

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the matter of the petition of: |) | |
| TEAMSTERS UNION, LOCAL 582 |) | CASE 9810-E-92-1615 |
| Involving certain employees of: |) | DECISION 4237 - PECB |
| CITY OF DEER PARK |) | DIRECTION OF ELECTION |
| |) | |
| |) | |

Greg D. Barrick, Executive Assistant, appeared on behalf of the petitioning union.

Perkins Coie, by Thomas F. Kingen, Attorney at Law, appeared on behalf of the employer.

On May 26, 1992, Teamsters Union, Local 582, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of certain employees of the City of Deer Park, Washington. In the space provided on the petition form for the number of employees involved, the union inserted the number "11".

The Commission directed a routine letter to the employer on June 2, 1992, supplying notices for posting pursuant to WAC 391-25-140 and requesting a list of the employees involved. The employer failed to supply a complete list of the employees in the petitioned-for bargaining unit, but filed a letter on June 18, 1992, detailing its reasons for wanting four individuals excluded from the petitioned-for bargaining unit as "confidential employees" or "supervisors". In the absence of a list of employees from which to verify the sufficiency of the showing of interest filed by the union in support of its petition, the Commission made a (rebuttable) presumption that the showing of interest would conform to the requirements of RCW 41.56.070 and WAC 391-25-110.

A hearing was held at Deer Park, Washington, on September 23, 1992, before Hearing Officer J. Martin Smith. The parties made closing arguments at the hearing, in lieu of filing post-hearing briefs.¹

BACKGROUND

The City of Deer Park is an incorporated municipality, located in Spokane County.² Operating under Title 35A RCW, the Optional Municipal Code, an elected mayor and five elected city council members set policy for the employer. As mayor, Keith Reilly is a part-time official who spends approximately 20 hours per week on his official functions. The employer at one time had a "city administrator" position within its organization, but that role has not been filled in recent years. The employer contracts with Spokane County for law enforcement services, but otherwise provides the services typical of a small municipality.

The petitioned-for bargaining unit consists of all of the full-time and regular part-time employees of the employer, excluding elected officials and confidential employees. Specifically listed in the petition as proposed for inclusion in the bargaining unit are the "finance director", "deputy clerk", "clerk/treasurer", "community service director", and "maintenance and sewer department employees". Employees of the City of Deer Park have not been represented for collective bargaining in the past.

The employer's response to the petition sought exclusion of four individuals from the petitioned-for bargaining unit, as follows:

¹ The employer has since provided a list of employees.

² A pamphlet entitled "Officials of Washington Cities 1990-91", published by the Association of Washington Cities, lists Deer Park as having a population of approximately 2380 persons.

1. Finance Director (Sheila Creekmore) - Proposed for exclusion as a "confidential employee".
2. Clerk/treasurer (Chris McCoy) - Proposed for exclusion as a "confidential employee".
3. Director of Community Services (Roger Krieger) - Proposed for exclusion both as a "confidential employee" and as a "supervisor".
4. Maintenance Supervisor (George Guenther) - Proposed for exclusion both as a "confidential employee" and as a "supervisor".

At the outset of the hearing in this matter, the union stipulated the exclusion of the "clerk/treasurer" position from the bargaining unit.³

POSITIONS OF THE PARTIES

The union argues that its petition to represent all full-time and regular part-time employees at Deer Park is for an appropriate bargaining unit, and that the persons holding the "finance director", "maintenance supervisor", and "building inspector/planner" positions are non-supervisory and non-confidential employees who should be included in the bargaining unit along with the seven uncontested employees.

The employer does not oppose the petition itself, but urges that the "finance director" will be instrumental in setting labor relations policy along with the mayor and city council, that the position now titled "community services director" covers a variety of functions and is the person being groomed to be the city

³ Acceptance of such a stipulation would appear to be in conformity with the decisions reached in several cases where similarly-titled positions have been contested in small municipalities. Town of Granite Falls, Decision 2617 (PECB, 1987); Town of Granger, Decision 2634 (PECB, 1987); City of Winlock, Decision 4056 (PECB, 1992).

administrator should the employer reactivate that role in its organization, and that the "maintenance supervisor" has authority to hire and fire subordinates, and so is excludable as a "supervisor" under Commission precedent.

DISCUSSION

The Propriety of the Petitioned-For Bargaining Unit

The administration of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and particularly the determination of appropriate bargaining units, is a function delegated by the Legislature to the Public Employment Relations Commission. The unit determination criteria to be considered are:

RCW 41.56.060 DETERMINATION OF BARGAINING UNIT--BARGAINING REPRESENTATIVE. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, 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** [emphasis supplied]

The task is not limited to establishing "the most appropriate" bargaining unit. Ben Franklin Transit, Decision 2357-A (PECB, 1986).

In the instant case, the employer has not raised any serious objection to the "wall-to-wall" bargaining unit being proposed by the union. Its arguments have been limited to "confidential" and

"supervisor" exclusions, which are regarded as "eligibility disputes" under the Commission's rules and precedents. Although the union's petition did not specifically provide for an exclusion of "supervisors", such an exclusion is required by Commission precedent. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). With that addition to the statutory exclusions already listed in the petition, the bargaining can be adequately described by use of the generic categories of excluded personnel.

Determining the Question Concerning Representation

In City of Redmond, Decision 1367-A (PECB, 1982), the Commission endorsed the use of a "bifurcated" procedure in representation cases. In Redmond, a union had petitioned for a unit which encompassed 30 employees. The employer had raised eligibility issues concerning only nine of those employees, but the determination of the question concerning representation for the entire bargaining unit was delayed pending a hearing and decision on the disputed positions. On appeal, the Commission wrote:

Under such circumstances, holding an election, at any time either before or after the eligibility determination - would cause an undue and **unnecessary delay** precisely because, given the overwhelming support the union enjoyed, an election would be unlikely to alter the outcome. Consequently considerations of efficiency should prevail under these circumstances, and **the Executive Director should have ordered a cross-check within a reasonable time after the showing of interest was assessed and the description of the bargaining unit established.** We, therefore, affirm the Executive Director's cross-check order, but emphasize that it should have taken place as described above.

[Emphasis by **bold** supplied]

Regardless of whether representation election or cross-check procedures are used, expedited determination of questions concerning representation, and reservation of "eligibility" issues for subsequent determination, has been the practice since Redmond. See, King County, Decision 4004 (PECB, 1992).

In the instant case, only 3 of 10 employees (30% of the total) remain at issue. The circumstances are thus similar to those present in the Redmond and King County cases.

While the conventional procedure for determining questions concerning representation is by having employees cast their ballots "in person" at an election on the employer's premises, WAC 391-25-490 permits the conduct of an election by "mail ballot" where use of the conventional procedure would result in undue delay, or would effectively deprive some eligible employees of their opportunity to vote. In a time period when the Commission has had its backlog of pending cases reach an all-time record high, and is operating an across-the-board cut of travel expenditures imposed by the Legislature, holding either an "in person" election or a "cross-check" in this case would be substantially delayed. Conduct of the election by mail ballot will result in a timely determination of the question concerning representation, as called for by the Redmond decision.

FINDINGS OF FACT

1. The City of Deer Park is a public employer within the meaning of RCW 41.56.030(1). The city is governed by an elected city council and mayor.
2. Teamsters Union, Local 582, a bargaining representative within the meaning of RCW 41.56.030(3), has filed a timely petition for investigation of a question concerning representation,

seeking certification as exclusive bargaining representative of a bargaining unit comprised of all full-time and regular part-time employees of the City of Deer Park. The petition was supported by a showing of interest which appeared to be sufficient for representation proceedings in a bargaining unit of the size claimed.

3. The City of Deer Park has a total of 11 employees. All those employees share some similar working conditions.
4. The parties have stipulated that the person holding the position of clerk-treasurer should be excluded from the bargaining unit as a "confidential employee".
5. The parties have framed issues concerning the eligibility of persons holding the positions of "finance director", "community services director" and "maintenance supervisor" for inclusion in the petitioned-for bargaining unit. Those issues affect no more than 30% of the remaining employees in the petitioned-for bargaining unit.
6. The determination of the eligibility issues in this matter is not a condition precedent to the determination of the question concerning representation, and would cause a substantial delay in the implementation of the rights of the non-disputed employees.
7. The determination of the question concerning representation in this matter by either an "in-person" election or by a cross-check would unduly delay the implementation of the rights of the non-disputed employees.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. A bargaining unit consisting of all full-time and regular part-time employees of the City of Deer Park, excluding elected officials, officials appointed for a fixed term, confidential employees, and supervisors, is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, and a question concerning representation presently exists in that bargaining unit.
3. The eligibility issues concerning the positions of "finance director", "community services director" and "maintenance supervisor" can be reserved for post-election determination under Chapter 391-25 WAC.

DIRECTION OF ELECTION

1. The employer shall provide the last known addresses of all of the employees in the bargaining unit affected by this proceeding, including the individuals whose eligibility to vote remains at issue. Such list shall be filed with the Commission and served on the petitioning union within 10 days following the date of this order.
2. A representation election shall be conducted, by secret mail ballot procedures, under the direction of the Public Employment Relations Commission, in the appropriate bargaining unit described in paragraph 2 of the foregoing conclusions of law, for the purpose of determining whether a majority of the employees in that unit desire to be represented for the purposes of collective bargaining by Teamsters Union, Local 582, or by no representative.

3. The ballots of the persons holding the positions of "finance director", "community services director" and "maintenance supervisor" shall be taken under challenge, and shall be subject to being opened and counted, if necessary, on the basis of a post-election determination of their eligibility to vote under Chapter 391-25 WAC.

ENTERED at Olympia, Washington, on the 24th day of November, 1992.

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.