City of Tacoma, Decision 9287 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, LOCAL 117, Complainant,	)	CASE 19762-U-05-5010
vs.	)	DECISION 9287 - PECB
CITY OF TACOMA, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Elizabeth A. Pauli, City Attorney, by *Mark Cassidy*, Assistant City Attorney, for the employer.

Spencer Nathan Thal, General Counsel for Teamsters, Local 117.

On September 1, 2005, Teamsters, Local 117 (Teamsters) filed an unfair labor practice complaint against the City of Tacoma (employer). A preliminary ruling was issued on September 22, 2005, stating two causes of action regarding employer with interference with employee rights and refusal to bargain in violation of RCW 41.56.140(1) and (4). The employer filed its answer October 12, 2005. A hearing was scheduled before Examiner Katrina I. Boedecker. Prior to the hearing, the parties filed a joint stipulation of facts. The Teamsters filed legal argument February 13, 2006. The employer relied on its assertions in its answer.

ISSUES

1. Did the employer unilaterally change the type of promotional list to fill street maintenance supervisor vacancies, which

are positions outside of the Teamsters bargaining unit, thus committing an unfair labor practice?

2. Did the employer refuse to provide collective bargaining information requested by the Teamsters concerning promotions into a bargaining unit not represented by the Teamsters, thus committing an unfair labor practice?

The Examiner rules as follows. (1) The employer did not commit an unfair labor practice when, without bargaining with the Teamsters, it changed the type of promotional list it used with a bargaining unit represented by the International Federation of Professional and Technical Engineers, Local 17 (IFPTE). (2) The employer did not commit an unfair labor practice when it declined to provide the Teamsters with information related to employees not represented by the Teamsters, when the Teamsters did not show how the information was connected to the course of its representation of its bargaining unit members.

In their joint stipulation of facts, the employer and the Teamsters agreed to the following:

> The Public Employment Relations Commission has jurisdiction to hear and decide this matter. The unfair labor practice charge in this matter is timely filed.
>
> The employer and the Teamsters are parties to a collective bargaining agreement dated January 1, 2004, through December 31, 2006. This agreement covers a bargaining unit which includes non-supervisory street maintenance employees.
>
> The Teamsters union has not waived its statutory right to bargain regarding mandatory subjects of bargaining.

Prior to the summer of 2005, the employer used a promotional list to promote street maintenance employees, represented by the Teamsters, to supervisory positions. These supervisory street maintenance positions are represented by the IFPTE. The parties are not aware of any instance prior to the summer of 2005 in which the employer filled a supervisory position through any method other than the use of the internal promotional list.

On or about January 2005, there were two supervisor positions in the Street Maintenance Department that were vacant. During the first half of 2005, the employer advised the Teamsters, and employees it represents, that it intended to fill one of the positions from the supervisory list, but that it intended to let the promotional list expire (on July 31, 2005) prior to filling the other supervisory position. The procedure for creating and utilizing a promotional list is allowed by the Civil Service Rules, and the rules define the method by which that is accomplished.

Later, the employer advised the Teamsters, and the employees it represents, that it intended to change its method for filling supervisory vacancies. Specifically, the employer indicated that it would utilize and consider candidates from an open, competitive list rather than the internal promotional list that had previously been used. The procedure for creating and utilizing an open list also is allowed by the Civil Service Rules, and the rules also define the method by which that is accomplished. The employer has implemented this decision over the Teamster's objection.

In the first half of 2005, the Teamsters requested information and clarification from the employer relative to its decision to allow the promotional list to expire and to begin using an

open, competitive list rather than the internal promotion list to evaluate candidates for supervisory positions. At first, the employer indicated that the information would be forthcoming. However, on July 29, 2005, the employer indicated that it would not fill the Teamster's information request. The employer continues to maintain that it has no obligation to provide the requested information.

The employer is governed by Civil Service Rules, Section 1.24, as set forth in the Tacoma Municipal Charter. The City of Tacoma Civil Service Board ("the Civil Service Board") is responsible for enforcing the Civil Service Rules.

On behalf of the non-supervisory street maintenance employees, the Teamsters filed a timely appeal to the Civil Service Board challenging the employer's use of the open list. A hearing was held on October 3, 2005, before the Civil Service Board as to whether the Board had jurisdiction to hear the appeal. On October 17, 2005, the Civil Service Board dismissed the appeal on the ground that this unfair labor practice charge had been filed before the Public Employment Relations Commission, which has authority to issue a remedy in this case.

The employer has not bargained nor offered to bargain regarding its decision (or the effects of its decision) to change the method of promotion for non-supervisory street maintenance employees. The employer takes the position that such bargaining is not required.

ISSUE ONE: Change in type of promotional list used.

LEGAL STANDARD and ANALYSIS

A public employer has a duty to bargain with the bargaining representative of its employees regarding any change to wages,

hours or working conditions, because they are mandatory subjects of bargaining.[1] Since promotions, within a bargaining unit, have an impact on employees' wages, promotions (again emphasizing within the bargaining unit) have been held to be a mandatory subject of bargaining. *See City of Anacortes*, Decision 5668 (PECB, 1996) and *City of Yakima,* Decision 3974 (PECB, 1992). The facts in the present case, however, concern promotions from a bargaining unit represented by one union up to a bargaining unit represented by a different union.

The Commission upheld the dismissal of a complaint charging unfair labor practices where the union claimed a right to bargain over a change in the minimum years of fire fighter service requirements for eligibility to apply for the position of fire chief, a position which was outside of the union's bargaining unit. *City of Yakima*, Decision 2387-B (PECB, 1986). The union contended that lowering of the service requirement, from four years to two years as a rank and file fire fighter, would result in a loss of a long-established right of more senior bargaining unit personnel to have special consideration. The union argued that by keeping the minimum service at four years, it was not dictating who should be selected nor limiting selection to bargaining unit members. The city would still be able to evaluate applicants from outside the fire

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[1] RCW 41.56.030(4) "Collective bargaining" means the performance of *the mutual obligations of the public employer and the exclusive bargaining representative to meet* at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and *collective negotiations on personnel matters, including wages, hours and working conditions*, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. (Emphasis by *italics* is added.)

department as well as bargaining unit applicants, for the position of fire chief, as long as each applicant had at least four years of service as a fire fighter. The Commission held that the facts differed from *City of Wenatchee*, Decision 2216 (PECB, 1985), because *Wenatchee* concerned the union's right to bargain about promotion to a position inside of the bargaining unit. The Commission found in *Yakima* that since the position of fire chief is outside of the union's bargaining unit, and it serves in a dual role as top manager and as political appointee, bargaining is not required regarding who should be allowed to apply.

The examiner noted in *Spokane County Fire Protection District, No. 9*, Decision 2860 (PECB, 1988), that the union conceded that a union does not have bargaining rights concerning persons and positions outside of the bargaining unit which it represents. "The union acknowledged that the employer could utilize the 'rule of three', or any other formula it chose, when it hired new employees or made promotions to positions outside of the bargaining unit." The examiner concluded that the employer did not violate the statute by choosing to use a "rule of three" for purposes other than promotions within the bargaining unit.

The Commission again reinforced the concept that standards for promotion to positions outside of the bargaining unit are not mandatory subjects of collective bargaining under Chapter 41.56 RCW in *City of Yakima*, Decision 3503-A and 3504-A (PECB, 1990).

The determination of whether a condition of employment is a mandatory subject of bargaining involves studying who is more impacted by the condition. Is the matter of more magnitude to employees in the bargaining unit or to the employer's exercise of entrepreneurial control? I find that setting the conditions for promotion to positions outside of the bargaining unit impact

managerial prerogative more than bargaining unit employees. If a union was allowed to have the employer sit down and bargain all of the standards of all of the promotional positions throughout its organization, the employer could be hampered in filling its managerial or supervisory slots for a period of time that could be detrimental to carrying out its mission. If this rank and file street maintenance unit was granted the right to bargain about positions outside of its unit, that could be parlayed into having the street maintenance unit bargain the conditions of promotion to battalion chief in the fire department. Other unions could also be involved with competing proposals, again negatively impacting the employer's ability to get its job done. The interest that one union has in promoting its bargaining unit members into another unit does not outweigh the interest that the employer has in filling supervisory positions in a timely manner. Requiring an employer to bargaining with a union who is not the exclusive bargaining representative of the employees at issue, unnecessarily constrains the employer.

CONCLUSION

Since standards for promotion to positions outside of the union's bargaining unit are not mandatory subjects of bargaining, the employer did not commit an unfair labor practice when it changed its method of promoting employees to supervisory positions into a bargaining unit not represented by the complaint union.

ISSUE TWO: Providing relevant collective bargaining information.

LEGAL STANDARD and ANALYSIS

The Commission has endorsed the standard as put forward in *NLRB v. Acme Industrial Co.*, 385 US 432 (1967), which established that the statutory bargaining obligation includes a mutual duty to supply, upon request, information reasonably necessary to an employer's or

union's performance of its statutory responsibilities. *City of Bellevue,* Decision 4324-A (PECB, 1994). In *Acme Industrial Co.*, the Court required the employer to supply information to the union which would aid the union in "sifting out un-meritorious claims" in the grievance process.

The factors endorsed by the Commission regarding information requests are identified in *City of Bremerton,* Decision 5079 (PECB, 1995), and were later affirmed in *City of Bremerton,* Decision 6006-A (PECB, 1998). Most recently, the factors were followed in *King County*, Decision 9204, (PECB, 2006). They are:

> 1) The request must be clear.
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> 2) The information must be requested for use in the collective bargaining context.
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> 3) The information must relate to the union's performance of obligations arising from its status of exclusive bargaining representative.
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> 4) The union must have a genuine need for the requested information.
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> 5) Finally, the duty to provide information requires an employer to articulate, and negotiate with the union over, any objections it has to producing the requested information.

In the case at hand, the parties' stipulated record gives fleeting mention to the union's request for information. The employer's answer notes that the union asked whether or not the employer could "show that supervisory employees who were previously promoted either failed promotion or have been discipline (sic) or demoted." The union submitted two sentences, total, in its brief regarding its contention that the employer violated the law by refusing to provide information about the change in promotional procedures. The first sentence cited the joint stipulations of parties. The second sentence states: "This information is necessary for the Union to be able to engage in meaningful bargaining about the issue

and thereby fulfill its role as the collective bargaining representative."

Although the union concludes that it needs information about promotions outside of its bargaining unit, it submitted no justification for the information. Since the union does not have the right to bargain about promotions outside of its bargaining unit, logic would lead to the conclusion that it did not have the right to the information, either. Without more linkage between its role representing rank and file street workers and the statistics requested, I see no reason to grant the union this information.

The information involves personnel issues not related to employees represented by the union. It is not necessary for the union to review in the course of its representation of non-supervisory employees. The employer's refusal to provide statistics about the labor pool for supervisory employee candidates was a legitimate exercise of its discretion. The union did meet its burden of proof to show how the information was related to the bargaining unit employees it represented.

CONCLUSION

The union did not establish a nexus between the information it was requesting and its obligation to represent employees in its bargaining unit. The employer did not commit an unfair labor practice when it refused to provide the union with information about the demographics of another union.

FINDINGS OF FACT

1. City of Tacoma is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Local 117 is a bargaining representative within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative of a bargaining unit of rank and file street maintenance workers.

3. The International Federation of Professional and Technical Engineers, Local 17, is the exclusive bargaining representative of a bargaining unit of supervisory street maintenance workers.

4. In early 2005, the city changed its method for filling supervisory street maintenance vacancies. Both the previous method and the new method of filling vacancies are in accord with the employer's civil service rules.

5. The city did not bargain its decision (or the effects of its decision) to change the method of filling supervisory street maintenance vacancies with the Teamsters Union Local 117.

6. In the first half of 2005, the Teamsters Union Local 117 requested information concerning the promotional lists the employer was using. The employer refused to provide the information.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW, and Chapter 391-45 WAC.

2. The employer did not violate RCW 41.56.140(4) or (1) when it did not bargain with the Teamsters Union Local 117 about a

change in the promotional list used to fill supervisory positions in a bargaining unit represented by International Federation of Professional and Technical Engineers, Local 17.

3. The employer did not violate RCW 41.56.140(4) or (1) when it did not provide information to the Teamsters Union Local 117 about promotions to supervisory positions in a bargaining unit represented by International Federation of Professional and Technical Engineers, Local 17.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matters is DISMISSED.

ISSUED at Olympia, Washington, this 19th day of April, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.