

City of Elma, Decision 9794 (PECB, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
TEAMSTERS UNION, LOCAL 252)	CASE 20754-C-06-1293
)	
For clarification of an existing)	DECISION 9794 - PECB
bargaining unit of employees of:)	
)	ORDER CLARIFYING
CITY OF ELMA)	BARGAINING UNIT
)	

Daniel O. Glenn, Attorney at Law, joined on the brief by
Puget Sound Employers, Bette Meglemre, for the employer.

Rick Englehart, Organizer, for the union.

On November 18, 2006, Teamsters Union Local 252 (union) filed a unit clarification petition with the Public Employment Relations Commission (Commission), seeking to include the Assistant Clerk/Treasurer position in its current bargaining unit of clerical and public works employees. A hearing on the matter was held on February 7, 2007, in Elma, Washington, before Hearing Officer Katrina I. Boedecker.

ISSUE

The issue before the Executive Director is:

Is there a change of circumstances involving the Assistant Clerk-Treasurer position that would appropriately lead to the accretion of the position to the bargaining unit?

Based upon the record as a whole, the Executive Director finds that there has been no permanent change of circumstances affecting the

Assistant Clerk-Treasurer position to allow for its inclusion in the bargaining unit through a unit clarification petition.

APPLICABLE STATUTES AND LEGAL STANDARDS

The City of Elma (employer) has a bargaining relationship with the union under the Public Employees' Collective Bargaining Act (PECBA), Chapter 41.56 RCW.

RCW 41.56.070 grants local government employees the right to vote to determine whether or not they wish to be represented for the purposes of collective bargaining. Once a bargaining unit has been certified or recognized, Commission and judicial precedents limit the rights of labor and management to modify the unit: "Absent a change of circumstances 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." *City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981).

Limited circumstances where accretions are appropriate were further explained in *Kitsap Transit Authority*, Decision 3104 (PECB, 1989).

Employees ordinarily are permitted to vote on their choice of exclusive bargaining representative. RCW 41.56.040; RCW 41.56.060. Accretions are an exception to the norm, and will be ordered only where changed circumstances lead to the presence of positions which logically belong only in an existing bargaining unit, so that those positions can neither stand on their own as a separate bargaining unit or be logically accreted to any other existing bargaining unit. See, *Ben Franklin Transit*, Decision 2357-A (PECB, 1986). Since accretion is accomplished without giving the affected employees an opportunity to vote on their representation, the party proposing an accretion has the burden to show that the conditions for an accretion are present.

This policy has been codified in the Commission's rules:

WAC 391-35-020 TIME FOR FILING PETITION -- LIMITATIONS ON RESULTS OF PROCEEDINGS.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions;

In making unit determinations, the Commission seeks to group together employees who have sufficient similarities, known as a community of interest, to indicate that they will be able to bargain collectively with their employer. *King County*, Decision 5910-A (PECB, 1997).

ANALYSIS

The City of Elma is a small community in Grays Harbor County. As of the date of the hearing, it has a total work force of 20 full and part-time employees.

Bargaining Unit at Issue

The current bargaining unit includes the following job classifications: Municipal Court Clerk; Assistant Municipal Court Clerk; Deputy Utility Billing Clerk; Clerical I; Police Deputy Records Clerk; Parks Grounds Keeper; Utility Worker; Chief Treatment Plant Operator; and Mechanic. There is no record of this unit being certified through the representation procedures of the Commission.

The Assistant Clerk/Treasurer, who is the subject of this petition, is not now represented by any union. At one time in the mid-1990's, the parties had included the Assistant Clerk/Treasurer position in the bargaining unit. Apparently, after one contract,

the parties agreed to remove the Assistant Clerk/Treasurer from the bargaining unit. None of the witnesses who testified at the hearing on this petition could recall why the Assistant Clerk/Treasurer position was removed.

Change of Circumstances Claim

The Assistant Clerk/Treasurer works in the Clerk/Treasurer's office. Until 2004, there were four employees in the office. That year, the employer's private sector ambulance and waste management providers reclaimed the billing functions previously performed in the Clerk/Treasurer's office. As a result, the employer laid off the employee who had been in the Clerk I position in the office.

In mid-2004, Carol Borek was promoted from the Deputy Utility Billing Clerk to Assistant Clerk/Treasurer. Diane Easton, the previous Assistant Clerk/Treasurer, had been promoted to be the Clerk/Treasurer. As the Deputy Utility Billing Clerk, Borek had been a dues paying member of the union. When she was promoted, she contacted Russ Walpole, the union business agent, to see if she should still pay union dues. Walpole asked if she was doing any bargaining unit work as the Assistant Clerk/Treasurer. Borek told him that she was training the new Deputy Utility Billing Clerk. Walpole then told her that she was indeed still doing bargaining unit work, so she was still in the bargaining unit and had to pay dues. Borek accepted Walpole's determination and did not raise the issue again.

The "change of circumstances" came to the union's attention during the negotiations to replace the 2004 - 2006 collective bargaining agreement. During those negotiations, the employer proposed deleting the title of "Clerk I" from the contract. The employer justified its proposal because the Clerk I had become a "non-existent" position. The union advanced that the Deputy Utility Billing Clerk position could not do 80 hours of work (the work of

both the Deputy Utility Billing Clerk and the Clerk I), so that Borek must have taken some of the billing utility duties with her when she became the Assistant Clerk/Treasurer. The union claims that the elimination of the clerk position, and the presumed addition of bargaining unit duties to the Assistant Clerk/Treasurer position, are the changes in circumstances that triggered it to challenge the exempt status of the Assistant Clerk/Treasurer.

The collective bargaining agreement recognizes the union as "the exclusive collective bargaining representative for all classifications set forth in Appendix 'A'" The appendix does not list the Assistant Clerk/Treasurer. For the term of the 2004 - 2006 agreement, the union did not make any proposals about wages, hours or conditions of employment for the Assistant Clerk/Treasurer.

The record failed to establish that there has been a change in circumstances. The union believes that the 40 hours of work that the Clerical I employee had performed must have gone somewhere. The union cannot find the work in the bargaining unit, so it assumes that it went out of the unit with Borek. However, there was no evidence in the record to support the union's belief that bargaining unit work went with Borek when she was promoted. The employer established that the Clerical I position did the garbage billing and ambulance billing, functions which are now performed by the private sector providers, and are no longer done by the city.

The record did not include much information on the duties of the Assistant Clerk/Treasurer. However, the record is clear that the duties of the Assistant Clerk/Treasurer have remained unchanged since the early 1990's. Borek and Easton gave clear, un rebutted testimony that Borek is only doing Assistant Clerk/Treasurer duties. These duties are not now bargaining unit duties.

The employer did not merely rename the Deputy Utility Billing Clerk position to that of Assistant Clerk/Treasurer. Both positions still exist and are staffed. When Borek was promoted from Deputy Utility Billing Clerk to Assistant Clerk/Treasurer, she changed jobs and performed different duties - duties which the union previously agreed were exempt from the bargaining unit.

When Borek was in the process of training a new Deputy Utility Billing Clerk, she was, of necessity, completing some of the tasks associated with that bargaining unit position. However, once the training period was completed, Borek no longer performed bargaining unit work. The nature, duties and responsibilities of the Assistant Clerk/Treasurer position have not changed since the union agreed to release it from the bargaining unit.

The Dues Dispute

This decision has not addressed the dues arguments submitted by the parties. It is important that both parties recognize that Commission unit determinations are based on duties performed, not on whether the individual involved is paying union dues. Under RCW 41.56.110, once the employer has a written authorization from the public employee, it is required to deduct the dues until the employee revokes the authorization. An employee can keep paying dues, even if he/she is no longer in the bargaining unit, unless there is a union rule to the contrary. The fact that the union may have advised Borek in 2004 that she was required to pay union dues is not germane to the issue before the Executive Director.

Remedy Request

The employer requests an order that the union return the dues, with interest, that Borek paid after she was promoted, and that the union pay attorney's fees and costs as a penalty for what the employer characterizes as the abuse by the union of the good faith

bargaining obligation, the frivolous nature of the action, and the abject failure to present relevant or material evidence at the hearing. Such remedies/awards are not appropriate in unit clarification proceedings, and will not be entertained.

SUMMARY

The union contends that Borek's position was merely reclassified, and that the Assistant Clerk/Treasurer position has been amalgamated into the bargaining unit. The record points in a different direction. The position of Assistant Clerk/Treasurer is unchanged. The Executive Director finds no evidence to support that a change of circumstances has occurred; thus the Assistant Clerk/Treasurer shall remain outside of the bargaining unit. The Executive Director denies the union's request to accrete the questioned position into the bargaining unit.

FINDINGS OF FACT

1. The City of Elma is an employer within the meaning of RCW 41.56.030(1).
2. The Teamsters Union Local 252 is a bargaining representative within the meaning of RCW 41.56.030(3), representing a mixed unit of city employees. It filed a unit clarification petition claiming a change of circumstances has occurred that would cause the Assistant Clerk/Treasurer position to be accreted to its bargaining unit.
3. Carol Borek was promoted from the Deputy Utility Billing Clerk to the Assistant Clerk/Treasurer. After she was promoted, she helped train the new Deputy Utility Billing Clerk. During the training period, Borek performed some Deputy Utility Billing

Clerk duties. After the training was done, Borek did Assistant Clerk/Treasurer duties exclusively.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and 391-35 WAC.
2. There has been no change in circumstances to support the accretion of the Assistant Clerk/Treasurer to the bargaining unit.

ORDER

The petition of the Teamsters Union Local 252 for unit clarification is DENIED.

Issued at Olympia, Washington, this 29th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: ROBBIE DUFF

CASE NUMBER: 20754-C-06-01293 FILED: 11/13/2006 FILED BY: PARTY 2
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