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Skamania County, Decision 6459 (PECB, 1998)

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)
SKAMANIA COUNTY LAW ENFORCEMENT)
GUILD)
Involving certain employees of:)
SKAMANIA COUNTY)
)

CASE 13650-E-98-2285

DECISION 6459 - PECB

ORDER OF DISMISSAL

Hoag, Garrettsen, Goldberg, Finch and Makler, by Mark Makler, Attorney at Law, appeared on behalf of the petitioner.

Gordon, Thomas, Honeywell, Malanca, Peterson and Daheim, by Warren E. Martin, Attorney at Law, appeared on behalf of the employer.

Victor Calzaretta, Attorney at Law, appeared on behalf of the incumbent intervenor, Office and Professional Employees International Union, Local 11.

On January 12, 1998, the Skamania County Law Enforcement Guild (petitioner) filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of Skamania County (employer). Office and Professional Employees International Union, Local 11, intervened in the proceedings on the basis of its status as the incumbent exclusive bargaining representative of the employees involved. An investigation conference was conducted on February 10, 1998. A statement of results issued following the investigation conference identified the following issues for further proceedings:

1. OPEIU, Local 11 questioned whether the Skamania County Law Enforcement Guild is a qualified labor organization. The Guild agreed to send its by-laws to the incumbent union and the employer. The parties have ten days from the date of this statement to notify the Commission of specific objections to the Guild's being treated as a qualified labor organization.
2. The incumbent union questioned whether the petition was timely filed. The petitioner's position is that by the expiration of the collective bargaining agreement, the county will meet the required population level of 10,000 to be eligible for interest arbitration. RCW 41.56.440 states that the parties must negotiate a new collective bargaining agreement at least five months prior to the submission of the county's budget to the Board of Commissioners and RCW 36.40.050 states that the budget must be submitted by the County Auditor to the Board of Commissioners by September 1, 1998. The date the parties must be in negotiations is around April 1, 1998, and therefore the window period should be interpreted to be January 1, 1998.
3. The employer stated that the current population is 9,800. The estimate for the current population is based on building permits and voter registration. In a subsequent conversation, the employer noted that according to the Department of Planning, the current population level is 9,900 as of December 31, 1997.
4. The incumbent union's position is that the petition is untimely because the petition was filed before the window period where there is a valid contract in place which does not expire until December 31, 1998.

A hearing was conducted on May 28, 1998, in Stevenson, Washington, before Hearing Officer Kenneth J. Latsch. The detailed opening statements made at the outset of the hearing included:

The petitioner argued that it had taken substantial steps to form itself as a "labor organization" within the meaning of RCW 41.56.030(3), including the creation of bylaws and the election of officers.

The petitioner argued that its petition had to be filed in advance of the contract bar "window" period set forth in RCW 41.56.070,¹ in order to meet the requirements of the bargaining timetable outlined in RCW 41.56.440 and 41.56.450.² The petitioner reasoned that RCW 36.40.050 requires the employer to submit its budget to the County Commissioners by September 1, 1998, so that bargaining should begin prior to April 1, 1998. It contends the traditional "window" period would only allow a petition in the month of October 1998, which would be

¹ RCW 41.56.070 includes: "Where there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement."

² RCW 41.56.440 includes: "Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached (in) sixty days ... then ... either party may ... submit the dispute ... for mediation... The commission shall appoint a mediator, who shall forthwith meet with the ... parties..." RCW 41.56.450 includes: "If an agreement has not been reached following a reasonable period of negotiations and mediation ... then an interest arbitration panel shall be created ... Within seven days ... each party shall name one person to serve as its arbitrator.... The two members so appointed shall meet within seven days ... to choose a ... neutral chairman of the arbitration panel. Upon the failure ... to select a neutral chairman within seven days, [they select an arbitrator by prescribed method]. The arbitration panel ... shall promptly establish a ... hearing.... The hearing ... shall be concluded within twenty-five days.... The neutral chairman shall ... within thirty days ... make written findings of fact and a written determination of the issues in dispute...."

too late for compliance with RCW 41.56.440 and 41.56.450, so that the inherent conflict between statutory directives should be resolved by allowing the affected employees to make an informed decision on their representation in a timely manner. The petitioner thus urged the Commission to move the contract bar "window" period to a time well in advance of the employer's budget submission.

The petitioner's argument depended on an assumption that the population of Skamania County would exceed 10,000 in calendar year 1998, so as to make the law enforcement officers employed by Skamania County "uniformed personnel" within the meaning of RCW 41.56.030(7).³

Local 11 argued that the petition was not filed in a timely manner, that the petitioner's argument was based on an assumption that the bargaining unit would go to interest arbitration if it became eligible to do so, that such an assumption was not warranted, and that the petitioner was interfering with a well established bargaining relationship. Local 11 noted that the window period found in RCW 41.56.070 has been in effect for a considerable period of time, and that there has never been any deviation from the traditional window period, so that the petitioner's arguments would create great uncertainty in the bargaining process. Local 11 moved for dismissal of the petition as untimely.

The employer noted that the primary issue for determination dealt with the timeliness of the petition. The employer contended that substantial bargaining unit determination questions would have to be addressed if the petition were to

³ Status as "uniformed personnel" is a pre-condition to coverage of the interest arbitration procedure set forth in RCW 41.56.440 and 41.56.450.

be allowed, because the unit has historically included a number of employees who would not fit the definition of "uniformed employees" set forth in RCW 41.56.030(7). The employer further argued that it was important to maintain stable collective bargaining relationships, and that the existing contract with the incumbent was in effect until December 31, 1998.

The petitioner did not offer any evidence to show that the population of Skamania County already actually exceeded 10,000, or even that it was certain to exceed 10,000 in 1998. After listening to the arguments presented by the parties, the Hearing Officer granted the motion of Local 11 for dismissal of the petition as untimely.

DISCUSSION

The Executive Director has reviewed the matter, and ratifies the dismissal order announced by the Hearing Officer. The petitioner's entire argument is dependent upon some (but not all) of the employees historically represented by Local 11 having become "uniformed personnel" within the meaning of RCW 41.56.030(7). The Commission and its staff must honor the legislative history distinguishing the state's smallest counties,⁴ and excluding their law enforcement employees from the interest arbitration process made applicable to larger counties.

⁴ According to population estimates issued by the Office of Financial Management as of April 1, 1997, the counties that have populations of less than 10,000 are: Skamania, Lincoln, Ferry, Columbia, Wahkiakum and Garfield.

The coverage of law enforcement officers under the interest arbitration process was a subject of debate in the Legislature for more than 20 years:

• When the interest arbitration process was first enacted in 1973, the only county law enforcement officers eligible for that process were those employed by King County (which was then the only county with a population in excess of the "500,000" threshold then established in the statute).⁵ That situation remained unchanged until 1984, notwithstanding frequent legislative proposals and litigation carried to the Supreme Court of the State of Washington.⁶

• In 1984, a change of the threshold to "any county of the second class or larger" made law enforcement officers in about 10 additional counties eligible for interest arbitration.⁷

⁵ 1973 c 131, Sec. 2. The interest arbitration process was then limited to fire fighters, law enforcement officers employed by cities with a population over 15,000, and law enforcement officers employed by class "AA" counties.

⁶ Legislative proposals to expand the coverage of interest arbitration included at least 1977 HB 85 (any county), 1977 HB 646 (any county), 1980 HB 1717 (any county), 1981 HB 34 (counties of class 3 or larger), 1982 SB 4987 (all counties). The 1973 classification was upheld in Yakima County Deputy Sheriffs' Association v. Yakima County, 92 Wn.2d 831 (1979), overturning a superior court decision which had found the classification unconstitutional, and Clallam County Deputy Sheriffs' Guild v. Clallam County, 92 Wn.2d 844 (1979).

⁷ 1984 c 150, Sec. 1. Second class = 70,000 population.

- Another 11 years then passed without change of the threshold, notwithstanding further efforts in the Legislature and another case litigated to the state Supreme Court.⁹
- The threshold for counties was reduced to "population of thirty five thousand or more" by legislation that was enacted in 1993 with an effective date of July 1, 1995.¹⁰

- The latest change for counties, which reduced the threshold to "population of ten thousand or more" was enacted by the Legislature in 1995 with an effective date of July 1, 1997.¹⁰

It would have been easy for the Legislature to extend interest arbitration to the law enforcement officers in all counties, and it has considered many bills proposing that exact result, but it has not done so.

Ultimately, the petitioner has offered only speculation that the population of Skamania County will exceed 10,000 at some time in the future, so that the law enforcement officers in the historical bargaining unit will become eligible for interest arbitration. The Commission must act on provable facts, not just on anticipation and speculation. Without a showing that any of the employees are now eligible for interest arbitration, there is no reason to interpret

⁹ Legislative proposals to expand the coverage of interest arbitration included at least 1985 SB 3375 (all counties), 1988 HB 1933 (3rd class counties), 1990 SB 6717 (all counties), 1991 HB 1362 (all counties), 1991 SB 5384 (all counties). The 1984 classification was upheld in Yakima County Deputy Sheriffs' Association v. Yakima County, 111 Wn.2d 854 (1989), again overturning a superior court decision which had found the classification unconstitutional.

¹⁰ 1993 c 398 Sec. 1 and 1993 c 379 Sec. 2.

1995 c 273 Sec. 1.

the provisions of RCW 41.56.440 as they relate to the contract bar "window" period established in RCW 41.56.070.

ORDER

The petition for investigation of a question concerning representation filed in this matter is DISMISSED as untimely.

Issued at Olympia, Washington, this 14th day of October, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

CASE NUMBER: 13650-E-98-02285 FILED: 01/12/98 BY: /S/ BETTY PASSMORE
FILED BY: PARTY 2 DISPUTE: QCR SAID ISSUED: 10/14/98
COMMENTS: DETAILS: Severance petition anticipates eligibility for int.arb?

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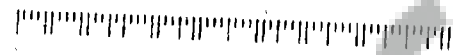
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