

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
AMALGAMATED TRANSIT UNION)	CASE NO. 4432-E-83-820
Involving certain employees of:)	DECISION NO. 1788 - PECB
CITY OF EVERETT)	ORDER ON OBJECTIONS AND CERTIFICATION

Sally B. Carpenter, Attorney-at-Law, appeared on behalf of the petitioner.

Grant K. Weed, Assistant City Attorney, appeared on behalf of the employer.

By a petition for investigation of a question concerning representation filed with the Public Employment Relations Commission on January 18, 1983, Amalgamated Transit Union No. 883 has sought certification as the exclusive bargaining representative of van drivers employed by the City of Everett to provide transportation for senior citizens and handicapped citizens. A pre-hearing conference was held in the matter and a hearing was scheduled. On August 17, 1983, the petitioner and the employer filed an election agreement and a supplemental agreement under the rules of the Commission, requesting that a representation election be conducted in the petitioned-for bargaining unit. Four employees were named as eligible to vote, while five were to vote by challenged ballot. On August 30, 1983, the employer withdrew its objections as to the eligibility of four of the five persons named in the supplemental agreement previously filed in the matter. The tally of ballots issued on September 8, 1983 indicates that six ballots were cast in favor of the union and two ballots were cast for no representation. On September 15, 1983, the employer timely filed objections to the election, pursuant to WAC 391-25-590, as follows:

1. On January 18, 1983, Amalgamated Transit Union Local No. 883 (ATU) filed a petition for investigation of a question concerning representation of employees who were working as van drivers for the Everett Senior Center. Case No. 4432-E-83-820, Ex.1. The petition lists Sally B. Carpenter as attorney representing ATU in this case, and she has, as a matter of fact, represented ATU in this case.

2. On February 8, 1983, in a separate matter not involving ATU, a request for a hearing was made before the Everett Civil Service Commission on behalf of the same employees who are the subject of this case and who voted in the representation election on September 8, 1983. The request for hearing was made by Sally B. Carpenter, as attorney representing the senior van drivers individually. Ex.2. Ms. Carpenter has represented the individual senior van drivers throughout the course of the proceedings before the Civil Service Commission.
3. On August 10, 1983, the City and ATU met with Hearing Examiner Katrina Boedecker in a pre-hearing conference to stipulate to issues and to execute an election agreement in this case. Present with Ms. Carpenter and ATU execute an agreement in this case. (sic) Present with Ms. Carpenter and ATU officers were three of the senior van drivers who were to vote in the election. Prior to the conference, Ms. Carpenter and Union officers were to have met with the van drivers to discuss their strategy. A memo signed by Tana Clark, President of ATU, was sent to senior van drivers urging them to meet before the conference for a "preliminary briefing." Ex.3. A separate memo was also sent to all senior van drivers by ATU Officer Diana Hathaway urging them to meet the evening before the pre-hearing conference with ATU International Vice President Mel Schoppert. Ex.4. It was obvious at the pre-hearing conference that Ms. Carpenter intended to represent both ATU as the petitioner in this case as well as the senior van drivers individually.
4. As a result of action by the Everett Civil Service Commission certifying an eligibility list from which the City was to hire, the City made employment offers to each of the senior van drivers. Along with the employment offers was a form to be filled out by the van drivers which allowed them to indicate their preference in positions or to reject the employment offer. Ex.5. At the prehearing (sic) conference on August 10, 1983, Ms. Sally Carpenter requested to examine the executed employment offer forms and then consulted with ATU officers and van drivers. Subsequently, the City received letters from four van drivers withdrawing their rejection of the City's employment offer, presumably upon advice given by ATU attorney, Sally Carpenter. Ex.6.
5. With respect to the election agreement and supplemental agreement signed at the August 10, 1983, pre-hearing conference, Ms. Carpenter signed those agreements as "attorney for Senior Van Drivers." Exs. 7,8.
6. On August 22, 1983, ATU filed a complaint with the Commission alleging unfair labor practices. Said complaint was filed prior to the election in this case and prior to any certification of a bargaining representative by the Commission. Nevertheless, the complaint described the bargaining unit involved as "Everett transit senior van drivers." Ex.9.

7. It is the City's understanding that ATU is not only paying Ms. Carpenter to represent the Union, but is also paying her to represent the individual van driver-voters, not only with respect to the representation petition and election, but also on private legal matters involving individual van drivers before the Everett Civil Service Commission.
8. On September 8, 1983, the election in this case was held. The results of the election were six votes cast for ATU and two votes cast for no representation. Ex. 10.
9. Based on the relationship between ATU, its attorney and the employee voters, it is inconceivable how an unbiased open election could have been held in this case. Any election where the same attorney represents the petitioner Union as well as the individuals who will vote to decide whether they are represented, is unfairly tainted. The provision of free legal services to the senior van drivers constitutes a gift and an improper economic inducement to vote for the petitioner Union.
10. Based on the aforementioned conduct by ATU and its attorney, the City files this objection to the election held September 8, 1983, and requests the Commission to conduct a full investigation into the legal and financial relationship between ATU, its attorney and the individual voters. The City further requests that the Commission investigate any other relevant circumstances that arise as a result of the allegations made herein that would constitute a basis for biasing said election.
11. Based on the aforementioned conduct by ATU and its attorney, the City requests that the results of the election in this case be invalidated, that ATU not be certified as the bargaining representative for the petitioned for employees, that no further elections be held, for the City's cost and attorney fees and for any other relief the Commission feels is just and appropriate.

The union was invited to respond to the objections, and it did so in a letter filed on October 7, 1983, wherein the union acknowledges that its attorney has represented eligible voters in the civil service commission proceedings.

The first question before us for decision is whether, on the facts alleged in the objections filed by the employer and admitted in the statement filed by the union, there are any disputed issues of material fact. If there are any disputed issues of material fact, a hearing would be necessary. We decline to hold a hearing, and overrule the objections as a matter of law.

For purposes of this opinion only, we assume as true the allegation that the union paid Sally Carpenter, an attorney-at-law, to represent the individual members of the bargaining unit in proceedings before the employer's civil service commission, as well as to represent the union itself in this proceeding.

The employees involved transport senior and handicapped persons to and from an activity center in Everett. The vans are furnished and maintained by the municipal transit system. The drivers are themselves senior citizens, working part-time for comparatively low wages. Some were retirees limited in the amount of earnings they could receive without affecting their pensions. They accumulated no rights to vacation or leaves of absence, but if they took such time off, their jobs were available when they returned. This arrangement may have been technically illegal under the city's own civil service procedures, because the city was paying these employees without ever having had them classified under its civil service law, but we need not decide that question. The system was being operated to the satisfaction of the city officials concerned. The city obtained low-cost transportation for its senior and handicapped citizens, and the drivers got a chance to render a substantial community service while picking up a little extra money.

The petition filed in the instant case had the effect of a serpent in Paradise. The city's immediate response was to assert as a bar to the petition its contract covering its regular transit bus drivers and that the van drivers were really day laborers covered by a contract between the city and another union. Further, the city responded that if the van drivers really were day laborers, they were subject to termination under city policy limiting day laborers to a maximum of 6 months of employment.

To protect the members of the petitioned-for bargaining unit from termination as day laborers, Carpenter filed a petition on their behalf with the civil service commission, alleging that they had been misclassified and asking that they be retained in their jobs unless dismissed for just cause. Her fees for those proceedings were paid by the ATU, and it is that representation of the van drivers as individuals at the expense of the union which the city now contends amounted to a gift to the drivers, tainting the election.

The legitimate interest of the union in the civil service proceedings is clear. If all of the drivers lost their jobs, the unit the union sought to represent would have been snuffed out. It did not take long for the other union to decide that the van drivers were not the kind of day laborers it represented, whereupon that organization withdrew from these proceedings. The civil service commission concluded in June, 1983, that the van drivers were not day laborers, and it classified them as "Senior Van Drivers".

The objections to the election do not arise out of the conduct of or results of the election. No challenged ballots were cast. Any hearing on matters occurring prior to August 17, 1983 was waived by the election agreement filed by the parties on that date. The city knew in February, 1983 that Carpenter was representing both the union and the drivers. The proceedings before the

civil service commission were an integral part of the representation bid by the union, and were precipitated by the city's response to the petition filed in this case. The union had a vital interest in the classification of these employees, and could not expect them to assume the expense incurred unexpectedly as the result of the union's filing of its representation petition. There is nothing in the record before us to suggest that Carpenter's handling of these proceedings and those before the civil service commission was not proper and professional.

The city cites and relies on NLRB v. Madisonville Concrete Co., 95 LRRM 2001 (6th Circuit, 1977). In that case, the court denied enforcement of an order of the NLRB compelling the employer to bargain with the union. It appeared that twelve days before an election, an eligible voter had an accident with his car on his way to a union meeting and received a citation. The union representatives said they would take care of it, and they did. They hired a lawyer to represent the employee, obtained a postponement of the trial until after the election and entered a guilty plea. The voter never paid any part of his fine, costs or attorneys' fees. That situation is clearly distinguishable on its facts. The traffic citation was of no concern to the union, and the legal representation bestowed on the voter was of no benefit to the union except as a conspicuous donation. The case is inapposite here, where the legal representation provided by the union had a direct relationship to the wages, hours and working conditions of the voters and to their eligibility to vote in the election.

The objections are overruled.

FINDINGS OF FACT

1. The City of Everett is a municipal corporation of the State of Washington and is a public employer within the meaning of RCW 41.56.020 and 41.56.030.
2. Amalgamated Transit Union No. 883, a labor organization and bargaining representative within the meaning of RCW 41.56.030, filed a petition with the Public Employment Relations Commission on January 18, 1983 for investigation of a question concerning representation in a claimed appropriate bargaining unit of "van drivers" employed by the City of Everett. Said petition was accompanied by a showing of interest which was administratively determined by the Commission to be sufficient.
3. In a letter filed with the Commission on January 28, 1983 in response to a routine inquiry made by the Commission, the City of Everett placed in question the employment status and voter eligibility of all of the employees in the bargaining unit involved in the representation

proceedings initiated by the petition filed on January 18, 1983. The union thereafter compensated its attorney to represent the employees in the claimed appropriate bargaining unit in proceedings before the employer's civil service commission wherein the union and the employees were seeking to secure the employment status and voter eligibility of the employees.

4. In June, 1983, the civil service commission classified the employees as senior van drivers.
5. The parties filed an election agreement on August 17, 1983, waiving hearing and stipulating to the propriety of a bargaining unit described as:

All full-time and regular part-time van drivers;
excluding supervisory and confidential employees.

The parties simultaneously filed a supplemental agreement permitting five persons to vote challenged ballots subject to later determination as to their eligibility, but the employer thereafter withdrew its objections concerning the eligibility of four of those individuals.

6. All proceedings were conducted under the supervision of the Commission in a manner designed to afford the affected employees a free choice in the selection of their bargaining representative, if any. A tally of the results of a representation election was previously furnished to the parties and is attached hereto.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The legal services provided by Amalgamated Transit Union No. 883 to eligible voters in this proceeding were for the purpose of securing their employment status and their eligibility to vote in this proceeding and were not an improper gift or inducement, so that the objections filed by the City of Everett are, as a matter of law, without merit.
3. The unit described in paragraph 4 of the foregoing findings of fact is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060; and all conditions precedent to a certification have been met.

NOW, THEREFORE, it is

CERTIFIED


The majority of the employees of the above-named employer employed in the appropriate collective bargaining unit described in paragraph 5 of the foregoing findings of fact have chosen:

AMALGAMATED TRANSIT UNION NO. 883

as their exclusive bargaining representative for the purposes of collective bargaining with their employer with respect to wages, hours and conditions of employment.

ISSUED at Olympia, Washington, this 16th day November, 1983

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANE R. WILKINSON, Chairman


MARK C. ENDRESEN, Commissioner