



STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE OFFICE
300 West Harrison
Seattle, Washington 98119

March 3, 1976

Mr. F. G. Enslow
Griffin & Enslow, P.S.
Attorneys At Law
424 Broadway
Tacoma, Washington 98402

DECISION NO. 25 PECB

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Re: Case No. ULW-063
Unfair Labor Practice Charge

Dear Mr. Enslow:

On February 3, 1976, the Commission received a Charge Against Employer, filed by Mr. Ronald L. Miller, on behalf of I.B.E.W. Local 483, against the City of Tacoma. Since you have filed a Notice of Appearance in the matter, this communication is directed to you. The Charge Against Employer alleges as follows:

The City violated 41.56.140 RCW by refusing to bargain on mandatory subjects (work conditions, wages) and unilaterally implemented a new wage scale, job title, and work conditions in the area of hydroelectric plant supervision, effective January 1, 1976.

I

On November 13, 1972, the City of Tacoma recognized the International Brotherhood of Electrical Workers, Local No. 483, as the exclusive bargaining representative for the Electrical Supervisors' Bargaining Unit (Exhibit I).

II

During subsequent years, the City of Tacoma actively negotiated wages, hours, and working conditions with the Local Union, reaching settlement each year.

III

The City of Tacoma stalled the signing of an agreement until 1976, and the contract has just now received Council approval and still awaits signatures (Exhibit II).

IV

In December, 1975, the City Council passed Ordinance #20619 (Exhibit III) creating the positions of Manager Cowlitz Hydroelectric Project, Assistant Manager Cowlitz Hydroelectric Project, Manager Nisqually Hydroelectric Project, Manager Cushman Hydroelectric Project, and established wages and job conditions for these positions without negotiating with the bargaining representative.

V

The City of Tacoma did create the new classifications by the disbursement of the duties of Generation Supervisor between the three (3) positions of Senior Hydroelectric Plant Supervisor (Exhibits IV, V) and the majority of the duties outlined in the Manager Classifications (Exhibit VI) are those of Senior Hydroelectric Plant Supervisor, a bargaining unit position.

VI

Local 483, I.B.E.W., asks that the Department issue remedial orders (41.56.160) to prevent the City of Tacoma from continuing its present course of action, and direct the City to enter into good-faith negotiations with the bargaining representative.

The action of the City which precipitated the charges was the adoption of Ordinance No. 20619 which created new, managerial positions. The City of Tacoma, to date, has not implemented the provisions of the ordinance. Mr. Hugh Judd, Labor Relations Director, in a reply on behalf of the City, received on February 23, 1976, explained the ordinance as follows:

The pertinent portion of that ordinance created four new appointive classes in the City of Tacoma service. Those new positions were created as a result of a reorganization of the Generation Section of the Light Division in the Tacoma Department of Public Utilities. Previously, supervision of all three hydro-electric projects in the Generation Section was the responsibility of one Generation Supervisor who reported to the Power Manager, who then reported directly to the Light Superintendent. The Senior Hydro-Electric Plant Supervisor reported to the Generation Supervisor, with the Hydro Plant Supervisor reporting to the Senior Hydro-Electric Plant Supervisor. The Senior Hydro-Electric Plant Supervisor and Hydro-Electric Plant Supervisor are currently represented by the union.

The reorganization of the Generation Section involves the elimination of the Generation Supervisor position when the incumbent employee in that position retires during the latter part of 1976. It also involves the creation of the four new classes. The three Manager positions are each in charge of one of the major hydro-electric projects and report directly to the Power Manager. The Assistant Manager of the Cowlitz hydro-electric project assists the Manager of the largest project in the system. Because of the removal of one level of supervision, the new classifications encompass added responsibilities and additional duties over those allocated to existing classifications in a bargaining unit represented by the union.

In carrying out its managerial prerogatives to create new and different classifications and to reorganize its administrative divisions, the City has not made any changes in working conditions or wage applications to existing positions represented by I.B.E.W. Local 483. No existing positions have been eliminated from the City's Compensation Plan. It is, however, my understanding that individuals in several positions represented by the union have applied for the newly-created positions, in response to advertisements circulated for applicants to those positions. No appointments have been made as of this date.

We would first discuss the Union's Exhibit No. I, which is a letter dated November 13, 1972 that recognized the Union as the exclusive collective bargaining representative of a supervisory unit. The Public Employees' Collective Bargaining Act, and the Rules adopted thereunder, encourages the parties to reach agreement on bargaining units. The recognized bargaining units will not be disturbed by the Commission unless they are challenged in a timely and lawful manner. Thus, a recognized bargaining unit may well include employees who would not be considered "employees" under the statute. In this regard we should review the following definitions in the Act:

41.56.030 Definitions. As used in this chapter:

- (1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter as designated by RCW 41.56.020, or any subdivision of such public body.
- (2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant

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or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer. (emphasis supplied)

The Department of Labor and Industries has processed many representation cases which faced a controversy over whether or not certain supervisory personnel were to be considered as employees under the Act. Several of these cases were decided on appeal by the Director. In the City of Bellevue (Case No. 0-1510), the City of Renton (Case No. 0-1573), and the City of Anacortes (Case No. 0-1713), the decisions, on appeal, excluded from the statute those employees with highly supervisory or managerial duties. In the above-cited Bellevue case, the decision stated of the employees:

They perform mixed functions depending upon their particular assignment, but basically they are individuals enjoying responsibilities, duties and authority to an extent which cause their position, in my judgment, to be labeled that of "managerial employees." A recent U. S. Supreme Court decision supports this conclusion. See NLRB vs. Texron, Inc., decided April 23, 1974, reported in 85 LRRM 2945.

A close examination of the five (5) job descriptions submitted by the Union as Exhibits IV, V, and VI, leaves no doubt whatsoever that these positions must be considered as "managerial." It is clear from our investigation that the positions created by Ordinance No. 20619 are excluded from the statutory definition of "employee" as cited above. Management does have the right and responsibility to establish managerial positions which, in the opinion of the City, are necessary for a structural reorganization.

For the reasons stated herein, and in accordance with WAC 391-20-311, the Public Employment Relations Commission has no alternative except to dismiss the charges in Case No. ULW-063 as being without merit.

Sincerely,

Willard G. Olson
Willard G. Olson
Associate Chief Labor Mediator

WGO:st

cc: Mr. Hugh Judd
Mr. Ronald L. Miller

cc: Mr. Marvin L. J. Judd