

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
)
INTERNATIONAL ASSOCIATION OF) CASE 10667-E-93-1760
MACHINISTS AND AEROSPACE WORKERS,)
AFL-CIO, LOCAL 160) DECISION 4648 - PECB
)
Involving certain employees of:)
)
INTERCITY TRANSIT) ORDER ON OBJECTIONS
)
)
)

Theodore Neima and Gearold Dargitz, Representatives,
appeared on behalf of the union.

Heller, Ehrman, White and McAuliffe, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the employer.

On September 7, 1993, International Association of Machinists and Aerospace Workers, AFL-CIO, Local 160 (IAM) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive collective bargaining representative of certain employees of Intercity Transit (employer). The parties entered into an election agreement on October 26, 1993, wherein they stipulated the propriety of a vehicle maintenance bargaining unit and the list of employees eligible to vote on the question concerning representation. The union prevailed in an election conducted by the Commission on November 10, 1993.¹ The employer filed timely objections on November 17, 1993, pursuant to WAC 391-25-590(1), alleging that the union had engaged in conduct improperly affecting

¹ There were 23 names on the stipulated eligibility list. The results of the election were: 13 votes for the IAM and 10 votes for no representation.

the results of the election. A hearing on the election objections was held on January 21, 1994, before Hearing Officer Rex L. Lacy. Post-hearing briefs were filed by the parties on February 25, 1994.

BACKGROUND

Prior to the election, the IAM prepared a flyer titled "Choices", which was distributed to various eligible voters on the afternoon preceding the day of the election (i.e., November 9, 1993) and on the morning of the day of the election (i.e., November 10, 1993). One copy of that flyer was posted on the bulletin board in the employees' work area on the morning of the election. Other copies were either given to various employees, or left at their work stations.

The two statements in the IAM's flyer that are objected to by the employer are as follows:

The Kitsap Transit Maintenance employees are a good example of members making choices. They shopped around for a medical plan which met their collective needs. To get better medical, they agreed to a small co-pay.

Intercity Transit (Nick) didn't mention that Kitsap Transit Maintenance employees have a single rate pay structure which more than offsets the amount of their medical co-pay (mechanic single rate of pay \$17.29).

The evidence establishes that the IAM's motivation in preparing and distributing that flyer was to respond to a written communication to employees which the employer had wrapped around pay checks distributed to them on or after November 5, 1993. Among other things, the employer's communication stated that IAM-represented maintenance employees of Kitsap Transit had a monthly payroll deduction for their medical benefits pursuant to a contract

negotiated by the union, while noting that Intercity Transit pays the full premium for its employees.²

POSITIONS OF THE PARTIES

The employer claims the IAM's flyer contains substantial misrepresentations. It asserts that the flyer indicated the IAM provides Kitsap Transit employees with a choice of medical plans, and that a co-payment had been accepted in order to get a better medical plan. The employer disputes those interpretations, because no change was made in the Kitsap Transit medical plan when the IAM agreed to the employee co-pay of premiums. The employer also takes issue with the flyer's statement that Kitsap Transit maintenance employees have a single-rate pay structure which offsets the amount of their medical co-pay. The employer asserts that there are varying rates of pay at Kitsap Transit, many of which are significantly less than the \$17.29 per hour rate mentioned in the flyer. The employer contends that the misrepresentations related to a salient issue in the minds of maintenance employees at Intercity Transit, and that the timing of the flyer's distribution prevented the employer from effectively responding to the misrepresentations. The employer urges the Commission to find that the IAM's conduct had a significant impact on the election, and that the election results should, therefore, be set aside under the precedent of Tacoma School District, Decision 4216-A (PECB, 1993).

The IAM contends that the flyer was factual and, in any event, should not constitute grounds for setting aside the election. The IAM specifically urges the Commission to overturn Tacoma School District, Decision 4216-A (PECB, 1993), and to adopt the views set forth by the National Labor Relations Board regarding objectionable

² The employer communication was not the subject of an election conduct objection by the IAM.

election conduct in Midland National Life Insurance Company, 263 NLRB 127 (1982). In further support for adoption of the NLRB rule in this case, the IAM contends that the Commission must apply the federal standard for determining election objections, because the employer receives grants of federal funds for capital expenditures.

DISCUSSION

Standards for Determining Election Objections

After full and careful evaluation of the alternatives, the Commission adopted the standards set forth in Tacoma School District, supra, as follows:

To set aside an election, a misrepresentation must:

1. Be a substantial misrepresentation of fact or law regarding a salient issue;
2. Made by a party having intimate knowledge of the subject matter so that employees may be expected to attach added significance to the assertion;
3. Occurring at a time which prevents another party from effectively responding; and
4. Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

We took note of "the NLRB's shifting approach" to such matters, and of the scrutiny and critical comment which has been directed at the NLRB in this area.

The Commission's jurisdiction over this employer and its employees is statutorily imposed by Chapter 41.56 RCW. The IAM cites no authority for its "federal funds" theory, and the fact that the employer has received some federal funds does not require the

application of NLRB precedent to the disposition of the issue raised herein.

We see no reason to depart from the standards we only recently adopted in Tacoma, and will decide this case under those criteria.

Application of Precedent

Criteria 2 - Knowledge/Authority of Party -

Inasmuch as the IAM is the exclusive bargaining representative of some employees at Kitsap Transit, and had negotiated the contract to which reference is made in the disputed flyer, it is clear that the statements at issue here were made by a party having intimate knowledge of the subject matter. The eligible voters who read the flyer could have attached added significance to the assertions made by the IAM, and could reasonably have believed that those representations deserved special credence. Thus, the statements objected to by the employer meet the second criterion set forth in Tacoma School District.

Criteria 3 - Timing of Campaign Material -

The distribution of the IAM's flyer on the afternoon of the day preceding the election, and the morning of the election day, would have precluded the employer from making a meaningful response. Accordingly, the third criterion of Tacoma School District is also met.

Criteria 4 - Significant Impact on the Election -

The question of health and welfare benefits, and whether employees would be required to contribute to the costs of the benefits, was a significant issue to employees in the Intercity Transit maintenance department during the pre-election campaign. Testimony of employer representative Melody Johnson, IAM organizer Dennis London, and employee Michael Munger all concurred on that point. Thus, the flyer objected to by the employer could have had a

substantial impact on the election, and the fourth criterion of Tacoma School District is also met.

Criteria 1 - The Claimed Misrepresentations -

The critical issue in this case is whether the challenged statements constituted "substantial misrepresentations". In this case, the employer would have us find, in effect, that the IAM's flyer communicated that the employees at Kitsap Transit were able to dictate the terms of their employment benefits by having the IAM as their exclusive bargaining representative, that all employees in the Kitsap Transit maintenance department were classified as mechanics; and that election of the IAM as their bargaining representative would produce the same results for the employees eligible to vote in this case. To make such a finding would require the Commission to ignore what should be regarded as a common understanding of the collective bargaining process.

The salient facts concerning the contract provision on "insurance" at Kitsap Transit were developed in testimony by Linda Hahn, the human resources manager for Kitsap Transit, and Rick Brown, the union's negotiator for the Kitsap Transit collective bargaining agreement. They testified that the employee co-pay for health insurance coverage required under the terms of the collective bargaining agreement between Kitsap Transit and the IAM was the result of contract negotiations. Both Hahn and Brown indicated that health/welfare was one of the most significant, if not the most significant, issue confronting the Kitsap Transit parties in negotiating their contract. They also agreed that the price extracted by Kitsap Transit for maintaining the historical level of health and welfare benefits was employee co-payment of basic monthly premium costs, ranging from \$7 to \$21 per month.

Hahn indicated that her employer had historically borne the entire cost of the basic health and welfare benefits. Citing the escalating costs of medical insurance, Hahn stated it had become

imperative for her employer to share some of the costs with the employees, and that her employer made a proposal to the IAM in contract negotiations for an employee contribution to the health and welfare plan.

Brown testified Kitsap Transit's initial proposal for health care preserved the status quo only for the first year of the contract, and that Kitsap Transit had sought a reopener for subsequent years. Brown indicated that the union negotiating team looked at a variety of medical plans, and decided that a reopener would place the preservation of existing benefits at risk because of the extent to which medical premiums had been steadily increasing. Brown's testimony was that the union members decided their agreement on a small co-payment of premiums was the best option to maintain the benefit package for the full term of the contract. Brown's testimony thus indicates that the employees did "shop around" for a medical plan which met their collective needs, and that they did make "choices".

The only possible debate concerning the first paragraphs objected to by the employer concerns the adjective "better", as used in the third sentence to describe the plan the Kitsap Transit employees ultimately accepted. We find no misrepresentation, because the reference to "better medical" is ambiguous. If construed as a reference to the medical plan in existence under the prior labor contract, the union's reference to "better medical" can reasonably be described as misleading. The same is not true, however, if the phrase "better medical" is read as a reference to what that employer initially offered in negotiations. The IAM did negotiate a plan that guaranteed the benefit package for a longer period than initially offered by the employer, so a claim that the employees got "better medical" is not a misrepresentation in that context.

The salient facts concerning the "wage rate" at Kitsap Transit are as follows: Hahn and Brown testified that maintenance employees at

Kitsap Transit are represented by two different unions, under two separate collective bargaining agreements. The Teamsters union represents ramp-persons and service helpers,³ while the Kitsap Transit employees represented by the IAM are senior-level or journey-level mechanics, mechanic's helpers, parts-persons, warehouse-persons, and apprentices. With the exception of the apprentice classifications, which have salary ranges depending on experience and expressed as a percentage of the journeyman rate, each of the classifications represented by the IAM has a single wage rate at Kitsap Transit. We are thus unable to conclude that the IAM's reference to "Kitsap Transit Maintenance employees have a single rate pay structure ... [at] \$17.29" was a substantial misrepresentation.

Conclusions

At best, the flyer indicates that the employees at Kitsap Transit chose to agree, through the collective bargaining process, on contract provisions which they regarded as in their best interests relative to health and welfare benefits. Such a statement cannot be reasonably construed as a substantial misrepresentation of fact or law based upon the testimony of the negotiators of the Kitsap Transit labor agreement. Nor does the flyer, on its face, misstate the single rate being paid to employees classified as journeymen mechanics under the terms of the Kitsap Transit collective bargaining agreement. To read into the words printed on the flyer an interpretation that it states that all maintenance employees of Kitsap Transit are classified as journeymen mechanics and receive a pay rate of \$17.29 per hour is unwarranted under any reasonable construction.

³ This was the terminology used to describe the employees represented by the Teamsters union in Kitsap Transit, Decision 3104 (PECB, 1989).

FINDINGS OF FACT

1. Intercity Transit is a "public employer" within the meaning of Chapter 41.56 RCW.
2. International Association of Machinists and Aerospace Workers, Local 160, AFL-CIO, is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. International Association of Machinists and Aerospace Workers, AFL-CIO, Local 160 filed a timely and properly supported petition for investigation of a question concerning representation, seeking certification as exclusive bargaining representative of all full-time and regular part-time mechanics, service workers, and cleaners employed by Intercity Transit, excluding all other employees. During preliminary processing of the case, the parties stipulated the propriety of the bargaining unit and the list of eligible voters.
4. An election conducted by the Commission on November 10, 1993, in the bargaining unit described in paragraph 3 of these findings of fact, resulted in a majority of the valid votes being cast for representation by International Association of Machinists and Aerospace Workers, AFL-CIO, Local 160.
5. On November 17, 1993, Intercity Transit filed timely objections to conduct by International Association of Machinists and Aerospace Workers, Local 160, which was alleged to have improperly affected the results of the election. The objections related to two sentences included in a flyer titled "Choices" which was distributed to various eligible voters on the afternoon and evening of the day preceding the election and on the morning of the election.

6. The portion of the flyer which dealt with the medical plan and an employee co-pay of insurance premiums by Kitsap Transit employees did not constitute a substantial misrepresentation of the facts or law. The provisions in effect at Kitsap Transit were described as the product of negotiation, which should reasonably have been understood by eligible voters to involve the give-and-take of collective bargaining.
7. The portion of the flyer which dealt with a single-rate pay structure at Kitsap Transit did not constitute a substantial misrepresentation of the facts or law. The employees represented by this union at Kitsap Transit are, in fact, paid in the manner described by the IAM's flyer.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in the matter pursuant to Chapter 41.56 RCW.
2. By distributing to eligible voters the "Choices" flyer addressing the insurance and wages of other IAM represented employees, as described in paragraphs 6 and 7 of the foregoing findings of fact, International Association of Machinists and Aerospace Workers, Local 160, did not violate the laboratory conditions required for the conduct of a valid representation election under RCW 41.56.070, and did not engage in objectionable conduct improperly affecting the results of the election under WAC 391-25-590.

ORDER

1. The objections filed by Intercity Transit in the above-entitled matter are OVERRULED.

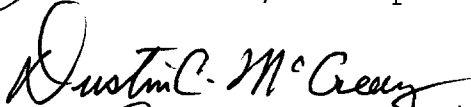
2. The Executive Director shall issue a certification consistent with the tally of ballots and this order.

Issued at Olympia, Washington, the 19th day of April, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



DUSTIN C. MCCREARY, Commissioner



SAM KINVILLE, Commissioner