City of Spokane, Decision 6748-A (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 270	)	CASE 12263-C-96-769
	)	
For clarification of a bargaining unit of employees of:	)	DECISION 6748-A - PECB
	)	
CITY OF SPOKANE	)	SUMMARY JUDGMENT
	)	

On January 8, 1996, the Washington State Council of County and City Employees, Local 270, filed a petition for clarification of an existing bargaining unit with the Commission under Chapter 391-35 WAC, concerning employees of the City of Spokane. The union sought inclusion of employees holding newly-created "Probation Officer I" and "Probation Officer II" positions in an existing bargaining unit represented by the union. The union further alleged that the City of Spokane assumed probation duties for its municipal court from Spokane County, as of January 1, 1996, and that it contested the placement of the newly-created positions in a bargaining unit represented by the Spokane Managerial and Professional Association (SMPA).

Because the City of Spokane Municipal Court operates as a municipal department of the Spokane County District Court, this matter was held in abeyance pending a decision on a writ of prohibition sought by the Spokane County District Court involving a different bargaining unit. In Spokane County (Maggs) v. State, 136 Wn.2d 663 (1998), the Supreme Court of the State of Washington affirmed the Commission's jurisdiction over district courts.

The processing of this matter was resumed, and a hearing was scheduled for May 20, 1999. On May 18, 1999, the SMPA filed a letter with the Commission, disclaiming the probation officer positions at issue in this proceeding. On May 19, 1999, the City of Spokane advised the Commission, in writing, that it believed placement of the disputed employees in either bargaining unit was appropriate, and that it did not oppose placement of the positions in the bargaining unit represented by Local 270.

The scheduled hearing was canceled, and all potential parties were invited to show cause why the petition should not be disposed of under WAC 391-08-230, which provides:

> **Summary judgment.** A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed and served as required by WAC 391-08-120.

No response was received from the City of Spokane, from Local 270, from the SMPA, or from the Spokane County District Court judges.

Individual probation officers sent a letter to the City of Spokane, and favored the Commission with a copy of that letter. While they expressed a desire to remain in the bargaining unit represented by the SMPA, the employees at issue in a unit clarification proceeding are not, themselves, parties to the proceedings. WAC 391-35-010 provides:

> **Petition for clarification of an existing bargaining unit -- Who may file.** A petition for clarification of an existing bargaining

> unit may be filed by the employer, the exclusive representative, or their agents, or by the parties jointly.

That rule is consistent with the representation provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.[1]

The determination of appropriate bargaining units is a function delegated by the Legislature to the Commission. RCW 41.56.060. Although the Commission is directed to consider the "desire of the public employees" as one of four factors in determining appropriate bargaining units, the Commission has both declined to elevate that factor over any of the other statutory criteria and has used secret-ballot procedures to implement the "desire of the public employees" factor:

> Long-standing Commission policy precludes the use of employee testimony to establish the "desires of employees". ... The Hearing Officer was correct in refusing to take testimony on the "desires of employees". It is highly undesirable that employees should be placed on the witness stand, under oath, and compelled to testify concerning their bargain-

---

[1] Under RCW 41.56.070 and Chapter 391-25 WAC, representation proceedings are conducted upon the petition of a prospective bargaining representative which has supplied a 30 percent showing of interest, or upon the petition of an employer. Intervention by other organizations requires a 10 percent showing of interest, or a showing that the organization is the incumbent exclusive bargaining representative of the employees involved. Individual employees have legal standing as a party in a representation case only upon submitting a 30 percent showing of interest in support of a decertification petition, and are then held to taking the bargaining unit where they find it and are not permitted to seek combination, modification, or severance from the historical unit in anticipation of a decertification election.

> ing unit preferences. Their preferences in regard to bargaining unit will too often be tied to or identifiable with their preferences as to choice of bargaining representative, and as to the latter, they are entitled to the secrecy of the ballot box.

City of Seattle, Decision 1229-A (PECB, 1982).

Accordingly, WAC 391-25-530(1) provides for unit determination elections where job classifications in question could be appropriately placed in more than one bargaining unit.[2] However, under Clark County, Decision 290-A (PECB, 1977), a unit determination election is only appropriate where application of the "duties, skills and working conditions", "history of bargaining" and "extent of organization" criteria set forth in RCW 41.56.060 yields a conclusion that either of two or more bargaining unit configurations requested by participating organizations could be appropriate. There is no occasion to conduct a unit determination election offering employees an opportunity to vote on an inappropriate unit, or where no organization has supplied the 30 percent showing of interest required to seek certification in such a unit.

In this case, the SMPA has disclaimed the disputed probation officer positions. The employer's unilateral placement of the disputed positions in the SMPA bargaining unit is not binding upon the Commission, nor would an agreement between the employer and the SMPA have been binding on the Commission under City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Under established precedent, there is no basis for holding a unit determination election with an "SMPA unit" choice on the ballot.

---

[2] A "Globe" election in NLRB terminology, based on 3 NLRB 294 (1937).

In the absence of a response from Local 270 or the City of Spokane, or even from the Spokane County District Court, identifying any contested issues of fact, application of the summary judgment rule is appropriate in this case. The disputed probation officers are thus accreted to the bargaining unit which includes other employees of the City of Spokane Municipal Court.

NOW, THEREFORE, it is

ORDERED

The employees in the "Probation Officer I" and "Probation Officer II" classifications are allocated to the bargaining unit of City of Spokane employees represented by Washington State Council of County and City Employees, Local 270.

Issued at Olympia, Washington, the 27th day of July, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order is re-issued to correct the title of the decision, with no change of text.

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-35-210.