



tive bargaining agreement deferred reclassification disputes to the commission, and the commission had inherent authority to regulate appearances before it. While the Civil Service Commission ruled that appearance by the exclusive bargaining representative would constitute the unauthorized practice of law, respondent contends that such action did not interfere with or restrain employees' collective bargaining rights nor did it tend to dominate or control the bargaining representative. Respondent maintains that the Civil Service Commission made a proper determination of the reclassification issues and complied with all responsibilities imposed by statute and collective bargaining agreement.

BACKGROUND:

On August 29, 1975, International Federation of Professional and Technical Engineers, Local 17 filed a "working out of classification" grievance on behalf of 15 bargaining unit employees classified as assistant engineers in the City of Seattle Engineering Department. The grievants claimed they should receive associate engineer classifications for the type of work they performed. The Engineering Department did not concur with the employees' contention, but offered to allow the Civil Service Commission to review the matter. However, the union desired to submit the grievance to binding arbitration, and a hearing was conducted before Arbitrator Richard B. Peterson on July 6 and 19, 1976.

During the pendency of the arbitration proceeding, four bargaining unit employees sought civil service review of their classifications. In September, 1975, Harpal Sidhu and Phillip Fraser submitted requests for reclassification, and in March, 1976, Gene Leonard and Wayne McPhillips requested investigation of their classifications. The requests of Leonard and McPhillips were held open pending resolution of the grievance. A preliminary report concerning Fraser and Sidhu was prepared in January 1976, but it was also delayed because of the unresolved grievance.

On August 13, 1976, Arbitrator Peterson issued an award ruling that the grievance did not present an arbitrable issue. The reclassification dispute was referred to the Civil Service Commission for resolution.

The reclassification report on Sidhu and Fraser was submitted to the Civil Service Commission on June 21, 1977, and it was heard at a commission meeting the following day. Issues raised by Leonard and McPhillips were also mentioned at that time. The union's business representative, William Hauskins, asked to represent Fraser and Sidhu before the commission, but his request was denied. Relying on a Corporation Counsel opinion issued in 1976, the commission determined that Hauskins could not represent Fraser and Sidhu because such appearance before the commission would con-

stitute the unauthorized practice of law. The reclassification issues were continued for later consideration.

On August 1, 1977, the union's business manager protested the commission's refusal to allow union representation in the employees' reclassification disputes. The protest was renewed at a commission hearing conducted on August 3, 1977. At the hearing, Commission Chairman McGinty directed that another legal opinion be requested concerning the unauthorized practice of law. The issues raised by Sidhu and Fraser were heard without benefit of union representation, but were continued pending receipt of the new opinion. However, the Civil Service Commission did not request a legal opinion concerning the unauthorized practice of law. At a formal hearing conducted on October 5, 1977, the commission upheld staff recommendations which retained Fraser and Sidhu as assistant engineers.

Staff recommendations on Leonard and McPhillips were submitted to the commission on October 3, 1978. On October 4, 1978, the recommendations were reviewed at a commission hearing attended by the union's business manager. The commission permitted the business manager to appear on behalf of the employees but informed him that he could be subject to criminal prosecution because the appearance would constitute the unauthorized practice of law. The warning was based upon a legal opinion drafted by the City Attorney for the Personnel Department, issued September 27, 1978. On November 1, 1978, the commission ruled that Leonard and McPhillips should retain assistant engineer classifications.

Leonard, McPhillips and Sidhu appealed the commission's decision by writ of certiorari to the Superior Court for King County filed December 28, 1978. Sidhu subsequently withdrew from the appeal. The Superior Court denied the writ of certiorari and Leonard and McPhillips appealed to Division I of the Court of Appeals of the State of Washington. The record before the Examiner did not disclose the disposition of that appeal.

#### DISCUSSION:

Complainant argues that the Civil Service Commission's refusal to permit the employees' exclusive bargaining representative to appear in reclassification hearings not only interfered with rights guaranteed to public employees by Chapter 41.56 RCW in violation of RCW 41.56.140(1) but also dominated and controlled the representative in violation of RCW 41.56.140 (2). The allegation of employer domination and interference with the bargaining representative cannot be sustained. Complainant has not shown that the Civil Service Commission's actions interfered with the internal affairs of the employee organization. See Metropolitan Alloys Corp., 223 NLRB 145 (1977).

If a violation exists, it arises from the effect on employee rights caused by the refusal of the Civil Service Commission to permit the employees' bargaining representative to appear. While the parties to this proceeding have devoted considerable effort analyzing the commission's inherent authority to regulate appearances, the real issue is whether the employees waived representation rights by contractually deferring reclassification disputes to the Civil Service Commission. Such waiver is not present in this case. No collective bargaining agreement can cover every term and condition of employment. Waivers must be made knowingly. City of Kennewick Decision No. 482-B PECB (1980). Nothing contained in the collective bargaining agreement suggests that the employees consciously waived representation rights by deferring reclassification questions to the Civil Service Commission. The legal opinions which gave rise to the "practice of law" issue came after the negotiated contract delegating reclassification matters to the Civil Service Commission and could not have been within the contemplation of the parties when the contractual language was negotiated.

Bargaining unit employees Fraser and Sidhu approached the Civil Service Commission with a question about the rate of compensation they expected for services performed, i.e., "wages". By denying the employees union representation in the presentation of those reclassification grievances, the commission interfered with the employees' right to address subjects of collective bargaining in violation of RCW 41.56.140(1). The record does not reflect a similar interference with rights guaranteed to bargaining unit employees Leonard and McPhillips. While the union's business manager was warned of possible consequences because of his appearance before the Civil Service Commission, complainant did not show that the warning inhibited or otherwise interfered with the presentation of Leonard's or McPhillip's reclassification grievances. The business manager did participate.

#### REMEDY

The Examiner recognizes that the Civil Service Commission was abolished by a personnel ordinance adopted by the City of Seattle in January, 1979. Recreation of the defunct agency would be a meaningless action. The employees' exclusive bargaining representative must be allowed to present Fraser's and Sidhu's reclassification grievances before the appropriate board of review created by the current ordinance, without prejudice based on the determinations made by the Civil Service Commission under defective procedure.

As part of its proposed remedy, complainant asks the Public Employment Relations Commission to establish jurisdiction to hear all 15 reclassif-

ication grievances filed on August 29, 1975. Such remedy is inappropriate. The parties have already submitted the grievances to binding arbitration, and the arbitrator concluded that the Civil Service Commission had authority to resolve the reclassification disputes. The criteria for post-arbitral deferral specified in Spielberg Manufacturing Co., 112 NLRB 139 (1955) have been met, and it would be improper to review the arbitrator's decision in these proceedings.

#### FINDINGS OF FACT

1. The City of Seattle is a municipal corporation located in King County and a "public employer" within the meaning of RCW 41.56.030(1).

2. The International Federation of Professional and Technical Engineers, Local 17 is a labor organization and a bargaining representative within the meaning of RCW 41.56.030(3); the union is exclusive bargaining representative for a bargaining unit including employees working as engineers in the City of Seattle Engineering Department.

3. The city and the union entered into a collective bargaining agreement effective from September 1, 1974 through August 31, 1975. The contract delegated reclassification questions to the City of Seattle Civil Service Commission.

4. On August 29, 1975, the union filed a "working out of classification" grievance on behalf of 15 bargaining unit employees classified as assistant engineers in the City of Seattle Engineering Department. The grievances were submitted to binding arbitration. During the pendency of the arbitration proceedings, bargaining unit employees Phillip Fraser, Harpal Sidhu, Gene Leonard and Wayne McPhillips sought review of their reclassification claims by the Civil Service Commission.

5. On August 13, 1976, the arbitration award was issued by Arbitrator Richard B. Peterson. The Arbitrator determined that the Civil Service Commission had exclusive jurisdiction to decide reclassification questions.

6. At a meeting conducted on June 22, 1977, the Civil Service Commission refused to permit the union's business representative to present reclassification grievances on behalf of bargaining unit employees Fraser and Sidhu.

7. The union's business manager was permitted to present the reclassification grievances raised by bargaining unit employees Leonard and McPhillips before the Civil Service Commission on October 4, 1978.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. The collective bargaining agreement between the parties does not constitute a clear and unmistakable waiver of the right of bargaining unit employees to have union representation in proceedings before the Civil Service Commission.

3. The City of Seattle has violated RCW 41.56.140(1) by refusing to permit the union's business representative to appear before the Civil Service Commission to address reclassification questions raised by bargaining unit employees Phillip Fraser and Harpal Sidhu,

ORDER

IT IS ORDERED that the City of Seattle, its officers and agents shall immediately:

1. Cease and desist from refusing to permit the International Federation of Professional and Technical Engineers, Local 17 from appearing on behalf of bargaining unit employees in the presentation of grievances pertaining to reclassification and other wages, hours and working conditions.

2. Take the following affirmative action:

a. Upon request, reconsider the reclassification grievances of Phillip Fraser and Harpal Sidhu before the appropriate board of review created by the current personnel ordinance, with representation, if requested by their exclusive bargaining representative and, further, without prejudice based on the determinations made by the Civil Service Commission under defective procedure.

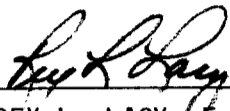
b. "Post in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked 'Appendix A'. Such notices shall, after being duly signed by an authorized representation of the City of Seattle, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Seattle to ensure that said notices are not removed, altered, defaced or covered by other material."

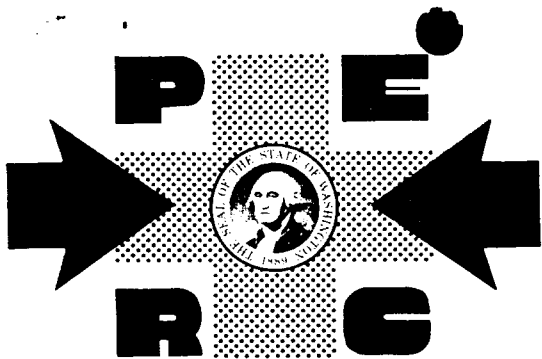
c. "Notify the Executive Director of the Commission, in writing, within twenty (20) days of the date of this Order, as to what

steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph."

DATED at Olympia, Washington this 14th day of February, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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REX L. LACY, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE PURPOSES OF THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING ACT, THE CITY OF SEATTLE HEREBY NOTIFIES ITS EMPLOYEES THAT:

WE WILL NOT refuse to permit the International Federation of Professional and Technical Engineers, Local 17 to appear on behalf of bargaining unit employees in the presentation of grievances pertaining to reclassification and other wages, hours and working conditions.

WE WILL, upon request, reconsider the reclassification grievances of Phillip Fraser and Harpal Sidhu before the appropriate board of review created by the current personnel ordinance, with representation, if requested by their exclusive bargaining representative and, further, without prejudice based on the determinations made by the Civil Service Commission under defective procedure.

DATED: \_\_\_\_\_

CITY OF SEATTLE

BY: \_\_\_\_\_

Authorized Representative, City of Seattle

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.