STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 763,	)	
	)	
Complainant,	)	CASE NO. 4018-U-82-628
	)	
vs.	)	DECISION NO. 1571-B PECB
	)	
CITY OF MUKILTEO,	)	
	)	CORRECTED
Respondent.	)	DECISION OF COMMISSION
	)	
	)	

> Mark S. Downing, business representative, appeared on
> behalf of the complainant.
>
> Bogle & Gates, by Peter M. Anderson, attorney at law,
> appeared on behalf of the respondent.

The Commission issued a decision in this matter, Decision No. 1571-A PECB, on June 13, 1983. Having noted certain errors therein, the Commission withdraws Decision No. 1571-A and substitutes this decision. The issues in this case concern two separate bargaining units: a unit composed of police officers and a putative unit of public works and clerical employees. The examiner, whose rulings are challenged by the employer, held that the employer committed unfair labor practices by its refusal to bargain with the union in both of the units. For the reasons discussed below, we affirm the decision of the examiner as it pertains to the police officers and reverse as it pertains to public works/clerical employees.

This is primarily a factual controversy; at its heart is the sufficiency of the proof offered by the union, as the party bearing the burden of proof.

An extensive factual discussion of the case is provided in the examiner's decision, Decision No. 1571 (PECB, 1983). A summary is as follows: On November 2, 1981, the union was certified as exclusive bargaining representative of a unit that included Mukilteo police officers only. During the last quarter of 1981, several negotiating sessions were held between representatives of the police officers and the city, who was led by the then mayor, John Sweat. A tentative agreement may have been reached at a November 9, 1981 meeting, but the parties understood that any agreement required the ratification of the city council. On November 3, 1981, the voters of Mukilteo elected a new mayor and five new city council members (out of seven). On November 9, 1981, a union representative gave Mayor Sweat a letter indicating that the union desired recognition for a unit consisting of "all employees of the City of Mukilteo, Washington Public Works Department,

Police Department and Office/Clerical employees" (emphasis supplied). The union claimed that it represented a majority of those employees. Mayor Sweat sent the following response to the union (emphasis supplied):

> This letter will acknowledge that I have been advised in behalf of the Teamsters Local No. 763 that a majority of the employees in the City of Mukilteo Public Works Department, police and office clerical division have authorized Teamsters Local Union No. 763 to act as their sole collective bargaining agent.
>
> Accordingly, we are prepared to meet with you at your convenience for the purpose of negotiating a labor agreement covering the aforesaid bargaining unit.
>
> Sincerely,
>
>
> John B. Sweat
> Mayor

The union submitted the alleged tentative police officer agreement to the city council for ratification on December 21, 1981. The council had not been briefed on the subject by the outgoing mayor and deferred action. The new Mayor, John Corbett, and several council members held an information meeting with the union on February 2, 1982. On February 16 another meeting was held. The union went into the meeting believing it to be a negotiating session, while the city characterized it as informational. At that meeting, Mayor Corbett informed the union representative that a consultant would be hired to represent the city in further negotiations. Also at that meeting, the union presented the mayor with a copy of a proposed contract covering the public works/clerical employees, along with a copy of the above-quoted letter from former Mayor Sweat. At that meeting Mayor Corbett indicated a decision on negotiating with the union concerning the public works/clerical unit would be made by March 1, 1982. In early March, Corbett told the union the decision would be delayed until March 15, 1982. On March 16, the union was told a negotiator had been hired, but the mayor expressed reservations about negotiations with the public works/clerical unit. The city then unilaterally and for budgetary reasons reduced the hours of all city employees except police officers, effective April 1, 1982. The filing of unfair labor practice charges followed. The union maintains that it then repeatedly telephoned the mayor in order to continue with negotiations, and that the mayor avoided telephone calls. The mayor denies this, and it is not disputed that the union did not send a written request for negotiations to the mayor or city council.

The union's complaint charges the city with refusing to negotiate in good faith for a contract covering police officers, and for a contract covering public works/clerical employees. The union also charges the city with committing an unfair labor practice by refusing to recognize the public

works/clerical unit and by unilaterally reducing the hours of the public works/clerical employees. The examiner agreed with the union on all counts.

We are in agreement with the examiner's finding as to the police officers. The examiner states:

> In this case, respondent's repeated delays in bringing the 'tentative agreement' up for action and its delays in hiring a negotiator and re-establishing a meeting schedule indicate that it was not prepared to negotiate in good faith. The examiner is aware that respondent underwent a major change in its elected leadership during the course of negotiations. However, complainant took reasonable steps to keep negotiations open, and respondent failed to bargain in good faith.

The examiner's reasoning is sound and is supported by the record. While some of the evidence supporting the union's position is disputed, the examiner is authorized to resolve issues of credibility and his determinations are supported by the record as a whole.

The city has presented us with a number of issues with respect to the charges involving the public works/clerical employees. The issues concern the legal prerequisites to a voluntary recognition of a union by an employer and to a finding of authority or apparent authority on the part of the mayor. The city also points to a fundamental issue concerning the majority status of the union in an appropriate bargaining unit, which issue is dispositive of the other issues raised. We observe that there is no evidence in the record that the union represented to Mayor Sweat that it represented a majority of the employees in a proper bargaining unit. Rather, the union claimed to represent a majority of public works, clerical and <u>police department employees</u>. Mayor Sweat's contemporary written response likewise referred to a unit which included "<u>police</u>" employees. There was no distinction in either the demand or the response between police officers and other police department employees. The inclusion of police officers in such a unit is clearly inappropriate, since they previously had been certified into their own unit. The inclusion of police officers in the union's correspondence to the city and the city's response may have been done by mistake. Mayor Sweat testified that he had assumed the unit did not include police officers, but the correspondence left an ambiguity for his successors. Nevertheless, a request for recognition must claim majority support from an appropriate unit. The union's request clearly did not. Accordingly, the city's refusal to bargain with the union, and its unilateral reduction of hours is not an unfair labor practice under Washington law.

ISSUED at Olympia, Washington, this __15th__ day of July, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

MARY ELLEN KRUG, Commissioner

CONCURRING OPINION

I concur, adding:

> "The Moving Finger writes; and,
>   having writ,
> Moves on: nor all your Piety
>   nor Wit
> Shall lure it back to cancel half
>   a line,
> Nor all your Tears wash out a Word
>   of it."

> Edward Fitzgerald,
> The Ribaiyat of Omar
> Khayyam (4th ed.)
> Stanza 71

MARY ELLEN KRUG, Commissioner