

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
GENERAL TEAMSTERS, LOCAL NO. 524)	CASE NO. 4896-E-83-893
)	
Involving certain employees of:)	DECISION NO. 1931 - PECB
)	
CITY OF SELAH)	ORDER DETERMINING CHALLENGED BALLOT

Davies, Roberts, Reid, Anderson and Wacker, by Herman L. Wacker, Attorney at Law, appeared on behalf of the petitioner.

Michael I. Quinn, City Supervisor, appeared on behalf of the employer.

Joe Ford, President, appeared on behalf of the intervenor, Selah Employees Association.

The petition for investigation of a question concerning representation was filed with the Public Employment Relations Commission in the above-entitled matter on October 10, 1983. An election was conducted by the Commission on November 23, 1983, at which a challenged ballot was sufficient to affect the result. A hearing on the challenged ballot was held at Yakima, Washington, on February 6, 1984, before Marvin L. Schurke, Executive Director.

BACKGROUND

The petitioner in this case seeks to sever a unit of police department employees from a broader unit of city employees for which the Selah Employees Association has been recognized as exclusive bargaining representative. The proposed bargaining unit was described in the original petition as:

All full-time and regular part-time employees in the City's Police Department with the exception of the Chief of Police, but to include the positions of Sergeant, Clerk/Matron, and/or Dispatcher.

The petitioner claimed that there were nine (9) employees in the bargaining unit.

As part of the Commission's docketing routine, a letter was directed to the employer on October 11, 1983, soliciting a list of the employees in the bargaining unit affected by the petition. The city responded in a letter dated October 18, 1983, as follows:

Per your letter received by the City of Selah on October 13, please find the following attachments:

1. List of employees, including 1 Sergeant, 7 Police Officers, and 1 Police/Court Clerk.
2. City of Selah/Employees' Association agreement with exhibits of 1983 compensation plan, 1983 classification plan, and City Personnel Rules and Regulations.

The list is to be used as an information base for determining the bargaining unit. As the employer, we express the desire for consideration to remove the Sergeant position from the bargaining unit. This position is supervisory in relation to the patrol officers and involved in disciplinary as well as management decisions. Another concern is the specific identification in the representation petition of the positions of Clerk/Matron, and/or Dispatcher. The City currently does not have these position classifications nor the associated functional workload to support such separate classifications. We look forward to hearing from you on the status of this petition request and will make every effort as a responsible employer to cooperate with your commission.

The list of employees attached to that letter contained nine (9) names. Maureen Knapp was listed as "police/court clerk". The showing of interest filed in support of the petition was administratively determined to be sufficient.

A pre-hearing conference was conducted on November 2, 1983, by a member of the Commission staff. The city, the petitioner and the incumbent exclusive bargaining representative were all represented at that time. No issue was raised concerning severance of the separate departmental bargaining unit, although the incumbent organization indicated its desire to be on the representation election ballot. During the course of the conference, the parties discussed the inclusion of the sergeant in the bargaining unit, to the end that he was left in the unit based on his historical inclusion in the association's unit. The parties also discussed election arrangements, out of concern that an employee then on by a temporary assignment for training at a school held in Spokane, Washington might be disenfranchised. The parties agreed to an election date after the employee's scheduled return to Selah. There is conflicting testimony as to whether the position held by, or the eligibility of, Tammy Sharp was ever discussed. There would appear to have been some discussion of the correct title for the position then held by Maureen

Knapp. The petitioner's witness denied hearing of Ms. Sharp at that time. Employer and incumbent witnesses testified that Ms. Sharp was mentioned during the course of the pre-hearing conference. At the conclusion of the pre-hearing conference, the parties executed an election agreement pursuant to WAC 391-25-230. The unit was described in that election agreement in terms similar to those used in the original petition. The parties did not develop or sign a new eligibility list, but indicated on the election agreement that the number of employees eligible was "9".

Tammy Sharp was employed by the City of Selah during 1983 as a part-time "general clerk". She was a one-half time employee, working two hours daily in the police department and two hours daily in the finance department. During a conversation which occurred some time between November 2, 1983, and November 23, 1983, Ms. Sharp made an inquiry to the city supervisor concerning her eligibility to vote in the election, and was advised to vote. The petitioner became aware of a potential claim that Tammy Sharp was an eligible voter, but that information came from an employee approximately a week following the pre-hearing conference. The employer never gave written notice to the Commission or either of the labor organizations that it had an additional employee who it claimed to be an eligible voter. The union did not follow-up on the rumor until the conference held immediately prior to the opening of the polls.

Ms. Sharp presented herself at the polls at the election conducted by the Commission on November 23, 1983, and she was permitted to cast a challenged ballot. The tally of ballots indicates that five votes were cast in favor of General Teamsters Local No. 524, four votes were cast in favor of the Selah Employees Association, and no votes were cast in favor of the choice for "no representation". If determined to be an eligible voter, Ms. Sharp's ballot cast either for the Selah Employees Association or for "no representation" would throw the proceedings into the runoff election procedure, whereas sustaining of the challenge to her ballot would result in certification of General Teamsters Local No. 524 as exclusive bargaining representative.

On December 3, 1983, all parties were given until December 16, 1983 to show cause why the challenged ballot should not be voided based on the election agreement previously filed. The employer responded in a letter dated December 13, 1983, and the Selah Employees Association responded in a letter (on the employer's letterhead) dated December 14, 1983. Based on those responses, the matter was set for hearing.

POSITIONS OF THE PARTIES

The petitioner contends that the challenged ballot should be voided. It disputes that Ms. Sharp's situation or potential eligibility was ever called

to its attention prior to execution of the election agreement, and contends that it was therefore deprived of the opportunity to campaign for her vote. It further contends that Ms. Sharp was merely a temporary, part-time employee who was not properly included in the bargaining unit.

The employer acknowledges that Tammy Sharp's name was omitted from the list of employees provided by the city, but attributes the situation to inadvertence. It contends that Ms. Sharp was within the "all full-time and regular part-time employees in the City's Police Department" unit description agreed upon by the parties at the November 2, 1983 pre-hearing conference, and that she should be deemed to be an eligible voter. Ms. Sharp subsequently became the full-time clerical employee in the police department and Ms. Knapp was transferred to full-time employment in other city departments. Based on those developments, the city urges that the entire election should be voided and re-conducted with the current employees as eligible voters.

The incumbent organization, starting from the premise that Ms. Sharp has been in its bargaining unit, urges that all of the employees affected by the representation proceeding should be deemed eligible to vote, so that the challenge to Ms. Sharp's ballot should be overruled.

DISCUSSION

The issues in this case are difficult. The law and the equities do not align clearly with any particular position or result. Both short-term and long-term considerations weigh in the determination.

Representation proceedings are directed at the very foundation of what may become long-term bargaining relationships between employers and labor organizations. Representation proceedings produce a description of a bargaining unit, which is an ongoing listing of classifications or types of employees which are grouped together and distinguished from others for the purposes of collective bargaining. Once certified, a labor organization will enjoy a statutory status as exclusive bargaining representative of the bargaining unit until such time as it is successfully challenged. On the other hand, employees have a statutory right to change their collective bargaining representative as soon as one year after certification.

Certifications are based on a snapshot of employee attitudes at a particular point in time. The eligibility list developed in connection with a representation proceeding will contain the names of all employees in the

bargaining unit at that particular point in time, with the expectation that, as time passes, employees may leave the bargaining unit or the employ of the employer and new employees will enter the bargaining unit. Employees involved in this case were represented for the purposes of collective bargaining by the Selah Employees Association under a contractual agreement for calendar year 1983. The petitioner in this case filed a timely and properly supported petition for investigation of a question concerning representation, pursuant to Chapter 41.56 RCW and Chapter 391-25 WAC. The question concerning representation was put to the employees in a secret ballot election conducted on November 23, 1983. Had any one of the three choices emerged as the clear winner, that election would have resulted in a certification on or about December 1, 1983. Under the provisions of RCW 41.56.070, such a certification would not have been affected by changes of personnel which took place on or about January 1, 1984, but would have been subject to exercise of the right of employee choice implemented by a petition filed after at least one year had passed following certification. While the employer's position favoring a whole new election has some subjective appeal as fulfilling long-term policies, it also has an element revisionist history. All of the parties in a representation case are bound by the image which appears when the shapshot is taken, at least until the one year period has passed to permit re-takes. The issue here is and continues to be the determination of which employees should be deemed eligible voters for the election held on November 23, 1983.

Contrary to the position asserted by the incumbent organization, close reading of the documents in evidence discloses that Tammy Sharp was not within the bargaining unit represented by the Selah Employees Association. Tammy Sharp was working during 1983 in the classification of "general clerk". The collective bargaining agreement in effect during 1983 between the City of Selah and the Selah Employees Association is a one-page document executed on December 28, 1982. That agreement makes reference to two previous collective bargaining agreements between those parties, together with references to certain city resolutions. That agreement then makes reference to a classification ordinance (number 793) and a salary resolution (number 646) for 1983. Ordinance No. 793 makes reference to "management and non-union employees", to "part-time and temporary personnel", to "fire department officer and support personnel", but does not list classifications represented by the Selah Employees Association. The "general clerk" classification is listed in Ordinance No. 793 among the "part-time and temporary personnel". Ordinance No. 646 makes reference to the same groups and classifications as are found in Ordinance No. 793, but also contains a separate section listing a different set of classifications under a heading of: "City of Selah Employees' Association Members". There is no "general clerk" classification among those specified in Ordinance No. 646 as being represented by the Association.

The precedents established by the Public Employment Relations Commission indicate that temporary and casual employees of an employer will be excluded from bargaining units. Columbia School District, et. al., Decision 1189-A (EDUC, 1982). The petition and the election agreement on file in this case both use the terminology: "All full-time and regular part-time employees..." In this context, "regular" is the antonym of "casual". The language used excludes from the bargaining unit those employees whose employment is so limited as to indicate that they lack an expectancy of continued employment. A fair inference can be drawn from the testimony that, by the time of the November 2, 1983 pre-hearing conference, the city was contemplating (and the incumbent organization had at least some knowledge of) a re-organization of its workforce which would separate police department and municipal court functions so as to return to having only one clerical employee in the police department. Under the dual circumstances of her exclusion from the Selah Employees' Association bargaining unit and the impending elimination of the part-time position, it is difficult to credit the claim that Tammy Sharp was only excluded from the eligibility list because of inadvertence.

The Public Employment Relations Commission has no independent source of information concerning the names, classifications or working arrangements of the employees of any particular public employer, and must rely on the information supplied to it by the parties to a representation case. An employer, on the other hand, is uniquely in a position to know who its employees are. See: Goldendale School District, Decision 1634-A (PECB, 1984). Although it attributes its initial failure to include Tammy Sharp's name on the eligibility list to "inadvertence", the employer was well aware some time prior to the election that it would claim she was an eligible voter. Nevertheless, the employer never provided either the Commission or the petitioner with any written notice of its claim that an additional employee should be considered eligible to vote.

The representation procedures of the Public Employment Relations Commission differ from those of the National Labor Relations Board in several important respects.

Placing considerable emphasis on conducting representation procedures by agreement of all parties, the "consent" procedures of the Commission call for agreement as to the list of eligible voters. WAC 391-25-230. While the City Supervisor testified that he "believed" that he had mentioned Tammy Sharp by name during the pre-hearing conference, it is clear that he failed to effect communications with either the hearing officer or the petitioner. The parties signed an election agreement showing the number of eligible voters as "9", and the hearing officer continued to process the case based on the list of nine names previously submitted by the employer. The city never availed

itself of the opportunity, during a period of three weeks following the pre-hearing conference, to set the record straight. The city clearly bears responsibility for any breakdown in communications and the perpetuation of any error.

Another important difference between the Commission's representation procedures and those of the NLRB is the absence, under PERC procedures, of an "Excelsior" list. See: Excelsior Underwear, Inc., 156 NLRB 1236 (1966). Instead, PERC procedures entitle the petitioning labor organization to a copy of the employee list as soon as the Commission has validated the sufficiency of the showing of interest filed in support of the petition. WAC 391-25-130. Early access to the list is encouraged, so that the union will be in a position to take positions concerning and make stipulations on eligibility of employees. Once an eligibility list is agreed upon, that list serves the purposes of the parties during any pre-election campaign. The employer's expressed belief that the list of employees was only for the purpose of checking the showing of interest is unrealistic in light of the rules and the employer's own written comments. The employer fully expected that the list would be used for additional purposes during the proceedings. Its failure to effect clear notice concerning Tammy Sharp, whether due to inadvertence or otherwise, deprived the petitioner of notice to which it was entitled. The potential prejudice is difficult to evaluate, since the petitioner had actual knowledge of the potential eligibility claim concerning Tammy Sharp prior to the election, but even then the employer's position can be interpreted as tentative or ambiguous.

For the several reasons indicated, it is concluded that the original list of nine employees provided by the employer correctly reflected the employment situation as it existed in October and November, 1983. Tammy Sharp was not employed in the bargaining unit with an expectation of continued employment at the time the election agreement was signed. The eligibility date for the election was properly set as of the date the election agreement was signed. Her subsequent transfer into the bargaining unit did not make her an eligible voter in the election held on November 23, 1983.

NOW, THEREFORE, it is

ORDERED

1. The challenge to the ballot cast by Tammy Sharp is SUSTAINED, and the ballot is deemed void.

2. An amended tally of ballots is attached, pursuant to WAC 391-25-550.

DATED at Olympia, Washington, this 15th day of May, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This Order may be appealed
by filing timely objections
with the Commission pursuant
to WAC 391-25-590.

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Amended
TALLY SHEET

NAME OF EMPLOYER

City of Selah

CASE NUMBER

4896-E-83-893

PART 1 - CROSS-CHECK OF RECORDS

The undersigned agent of the Public Employment Relations Commission certifies that he/she has conducted a cross-check of records in the above case, and that the results were as follows:

Number of Employees in Bargaining Unit.....

Number of Employee Records Examined.....

Number of Employee Records Counted as Valid Evidence of Representation...

PART 2 - SECRET BALLOT ELECTION

The undersigned agent of the Public Employment Relations Commission certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated below, were as follows:

- 1. Approximate number of eligible voters..... 9
- 2. Void Ballots..... 1
- 3. Votes Cast For: *General Teamsters Local No. 524* ... 5
- 4. Votes Cast For: *Selah Employees Assn.* ... 4
- 5. Votes Cast For: _____ ...
- 6. Votes Cast For: NO REPRESENTATION..... -0-
- 7. Valid Ballots Counted.(total of 3, 4, 5, and 6)..... 9
- 8. Challenged Ballots..... -0-
- 9. Valid Ballots Counted plus Challenged Ballots (total of 7 and 8)..... 9
- 10. Number of Valid Ballots Needed to Determine Election..... 5

Challenges are sufficient in number to affect the results of the election.
 are not

The results of the election appear to be inconclusive.
 conclusive favoring choice on line 3

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DATE ISSUED

May 15, 1984

By

Mason J. Schulte

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For _____

For _____

For _____

For _____
