

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
KING COUNTY)	CASE 10304-C-93-606
)	
For clarification of existing)	
bargaining units of its employees)	DECISION 4569 - PECB
represented by:)	
)	
TEAMSTERS LOCAL UNION 174)	
)	
and)	ORDER DENYING
)	MOTION TO DISMISS
INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 302)	
)	
)	

Norm Maleng, Prosecuting Attorney, by Cheryl D. Carlson, Deputy Prosecuting Attorney, filed the petition and a brief on behalf of the employer.

Brad Rayson, Staff Counsel, filed the motion to dismiss and brief on behalf of Teamsters Local Union 174.

On March 5, 1993, King County invoked the jurisdiction of the Public Employment Relations Commission, by filing a petition for clarification of an existing bargaining unit pursuant to Chapter 391-35 WAC. The employer asked the Commission to resolve a "jurisdictional" dispute between two unions, each of which has claimed that employees working at a new facility would properly be accreted to an existing bargaining unit represented by the respective organizations.

The petition indicates that Teamsters Local Union 174 represents employees working as "site attendants" at certain solid waste transfer stations operated by the employer, and alleges that Local 174 had already claimed jurisdiction over all of the work at a new transfer station then being readied for opening. Attached to the original petition was a copy of the most recent collective

bargaining agreement between King County and Local 174, for the period from July 1, 1988 through June 30, 1991.

The petition further indicates that International Union of Operating Engineers, Local 302, represents equipment operators throughout the employer's workforce, and alleges that Local 302 had already claimed jurisdiction over at least the operation of machinery and equipment used at the new transfer station. Attached to the original petition was a copy of a collective bargaining agreement between King County and the Joint Crafts Council,¹ for the period from January 1, 1992 through December 31, 1994.²

THE MOTION FOR DISMISSAL

On March 25, 1993, Teamsters Local 174 filed a "motion to dismiss and/or motion for summary judgment", together with a supporting brief. That union contended that the employer's petition fails to state a claim upon which relief can be granted. The first of two substantive arguments was that any ruling by the Commission would be speculative and premature, because the work at issue was not yet being performed. The second argument was that the petition involves questions of work assignment, which fall outside the scope of unit clarification proceedings. In its brief, and in a subsequent letter filed on April 30, 1993, Local 174 stated a belief that this matter should be resolved through collective bargaining or through the parties' grievance procedure, rather than before the Commission.

¹ IUOE Local 302 is a signatory to that collective bargaining agreement, as a member of the Joint Crafts Council.

² IUOE Local 302, filed a notice of appearance in the matter on March 11, 1993.

DISCUSSIONThe "Timeliness" Argument

Certain basic facts appear to be uncontested. This case concerns the staffing of a new solid waste transfer station built by King County in or near Enumclaw, Washington. The new facility is adjacent to an existing landfill, which was scheduled to be closed by October of 1993. The brief filed by Local 174 affirms the employer's factual claim that the Enumclaw transfer station was to go into operation in April of 1993.

The "prematurity" argument advanced by Local 174 is not persuasive. The planned opening of the new facility was only a few weeks away when the employer filed the petition in this case. Local 174 does not contest the employer's allegation, in its petition, that both unions had already asserted work jurisdiction claims regarding the Enumclaw transfer station. Moreover, operations will presumably have commenced at the new facility by the time this is written.

The "Jurisdiction" Argument

The "jurisdiction" argument advanced by Local 174 is similarly unpersuasive. Work jurisdiction claims arise out of the status of an organization as the exclusive bargaining representative of a defined grouping (bargaining unit) of employees. The issue raised by the employer concerns the scope of two bargaining units, each of which apparently has some colorable claim to work at the new transfer station. Unit determination is a function delegated by the Legislature to the Public Employment Relations Commission in RCW 41.56.060.

Sending the parties to the bargaining table is not a viable alternative. Unit determination is not a subject for bargaining in the traditional "mandatory/permissive/illegal" sense. City of

Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Thus, an unfair labor practice can be found if a party insists on "scope of bargaining unit" concessions as a condition of settlement of a contract. Spokane School District, Decision 718 (EDUC, 1979). While parties are free to discuss and agree upon unit issues in the context of negotiations if they are able to do so, such disputes must be submitted to the Commission if the parties cannot agree. WAC 391-35-020.

Sending the parties to arbitration is similarly not a viable alternative. An arbitrator draws his or her authority only from the agreement between the parties. Inasmuch as the Commission is not bound by the agreements of the parties on unit determination matters, under Richland, supra, it cannot be bound by the decisions of arbitrators with respect to unit issues. Accordingly, the Commission does not "defer" any unit determination issues to arbitration. Seattle School District, Decision 3979 (PECB, 1991).

NOW, THEREFORE, it is

ORDERED

The motion to dismiss the unit clarification petition filed in the above-captioned matter is hereby DENIED.

DATED at Olympia, Washington, this 22nd day of December, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director