

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL BROTHERHOOD OF) CASE 13778-C-98-874
ELECTRICAL WORKERS, LOCAL 483)
)
For clarification of an existing) DECISION 6780 - PECB
bargaining unit of employees of:)
)
CITY OF TACOMA) ORDER CLARIFYING
) BARGAINING UNIT
)
)
_____)

Steve Swinney, Business Agent, appeared for International Brotherhood of Electrical Workers, Local 483.

Cathy Parker, Assistant City Attorney, appeared for the City of Tacoma.

Leif Jensen, Business Agent, appeared for intervenor International Association of Machinists, Local 160.

On March 13, 1998, International Brotherhood of Electrical Workers, Local 483 (IBEW) filed a petition with the Commission under Chapter 391-35 WAC, seeking transfer of certain employees of the City of Tacoma (employer) from a bargaining unit represented by International Association of Machinists, Local 160 (IAM), to the unit it represents. A hearing was held on September 24, 1998, at Tacoma, Washington, before Hearing Officer J. Martin Smith. The employer and IAM filed briefs to complete the record on this case.

Based on the evidence and arguments presented, the Executive Director concludes that there has not been a sufficient change of circumstances to warrant a change of the unit status of the disputed employees. The IBEW's request is denied.

BACKGROUND

The City of Tacoma has about 3000 employees working in more than 600 job classifications. A substantial majority of those employees are organized into 3 bargaining units under the Railway Labor Act and 24 bargaining units (represented by 9 unions) under Chapter 41.56 RCW. The employer's labor relations staff includes three professionals: One has four principal assignments; the other two share responsibility for the other bargaining units. As of negotiations for 1998-1999, all three were involved in negotiating a "Joint Labor" agreement.

The employer provides wastewater treatment through a Public Works Department, which is a major branch of the table of organization reporting directly to the city manager. The department has two large divisions: Utilities and General. Two subdivisions of the utilities provide wastewater services: The Sewer Utility Operations Division (operations) headed by David Hufford; and the Sewer Utility Maintenance Division (maintenance) headed by Robert Davis.

The Operations Division -

The employees in this division operate various equipment used in wastewater treatment, such as motors, grit systems, rakes, chlorine applicators, gates and valves. These employees work at two wastewater treatment plants. The workforce includes employees working under "plant operator" (Code 5101), "senior plant operator" (Code 5103), and "plant manager for operations" titles.

The Maintenance Division -

Employees in this division report for work at the central wastewater treatment plant, but perform assignments at both plants and related facilities such as 54 pump (lift) stations. The workforce

in the division includes employees working under "maintenance mechanic" (Code 5105), "senior maintenance mechanic" (Code 5106), "maintenance mechanic supervisor", and "manager" titles.

The Disputed Classification -

The "waste water treatment plant assistant" (WWTPA) class (Code 5099) was created by the employer in the early 1980's, and is described as an entry-level class which does not require experience at hire. These employees perform assignments in both the operations division and maintenance division, cleaning digesters, performing other clean-up tasks at wastewater treatment facilities including an otherwise-unstaffed "beltline filter press", and performing preventative maintenance tasks. They operate manlifts, forklifts, and related equipment. The employer's intentions regarding the disputed class were described in a June 3, 1992 memo addressed to them by the heads of the operations division and maintenance division:

The WWTPA will be rotated through both the Sewer Operation and Maintenance divisions so the person can become familiar with both divisions. The rotation will take place as follows:

1. Each person hired will work in one division for approximately one year. At the end of that year the person will be transferred to the other division for approximately six (6) months. At the end of those six months the person will return to their original division.
2. If a WWTPA has been through a rotation and wishes to do so again, the person can request another rotation in writing. Management may grant the request if there is the capability of doing so.
3. Switching divisions permanently can only be done through the contract provisions or by mutual agreement between management and the individual.

With experience acquired in the WWTPA class, employees bid, promote or transfer to higher-paying positions in either the operations and maintenance divisions.

The Existing Bargaining Units -

The IBEW represents the operators and senior operators working in the operations division. The employer and the IBEW were parties to a collective bargaining agreement for a "Water Pollution Control Unit" covering the 1995-1997 period, and were in negotiations for a successor agreement in March of 1998, when the petition was filed to initiate this proceeding. That contract also covered "Engineering Instr. Tech. Asst." and "Wastewater Treatment Plant Electrician" classifications.

The IAM represents the maintenance mechanics and senior maintenance mechanics working in the maintenance division, along with all of the employees in the WWTPA class, as part of a "general" unit which includes a variety of automotive body repair, automotive mechanic, equipment mechanic, fire and marine mechanic, machinist, and similar classifications in various City of Tacoma operations. A collective bargaining agreement between the employer and the IAM covering that unit for the 1995-1996 period was extended through 1997. Those parties were apparently in negotiations for a successor agreement as of March 1998, and a city council resolution adopted in September 1998 ratified a successor contract covering the 1998-2000 period.

POSITIONS OF THE PARTIES

The IBEW argues that the job description for the WWTPA class has evolved into two separate and distinct positions, and that the

WWTPA employees assigned to the operations division should be transferred to the bargaining unit it represents. It claims the cleaning of the belt filter press is the only example of cross-over between the two groups within the WWTPA class, and explains that was the result of a grievance settlement. It refers to the WWTPA employees working in the operations division as "operations assistants", it cites the state certifications they hold, and it alleges the disputed employees actually function in the place of and interchange duties with the operations staff. It cites similarities of uniforms and work locations with the operations staff. It notes that the two unions are agreed on the matter, and argues that the employer's own table of organization confirms the employees it seeks are part of the operations division.

The employer contends the petition is untimely, citing (at and following the time of the hearing) both the collective bargaining agreement made effective retroactively between the employer and the IAM, and the impending ratification of a successor agreement between the employer and the IBEW. In the alternative, the employer contends that a split of the WWTPA classification would contravene a long-standing employer effort to avoid having classes split between bargaining units, and would fly in the face of a "horizontal" bargaining unit structure which it traces back to City of Tacoma, Decision 204 (PECB, 1977). The employer contends the cross-training envisioned in 1992 continues and is institutionalized in the contract between the employer and the IAM, although it acknowledges there have been few transfers between divisions after initial placement. The employer notes that all of the WWTPA employees have been in the bargaining unit represented by the IAM since at least 1985, that interaction between units is required by the fact that other unions represent various employees working in wastewater treatment, and that the criteria for a "severance" are

not met. The employer argues there has been no change of circumstances which would warrant altering the unit placement of the disputed employees.

A representative of the IAM entered an appearance at the hearing, but did not take an active role in the questioning of witnesses. In an opening statement, its representative indicated that it had been approached by the WWTPA employees working in the operations division, had investigated their situation, had come to a conclusion that they could properly be transferred to the bargaining unit represented by the IBEW. Thus, the IAM had no opposition to the request made by the IBEW. It did not file a brief.

DISCUSSION

The Authority to Determine Appropriate Bargaining Units

The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission in RCW 41.56.060:

The commission, after hearing upon reasonable notice, shall decide ... the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.

While parties may agree on units, unit determination issues are not subjects for bargaining in the usual mandatory/permissive/illegal sense, and the agreements of parties are not binding on the Commission. City of Richland, Decision 279-A (PECB, 1978),

affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

Timeliness of Petition

The employer urges dismissal of this petition as untimely, citing that the IAM contract was "closed" when the IBEW initiated this proceeding. The argument is without merit.

WAC 391-35-020 is a procedural rule which establishes three windows of opportunity for parties to **file** unit clarification petitions:

WAC 391-35-020 Petition--Time for filing. (1) Disputes concerning status as a "confidential employee" may be filed at any time.

(2) Where there is a valid written and signed collective bargaining agreement in effect, a petition for clarification of the covered bargaining unit filed by a party to the collective bargaining agreement will be considered timely only if:

(a) The petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the collective bargaining agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class; or

(b) The petitioner can demonstrate that, although it signed the current collective bargaining agreement covering the position or class at issue in the unit clarification proceedings:

(i) It put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class via the unit clarification procedure; and

(ii) It filed the petition for clarification of the existing bargaining unit prior to signing the current collective bargaining agreement.

(3) Disputes concerning the allocation of employees or positions between two or more bargaining units may be filed at any time.

WAC 391-35-020(3) does not depend upon any or all of the potentially-applicable collective bargaining agreements being "open" at the same time, or upon all interested parties taking an active role in the controversy. The issues in this case involve the allocation of employees and positions between two bargaining units of the employer City of Tacoma.

Application of Statutory Criteria

The employer urges that the change of bargaining unit status sought by the IBEW in this case should be denied, in the absence of changed circumstances. The employer's position is well-taken. Apart from the procedural requirements embodied in WAC 391-35-020, a substantive requirement above and beyond (and overriding) procedural concerns was set forth by the Commission in City of Richland, supra, as follows:

Absent a change of circumstance warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed. However, both accretions and exclusions can be accomplished through unit clarification in appropriate circumstances.

See, also, Quillayute Valley School District, Decision 2809-A (PECB, 1988); Toppenish School District, Decision 1143-A (PECB, 1981); City of Auburn, Decision 4880-A (PECB, 1995).

History of Collective Bargaining -

The history component of the statutory unit determination criteria will not operate in every case, but moves to the forefront in a case such as this. As the moving party in this case, the IBEW would need to show that the historical unit configuration is no longer appropriate. The IBEW has not satisfied that burden.

The employer provided testimony that the WWTPA classification was created in the early 1980's. While the initial inclusion of the WWTPA class in the bargaining unit represented by the IAM remains shrouded in mystery, the employer provided documentary evidence that the WWTPA class has been included in that unit since at least 1985 (then under a "Treatment Plant Helper" title).

The WWTPA class has been before the Commission in past proceedings. The IBEW made a false start at this same issue in 1989, by filing a unit clarification petition seeking to have members of the WWTPA class assigned to the operations division transferred to the bargaining unit it represents, but then withdrawing that petition without a ruling.¹ The WWTPA class was included in the IAM

¹ Notice is taken of the Commission's docket records and files for Case 8016-C-89-433. The petition filed by the IBEW on June 7, 1989 stated:

"The class of Waste Water Treatment Plant Assistant (currently covered by Machinists Local 160) have existed as maintenance only classifications. IBEW has covered operations classifications. Upgrade of plant facilities has placed individuals in this classification in operations work, necessitating changes in hours and working conditions in support of our classes of Senior Waste Water Treatment Plant Operators and Waste Water Treatment Plant Operators. We find work in operations to be our bargaining unit work. Number of affected employees is approximately six (6).

bargaining unit in 1991, when the IAM withstood a decertification effort. City of Tacoma, Decision 3680 (PECB, 1991).

While the IAM has not opposed the change of bargaining unit status requested by the IBEW in this case, all indications are that it is and remains a viable organization which continues to represent a viable bargaining unit. The IAM and the employer are now parties to a new contract which extends through 2000. Nothing in this record suggests that the history of bargaining in that unit has been confused, conflicted, or erratic. Nothing in this record indicates any historical problems in that bargaining unit would be alleviated by transfer of part of the WWTPA class to another unit. These facts weigh heavily against a finding that the unit represented by the IAM is "inappropriate" in any way.

Duties, Skills and Working Conditions -

The duties, skills and working conditions component of the statutory criteria will operate in virtually every case, and is critical to the allocation of employees to bargaining units. As the moving party, the IBEW has the burden to show that appropriate circumstances exist for a change of the bargaining unit status of the WWTPA employees working in the operations division. City of Richland, supra. As with any "accretion", the IBEW must also prove that the bargaining unit it represents is the **only** appropriate unit placement for the employees it seeks. Those burdens are not met.

The evidence supports the employer's arguments with regard to the WWTPA being an entry-level class, and a training ground for all aspects of the wastewater operation. Since at least 1992, the employer has expressly provided for rotation of each WWTPA through the operations division and then the maintenance division, for one year. The memo from that time indicates that a WWTPA could request

another rotation after completion of one cycle. The record indicates reassignments between maintenance and operations.

The basic work of the WWTPA class is cleaning and helping. They all use pressure washers and sweeping equipment. The preventative maintenance work performed in both divisions includes scraping, sanding and painting. One complex (and apparently distasteful) task performed by all members of the WWTPA class on an ongoing basis is the maintenance of the beltline filter press, where they work without the supervision of an operator.

It is significant that the members of the WWTPA class are given their daily assignments at the beginning of almost every work day. That is consistent with a "maintenance" approach, following the immutable rule that things don't break down on a fixed schedule, and distinguished from day-to-day operation of equipment following a relatively normal schedule or routine.

While there was testimony that all of the WWTPA employees presently working in the operations division have acquired state certifications necessary to serve as a plant operator, the same witness acknowledged that having or obtaining such certification was not a requirement of the WWTPA position. The employer provided evidence that completion of a separate application and civil service examination process is required for a WWTPA to obtain promotion to one of the operator positions in the IBEW unit, so the upgrades mentioned are only to fill temporary vacancies. Importantly, nothing prevents the WWTPA employees assigned to the maintenance division from obtaining the same state certifications, or from seeking promotion to the operator classes through the civil service procedure. All of this is consistent with the employer's "entry level" characterization of the class as a whole.

The evidence does not support the IBEW claim that the WWTPA class has evolved into two separate job classes. Although the disputed employees may prefer to think of themselves as "assistant operator" at the treatment plants where they work, the employer made it clear that was not its intention. Similarly, although the IBEW's brief includes an assertion that the new IAM contract provides for "separate training programs for the Operations Assistants", that claim was not supported by testimony or documentary evidence in this record.

The Executive Director does not adopt the employer's proposal to reject the result requested by the IBEW because it would split a class. The employer explained that it has a civil service system, and that it has made an effort to avoid having its classifications split between two or more bargaining units. While that may yield administrative efficiencies and other benefits to the employer, its civil service system and classifications cannot overrule the statutory authority of the Commission to place employees into bargaining units under the criteria set forth in RCW 41.56.060. If the IBEW were able to show sufficient differences to warrant placing the members of the WWTPA class into two different bargaining units, the employer's civil service classification could not stand in the way.² Conversely, the rejection of the IBEW's request is not based on preserving the civil service classification.

Extent of Organization -

The extent of organization aspect of the statutory unit determination criteria compares the unit configuration sought by a petition-

² Faced with such a result in a unit clarification proceeding under RCW 41.56.060 and Chapter 391-25 or 391-35 WAC, the employer could, of course, change its civil service classifications and/or titles to distinguish the employees placed in separate bargaining units.

ing organization with the whole of the employer's workforce. Considerations of this type are not determinative in this case.

The result proposed by the IBEW will not reduce the number of bargaining units at the City of Tacoma. Continuation of the historical inclusion of the disputed employees in the unit represented by the IAM will not increase the number of bargaining units or increase any fragmentation of bargaining units.

The Executive Director is not persuaded by the employer's extensive arguments founded upon City of Tacoma, Decision 204 (PECB, 1977). While an employer-wide bargaining unit of office-clerical employees was found appropriate in that case (and a request by the IBEW for a separate unit of office-clerical employees in the utilities department was rejected), the employer's extrapolation that an all-horizontal unit configuration was thereby dictated on a city-wide basis puts more weight on the decision than it will bear. All unit determinations are necessarily made under RCW 41.56.060 on a case-by-case basis. The cited decision remains valid as to the matters at issue in that case, but it is not conclusive in this case.

Desires of Employees -

The IBEW asserts the Commission is bound to consider the "desires of the employees", and it cites documents showing that the disputed employees favor a change of their unit status. That approach conflicts with Commission precedent, however.

RCW 41.56.060 certainly requires the Commission to consider the desires of the employees as one of four factors, but it is not the primary or an otherwise dominant factor. Bremerton School District, Decision 527 (PECB, 1978). Importantly, the Legislature did not prioritize the criteria.

Where application of the other statutory criteria indicates that either of two or more bargaining unit structures could be appropriate, the Commission conducts a unit determination election as the exclusive procedure to assess the desires of employees. Clark County, Decision 290-A (PECB, 1977); Pasco School District, Decision 5016-A (PECB, 1995). The unit determination election procedure assures that all employees affected by a choice between two or more appropriate bargaining unit configurations will have equal voice and vote on the matter, and avoids the inherent interference with employee rights that would occur any time an employee is subjected to examination and cross-examination, under oath, concerning a matter closely related to their choice of exclusive bargaining representative (where the statute assures employees the confidentiality of the ballot box or cross-check procedure). The IBEW has not presented any substantial legal argument supporting disregard or rejection of these precedents.³

This record does include letters in which certain employees have expressed their preference for affiliation with the IBEW. The letters were originally addressed to the IAM, and asked that union to release them to the IBEW. To the extent the letters contain statements asserting that friction between employees would be eliminated, career paths to operator positions would be accelerated, and/or training issues would be better addressed, they are objectionable as hearsay in the absence of the opportunity for

³ Statutory interpretations made by administrative agencies established by the Legislature to administer specific statutes are accorded considerable weight by the courts, especially when the administrative agency has expertise in a highly specialized area of law. See, City of Yakima, Decision 3503-A (PECB, 1990), citing Community College v. Personnel Board, 107 Wn.2d 427 (1986); Yakima v. Yakima Police, 29 Wn.App. 756 (1981).

cross-examination. This decision must be made on the basis of the evidence produced at the hearing.

In this case, the "history of bargaining" forecloses a change of unit status under City of Richland, supra, and the evidence concerning "duties, skills and working conditions" falls far short of indicating that there have been changes of circumstances making the unit represented by the IBEW the only appropriate unit for the WWTPA employees assigned to the operations division. There is no basis for conducting a unit determination election.

FINDINGS OF FACT

1. The City of Tacoma is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1).
2. International Brotherhood of Electrical Workers, Local 483, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of non-supervisory City of Tacoma employees which includes wastewater treatment plant operators.
3. International Association of Machinists, Local 160, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of non-supervisory City of Tacoma employees which includes employees performing maintenance functions and cleanup/helper functions in the employer's wastewater treatment operations.
4. The classification titled "waste water treatment plant assistant" was created by the employer in the early 1980's as

an entry-level class which did not require experience, and which was used to train employees for eventual promotion to higher-level positions in the employer's waste water treatment operations. Employees in that classification are assigned to both the operations division and the maintenance division within the employer's wastewater treatment operation. Since at least 1985, all of the employees in that classification have been represented for the purposes of collective bargaining in the bargaining unit described in paragraph 3 of these Findings of Fact.

5. Since at least 1992, employees in the waste water treatment plant assistant classification have been cross-trained under a written protocol requiring their rotation through the operations and maintenance divisions.
6. IBEW Local 483 filed a petition under Chapter 391-35 WAC, claiming a dispute concerning the allocation of positions between two bargaining units and claiming that the employees in the waste water treatment plant assistant classification who are assigned to the operations division should properly be included in the bargaining unit it represents as described in paragraph 2 of these Findings of Fact.
7. All of the employees in the waste water treatment plant assistant classification perform cleanup work and preventive maintenance work, usually assigned on a daily basis. Interchange of the positions between divisions can take place on a daily basis. Employees from both divisions are routinely assigned to work on the beltline filter press facility.

8. Promotion from the waste water treatment plant assistant classification to higher classifications within the employer's operation is by qualification and examination under a civil service system created and operated by the employer, and is not automatic for any such employee.
9. The employer does not require any of the employees in the waste water treatment plant assistant classification to obtain state certification as waste water treatment plant operators. To the extent that any of the employees in that classification who are assigned to the operations division have obtained such certification, it was at their own volition and for the purpose of qualifying for temporary upgrade to operator positions outside of their own classification.
10. No meaningful change in circumstances has occurred with respect to the duties, skills or working conditions of the employees in the waste water treatment plant assistant classification.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-35 WAC.
2. In the absence of a change of circumstance, the record in this proceeding does not warrant a change of the bargaining unit status, under RCW 41.56.060, for employees in the waste water treatment plant assistant classification historically included in the bargaining unit described in paragraph three of the foregoing Findings of Fact.

ORDER

All of the employees in the waste water treatment plant assistant classification shall continue to be included in the appropriate bargaining unit described in paragraph three of the foregoing Findings of Fact.

Issued at Olympia, Washington, on the 5th day of August, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHÜRKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.