Pierce County, Decision 10636 (PECB, 2010)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY, Complainant, vs. TEAMSTERS LOCAL 117, Respondent.	CASE 22692-U-09-5799 DECISION 10636 - PECB ORDER DENYING APPEAL

James V. Smith III, Attorney at Law, for the union.

Mark Lundquist, Pierce County Prosecuting Attorney, by *Denise Greer*, Deputy Prosecuting Attorney, for the employer.

Kram, Johnson, Wooster & McLaughlin, by *Richard H. Wooster*, Attorney at Law, for Dale Washam, Pierce County Assessor-Treasurer.

On September 3, 2009, Teamsters Local 117 filed an unfair labor practice complaint naming Pierce County as respondent. Teamsters Local 117 represents a mixed class of employees working in the Assessor/Treasurer's Office, Clerk's Office, Human Services Office, Facilities Management Department, Medical Examiner's office, Parks and Recreation Department, and Veteran's Aid Bureau. The complaint alleges that Dale Washam, the Pierce County Assessor-Treasurer, committed certain unfair labor practices.

On October 23, 2009, Washam filed a motion for joinder/intervention claiming he is a "necessary party" to these proceedings. On October 30, 2009, Unfair Labor Practice Manager David Gedrose denied the motion by letter, stating that under RCW 41.56.020 and .030, Pierce County is the employer. Washam now appeals that denial of that motion.

DISCUSSION

Washam's Appeal is not Appropriately Before The Commission

Washam's appeal is interlocutory in nature. In 2008, the Commission adopted specific guidelines for interlocutory appeals to ensure that those appeals do not delay the administrative process.[1] Those guidelines, codified at WAC 391-45-310(1), state:

> (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or a hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, his or her designee, or a hearing examiner, within seven days after the decision is issued.
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> (b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or a hearing examiner will be accepted by the commission only:
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> (i) If the executive director, his or her designee, or a hearing examiner has *committed an obvious error which would render further proceedings useless*; or
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> (ii) If the executive director, his or her designee, or a hearing examiner has *committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act*; or
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> (iii) If the executive director, his or her designee, or a hearing examiner has *so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.*
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> (c) The commission will not accept motions for discretionary review of:
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> (i) The scope of proceedings issued in a preliminary ruling by the executive director or his or her designee or a hearing examiner under WAC 391-45-110; or
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> (ii) Application of the six-month statute of limitations;
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> (iii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.
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> (d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.
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> (e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(emphasis added). Although this is a case of first impression, it is clear from a plain reading of the rule that WAC 391-45-310(1)(b) limits the circumstances where the Commission will accept

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[1] Washam should have, but did not, specifically address each of the WAC 391-45-310(1)(b) criteria to explain why his interlocutory appeal should be accepted.

an interlocutory appeal. Examining each of the WAC 391-45-310(b) criteria in reverse order, the following are demonstrated:

The Decision Did Not Depart from the Accepted and Usual Course of Proceedings

Washam asserts that as an elected official of Pierce County operating under Pierce County Charter, he is a dual employer along with the county, and therefore, a public employer under Chapter 41.56 RCW. We disagree.

An employer respondent to unfair labor practice proceedings filed under Chapter 41.56 RCW is the "public employer" named in the bargaining unit certification or collective bargaining agreement. This Commission and the Appellate Courts have rejected the notion that individual elected officials are "public employers" where a bargaining unit encompasses employees who work under multiple elected officials. *Lewis County*, Decision 644-A (PECB, 1979), *aff'd*, *Lewis County v. PERC*, 31 Wn. App. 853 (Div. II, 1982), *review denied*, 97 Wn.2d 1034 (1982). The *Lewis County* Court noted that the different concerns "of the [County] Commissioners and elected officials could be accommodated within the . . . bargaining relationship" certified by this agency. *Lewis County*, 31 Wn. App. at 865. The *Lewis County* Court concluded that "the burden is on the County Commissioners and individually elected officials to consult with each other as to concerns over employee working conditions so that the collective opinion of county management can be effectively formulated and communicated." *Lewis County*, 31 Wn. App at 865. [2]

Here, the collective bargaining relationship is between Pierce County, the employer, and Teamsters Local 117, the exclusive bargaining representative. They are the parties to the collective bargaining agreement. Pierce County, as the employer under RCW 41.56.030(1), controls who its representative will be and how it will conduct its defense. Accordingly, we reject the notion that Washam is a "necessary" party who must be named in this proceeding.

[2] Although the *Lewis County* Court discussed the roles of elected officials in collective bargaining negotiations, the lessons enunciated by the Court are equally applicable to the unfair labor practice setting.

The Decision Would Not Render Further Proceedings Useless

The Unfair Labor Practice Manager found that the union's amended complaint stated a cause of action, and the parties are in the process of scheduling hearing dates with the assigned hearing examiner. Therefore, further proceedings would not be rendered useless.

The Decision Does Not Alter the Status Quo or Limit the County's Freedom to Act

As previously noted, the Unfair Labor Practice Manager's decision does not limit Pierce County in its selection of a representative in this matter, or how it conducts its defense.

Stated simply, Washam's appeal does not fit under any of the criteria outlined in WAC 391-45-310(b), and therefore it is not the type of appeal that this Commission will accept at this stage of the proceedings. The respondent in this case is, and continues to be, Pierce County. Based upon the standards announced in the *Lewis County* case, Washam cannot be named as a separate party in this case because he is an elected official.

NOW, THEREFORE, it is

ORDERED

Pierce County Assessor-Treasurer Dale Washam's interlocutory appeal is DENIED.

ISSUED at Olympia, Washington, this 6th day of January, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner