

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 280,)	CASE NO. 2883-U-80-417
Complainant,)	DECISION NO. 1258 - PECB
vs.)	
CITY OF KENNEWICK,)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.)	

E. W. Clifford, Business Agent, appeared on behalf of the complainant.

Greg Cuoio, Administrative Services Director, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on July 11, 1980, wherein it alleged that the above-named respondent had committed an unfair labor practice within the meaning of RCW 41.56.140. George G. Miller, a member of the Commission staff, was designated to act as Examiner and to make and issue findings of fact, conclusions of law and order. Pursuant to notice issued by the Examiner on October 31, 1980, and amended on November 24, 1980, hearing on the complaint was held on December 19, 1980. The parties did not file post-hearing briefs.

THE COMPLAINT:

The original complaint alleged:

The City of Kennewick unilaterally contracted bargaining unit work. RCW 41.56.140.

Relief Sought:

Cease and desist contracting of bargaining employee's work and fill positions with bargaining agency employees.

On November 5, 1980, the respondent requested that the complainant make the complaint more definite and certain by the filing of a statement supplying specified information (WAC 391-45-250). Specifically, the respondent requested times, dates, places, participants in occurrences, and a listing of positions not filled by bargaining unit employees. On November 10, 1980, the complainant was directed to file a statement with the Commission reflecting the requested information no later than November 17, 1980, and to furnish a copy directly to the respondent.

On November 19, 1980, the respondent advised the Examiner that the requested information had not been received, and requested that the hearing scheduled for November 24, 1980 be reset or that the complaint be dismissed. On November 20, 1980, the Examiner contacted the complainant, by telephone, and renewed the request for the statement asked for on November 10, 1980. That request was followed by a letter. On November 21, 1980, the complainant wrote to the Examiner:

"Dear Mr. Miller:

Approximately around May 29, 1980, the City of Kennewick unilaterally contracted a bargaining agency position of "pump operator" to one Byron Combs.

The position was vacated by the retirement of a bargaining agency employee, Charles Carlisle.

It is the Union's contention that the job should have been placed on bid, as is the normal procedure for filling vacancies, and the appropriate employee from the unit be selected to fill the position.

Sincerely,

E. W. "Bill" Clifford
Business Representative
Local 280, I.U.O.E."

The letter indicates that a copy was sent to the respondent.

On November 26, 1980, the respondent advised the examiner, by letter:

"The City denies it unilaterally contracted a bargaining agency position of "pump operator" to one Byron Combs. The City takes exception to the Union's contention that the job vacancy created by the retirement of Charles Carlisle was not placed on bid and a selection made. The City will be prepared to substantiate its position at the time of hearing."

DISCUSSION:

Charles Carlisle was employed by the City of Kennewick as Plant Operator Craftsman, Public Works Department - Water. On March 6, 1980, he advised his immediate supervisor that he wished to retire from City service effective March 31, 1980. As a result of Carlisle's retirement, the respondent generated an "Employee Notice of Job Vacancy" which was distributed and posted on March 19, 1980 in accordance with the bid procedure. On March 24, 1980, Frank Rust, who had been employed as a General Craftsman Leader, submitted a bid form for the Plant Operator Craftsman position. Rust's bid was accepted and his classification was changed accordingly, effective April 1, 1980. Subsequent to Rust's reclassification, the respondent hired Byron Combs on a part-time basis (2 days per week) to act as relief operator.

Rust, a full-time employee, is a member of the bargaining unit. Combs, a part-time employee, is not a member of the bargaining unit. The complainant

does not contractually represent any part-time employees, and it has not shown any historical claim to supplemental work performed by excluded part-time employees. The complainant has the burden of proof in any unfair labor practice case. See WAC 319-45-270. The record in this case fails to substantiate the complaint of unfair labor practice by the City of Kennewick. Having considered the evidence, testimony and arguments, the Examiner now makes the following:

FINDINGS OF FACT

1. The City of Kennewick, Washington, is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).
2. International Union of Operating Engineers, Local Union No. 280, AFL-CIO, is a "labor organization" within the meaning of RCW 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030(3) which is recognized as the exclusive bargaining representative of full-time employees of the Public Works Department of the employer, excluding part-time employees.
3. The City of Kennewick followed the contractually required procedure by posting the job opening and selecting an applicant to fill the Plant Operator vacancy created by the retirement of Charles Carlisle.
4. The applicant chosen to replace Carlisle was a member of the bargaining unit prior to his transfer to the Plant Operator classification and remains a member of that bargaining unit in his new position.
5. Byron Combs was hired by the employer as a part-time employee (2 days per week) to supplement the work performed by Rust. The complainant wrongly assumed that Combs had been hired to fill the full-time position vacated by Carlisle.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The respondent, City of Kennewick, did not infringe on the bargaining unit work jurisdiction of the complainant, and violate RCW 41.56.140, by hiring Byron Combs as a part-time relief employee.

On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

ORDER

The complaint charging unfair labor practice filed in the above-entitled matter is dismissed.

DATED at Spokane, Washington this 15th day of October, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner