

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 763,	)	
	)	
Complainant,	)	CASE NO. 7064-U-87-1439
	)	
vs.	)	DECISION 3030 - PECB
	)	
KING COUNTY,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	
	)	

Davies, Roberts, and Reid, by Finley Young,
Attorney at Law, appeared on behalf of the
complainant.

Norm Maleng, Prosecuting Attorney, by Mary
E. Cummings, Deputy Prosecuting Attorney,
appeared on behalf of the respondent.

On October 8, 1987, Teamsters Union Local 763 (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that King County (respondent) had violated RCW 41.56.140(1) and (4), by refusing to provide the union with the residence addresses of bargaining unit members. A hearing was held on February 23, 1988, before Frederick J. Rosenberry, Examiner. The parties submitted post-hearing briefs.

BACKGROUND

King County is a political subdivision of the state of Washington which encompasses the city of Seattle and its surrounding

metropolitan area. The employer provides a number of public services.

Teamsters Local 763 is the certified exclusive bargaining representative of a bargaining unit composed of employees working in the respondent's Department of Assessments. The department maintains offices in both Seattle and Bellevue, Washington. There are approximately 135 full-time and regular part-time employees in the bargaining unit, many of which have field work assignments which require them to depart from their assigned business office by 9:00 a.m. on work days.

During the summer of 1987, Local 763 mailed a meeting notice to each member of the bargaining unit, using the residence addresses then known to the union.¹ Eleven such notices were returned by the postal service as non-deliverable, because the addresses were incorrect and they were not forwardable.

Thereafter, in August, 1987, union business representative Gregory Slaughter contacted the personnel representative for the Assessments Department, Michael Frawley, for the purpose of obtaining the current residence addresses of the 11 employees. Frawley declined to provide the addresses, and suggested that Slaughter communicate with the employees by using union bulletin boards located in the employees' work areas or by contacting employees at their work stations.² Frawley suggested, in the alternative, that the employer would provide

1 The record does not reflect the precise date the union mailed the meeting notice or the date of the union membership meeting.

2 The record contains uncontroverted testimony that the parties' collective bargaining agreement contains a provision that allows union representatives access to work areas for the purpose of communicating with employees regarding union business.

the union with the office addresses and telephone numbers of employees, that the employer would accept sealed letters from the union and forward them to employees through its internal inter-office delivery system, and/or that the employer would affix the residence addresses and mail letters provided by the union with postage affixed and the names of the employees to which it wanted the letter(s) delivered. Those options were not satisfactory to the union.

Slaughter reiterated his request for the addresses in a letter dated September 9, 1987, which he directed to Wes Moore, the respondent's manager of labor relations. Slaughter stated in his letter that he sought the information in order to fulfill the union's responsibilities as the exclusive bargaining representative.

Slaughter and Moore had a subsequent telephone conversation regarding the matter, at which time Moore told Slaughter that the employer was concerned about the effect of a then-recent amendment to RCW 42.17.310, relating to public records. The employer based its denial of the union's request for information on avoidance of a violation of the amended law.³

In a memorandum dated September 29, 1987, Frawley advised the 11 employees regarding the union's request for their current residence addresses, stating:

Please be informed that Teamsters Union Local No. 763 does not have your current address. They have requested through Mr. Gregory Slaughter, Business Representative, that they be supplied with that informa-

³ The record fairly reflects that the respondent affirmatively acknowledged that there was no administrative burden in providing the requested information to the complainant.

tion. If you wish to supply your address you may do so by telephoning Mr. Slaughter at 441-0763 or writing him at:

553 John Street
Seattle, WA 98109-5081

Two of the employees responded to the county's memorandum and provided their addresses to the union.⁴ Impliedly, the other nine employees did not respond.

POSITIONS OF THE PARTIES

The union maintains that it needs the residence addresses of all members of the bargaining unit in order to communicate effectively with the employees regarding official union matters and to fulfill its responsibilities as exclusive bargaining representative. The union argues that the alternatives offered by the employer are not satisfactory, because of the amount of time such methods of communication require, because they do not provide the union with the ability to verify that its correspondence is relayed to the employees, and because it may desire to communicate with employees in a confidential manner. The union contends that it keeps bargaining unit member names and addresses confidential, and that they are used only for its official business. It is the union's position that Chapter 41.56 RCW, consistent with federal labor law, requires that the employer provide the employee addresses, and that the employer does not violate Chapter 42.17 RCW by providing them.

It is the employer's position that the Public Employment Relations Commission does not have jurisdiction over this dispute,

⁴ The complainant has not raised any issue regarding the lawfulness of the respondent's direct contact with employees.

because it is a public disclosure matter. The employer maintains that it refuses to supply employee addresses out of concern for the privacy rights of its employees, and contends that such information is exempt from disclosure because of amendments to RCW 42.17.310 enacted in 1987. The employer argues that this is the first time that the union has requested residence addresses during the ten years that it has been the exclusive bargaining representative, and that it has failed to establish that the addresses are necessary for it to fulfill its obligations as exclusive bargaining representative. The respondent argues, further, that it has offered suitable alternatives to the union, and that it has not impeded the union in its representation responsibilities.

DISCUSSION

Where public employees have exercised their right under Chapter 41.56 RCW to organize themselves for the purpose of collective bargaining and to designate an exclusive bargaining representative under RCW 41.56.080, the employer is obligated to recognize that organization and to bargain with it in good faith. An employer which fails to meet its bargaining obligation commits a violation of RCW 41.56.140(4). City of Centralia, Decision 1534-A (PECB, 1983).

Respondent's Affirmative Duty to Supply Information

The Public Employment Relations Commission and the Washington courts have looked to federal precedent, where consistent with our statute, in the administration of Chapter 41.56 RCW. Nucleonics Alliance, Local 1-369 v. WPPSS, 101 Wn.2d 24 (1984). Both the Commission and the National Labor Relations Board have repeatedly held that it is an unlawful repudiation of the

bargaining obligation for an employer to refuse to provide the exclusive bargaining representative with information necessary for that organization to perform its statutory representation function. City of Yakima, Decision 1124, 1124-A (PECB, 1981); NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956).

A union's request for bargaining information was addressed in Highland School District, Decision 2684 (PECB, 1987), as follows:

In this case the employer and the union have a bargaining relationship under Chapter 41.56 RCW. Along with the duty of the employer under that statute to bargain in good faith comes the duty to provide the union with information relevant and necessary to the union's performance of its functions as exclusive bargaining representative in the collective bargaining process. Toutle Lake School District, Decision 2474 (PECB, 1986; also Pullman School District, Decision 2632 (PECB, 1987)).

Claims by exclusive bargaining representatives that the residence addresses of bargaining unit members are needed in order to administer collective bargaining agreements and perform the responsibilities of exclusive bargaining representative have repeatedly been upheld by the National Labor Relations Board as being presumptively relevant to the good faith bargaining obligation. Recent examples are: United Graphics, 281 NLRB No. 70 (1986); Van Dorn Co., 265 NLRB 864 (1982); Harvard Folding Box Co., 259 NLRB 686 (1981). The NLRB has continued to order the furnishing of employee residence addresses, notwithstanding employer concerns for employee privacy or claims that the information is confidential. The duty to provide information to an exclusive bargaining representative, and the specific duty to provide residence

addresses, thus arises from the collective bargaining statute, separate and apart from any other rights or obligations of either the employer or the individual employees.

Although not directly controlling in this situation, the Examiner notes the parallel impact of WAC 391-25-130, which was adopted by the Commission pursuant to its rule-making authority conferred by RCW 41.56.090. In the context of representation proceedings before the Commission, that rule provides:

WAC 391-25-130 LIST OF EMPLOYEES. The employer shall submit to the commission a list containing the names and last known addresses of all of the employees in the bargaining unit described in the petition. Following administrative determination that the petition is supported by a sufficient showing of interest, the employer shall, upon request, provide a copy of the list of names and addresses to the petitioner. Following granting a motion for intervention, the employer shall, upon request, provide a copy of the list of names and addresses to the intervenor. (emphasis supplied)

There is no indication that this employer has challenged the validity of WAC 391-25-130,⁵ or that it has declined to provide such information in the representation proceedings leading to the creation of this or any other bargaining unit. The

⁵ The nature of such a challenge is described in Green River College v HEP Board, 95 Wn.2d 108 (1980) as:

A party attacking the validity of an administrative rule has the burden of showing compelling reasons that the rule is in conflict with the intent and purpose of the legislation. Weyerhaeuser Co. v. Department of Ecology, 86 Wn. 2d 310, 314 (1976).

representation case process regulated by Chapter 391-25 WAC is the initial step in the creation of a bargaining relationship. Even at that stage of the process, a prospective exclusive bargaining representative is entitled, subject to meeting statutory "showing of interest" requirements, to establish direct lines of communication with the members of the bargaining unit. There is no logic to the proposition that the ongoing rights of the organization which establishes majority support and receives certification as exclusive bargaining representative should be less than those of an organization which merely demonstrated the 10% support needed for intervention in the representation case.

The Effect of Amendments to RCW 42.17.310

Unfair labor practice complaints are reviewed by the Executive Director under WAC 391-45-110. Claims of "refusal to provide information" are thus administratively screened at the initial stage of processing, to ensure that the disputed information is reasonably related to a mandatory subject of bargaining. Those requests which do not appear to involve mandatory subjects of bargaining do not state a cause of action under Chapter 41.56 RCW, and will be dismissed even though they may allege a violation of the law on public records, Chapter 42.17 RCW. See, Anacortes School District, Decision 2544 (EDUC, 1986).

In the preliminary ruling issued in the case at hand, the Executive Director determined that, assuming all of the facts alleged to be true and provable, the complaint stated a cause of action for which relief could be granted through the unfair labor practice provisions of Chapter 41.56 RCW. Notwithstanding the Executive Director's preliminary ruling, the employer moved at the outset of the evidentiary hearing in this matter for dismissal of the complaint, claiming that the Public

Employment Relations Commission does not have jurisdiction over the dispute. The employer asserted that the case involves an issue that arises under Chapter 42.17 RCW.⁶ The Examiner reserved ruling on the motion until the parties completed the presentation of their case.

An extensive analysis of the applicability of Chapter 42.17 RCW as an appropriate basis for refusing to provide information requested in the collective bargaining process was undertaken in Pullman School District, Decision 2632 (PECB, 1987). Rejecting the employer's claim in that case that personnel information was private and confidential, it was determined that the employer's refusal to provide information was not protected by Chapter 42.17 RCW, and that it violated RCW 41.56.140(4). The employer's argument in the case at hand similarly disregards applicable labor law precedent, and the operative effect of Chapter 41.56 RCW as a source of rights and obligations separate and apart from Chapter 42.17 RCW.

First enacted in 1967,⁷ the Public Employees' Collective Bargaining Act states, in relevant part, at RCW 41.56.010:

The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers. (emphasis supplied)

⁶ The employer thus argued that the appropriate source of redress for the union was to process its complaint through the courts, pursuant to RCW 42.17.340(1).

⁷ As Chapter 108, Laws of 1967, ex. sess.

As most recently amended by Chapter 287, Laws of 1987, RCW 41.56.905 provides:

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control. (emphasis supplied⁸)

The supremacy of the Public Employees' Collective Bargaining Act over other statutes was re-affirmed in Rose v. Erickson, 106 Wn.2d 421, 424 (1986), where the Supreme Court held:

RCW 41.56.905 was added as a part of the 1973 amendment to chapter 41.56. Laws of 1973, ch. 131, sec. 10. Significantly, in Laws of 1983, ch. 287, sec. 5, the Legislature changed the references to the 1973 amendment and enacted the provisions stating that a liberal construction should be given to all of RCW 41.56 and conflicts resolved in favor of the dominance of that chapter. The change is significant and we conclude that in the event of conflict between RCW 41.14 and RCW 41.56, RCW 41.56 must prevail.

Like most of Chapter 42.17 RCW, the law on "public records" was added to the Revised Code of Washington as Chapter 1, Laws of 1973, stemming from Initiative Measure No. 276 adopted by the voters on November 7, 1972. The portions of Chapter 42.17 RCW which are at the root of the present conflict were added to that statute in 1987, as follows:

⁸ RCW 53.18.015 provides authorization for port district collective bargaining, and is irrelevant to this proceeding.

42.17.310 Certain personal and other records exempt. (1) The following are exempt from public inspection and copying:

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.⁹

The legislative intent stated in Chapter 403, Laws of 1987, was "to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in 'In re Rosier'".¹⁰

There are multiple reasons for holding that the recent amendments to Chapter 42.17 RCW do not constrict the rights of an exclusive bargaining representative under Chapter 41.56 RCW.

First, the collective bargaining statute and the precedents on the obligation to provide information under a collective bargaining statute were in place long before either the Rosier decision or the recent amendments to Chapter 42.17 RCW. There is no indication that Rosier in any way affected the rights of an exclusive bargaining representative under the collective bargaining law.

Second, the 1987 amendments to Chapter 42.17 RCW contained an additional provision regarding the disclosure of information, as follows:

⁹ The Reviser's note to RCW 42.17.310 in the 1987 edition of the Revised Code of Washington indicates that there were multiple amendments in 1987, each without reference to the other. The citations used herein are to the official codification, rather than to the bills and/or session laws cited by the employer in its arguments.

¹⁰ 105 Wn.2d 606 (1986). The decision was perceived as expanding the right of citizens to obtain disclosure of information under Chapter 42.17 RCW.

42.17.311 Duty to disclose or withhold information -- Otherwise provided. Nothing in RCW 42.17.310(1)(t) through (v) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law. (emphasis supplied)

This new section indicates that the Legislature was aware of the possibility that a public employer may have a duty to provide information under other laws, such as the collective bargaining law, and that it took such a circumstance in account in attempting to legislatively overrule the Rosier decision. The Examiner notes that the employer cites no statute other than RCW 42.17.310(u) as imposing a "positive obligation" upon it to withhold information under RCW 42.17.311. Conversely, the Examiner finds that Chapter 41.56 RCW imposes upon the employer a positive duty to disclose information to the exclusive bargaining representative of its employees, including the residential addresses of those employees, necessary for the union to perform its representation function.

Third, in addition to the "supremacy" provisions already existing in Chapter 41.56 RCW, the collective bargaining duty to provide information to an exclusive bargaining representative is so well established in labor law precedent which pre-dates the adoption of the public records statute, and is so inherent in the provisions of Chapter 41.56 RCW, as to suggest that a specific amendment of Chapter 41.56 RCW would be necessary to alter the terms and obligations of that statute. Had the Legislature intended that RCW 42.17.310(u) be preemptive to rights arising under Chapter 41.56 RCW, it could have easily so stated. It did not.

Finally, the Examiner notes that the Washington State Department of Personnel has reached a similar result in its administration of collective bargaining for state merit system

employees covered by Chapter 41.06 RCW. See, Washington Public Employees Association v. Department of Natural Resources, Decision 87 ULP-7 (May 6, 1988). Although the decision is not binding upon the Examiner as precedent, the employees covered by Chapter 41.06 RCW trace their collective bargaining rights to the same act of the Legislature, Chapter 108, Laws of 1967, 1st. ex. sess., which created Chapter 41.56 RCW.

Other Defenses Asserted by the Employer

The record fairly reflects that the union maintains its records on employees as confidential information, and that those union records are used only for official union-related business. There is no indication of a propensity toward misuse by the union in the event that the employee residential addresses were provided by the employer.

The employer's contention that this is the first time the union has requested employee residence addresses during a bargaining relationship of ten or more years duration is not clearly supported by the record. Regardless of what occurred in the past, however, there is no indication in the record that the union knowingly waived its statutory rights to information regarding the residence addresses of the employees.

The employer's offer to place employee residential addresses on pre-posted union letters is not sufficient. Such a method would deny the union the ability to maintain an arms-length business relationship with the employer. The offered alternative would require ongoing employer cooperation, participation, and contribution in order for the union to maintain direct communication with the members of the bargaining unit away from their work stations. Further, the employer's alternative would deprive the union of the ability to have a direct, confidential

communication link with the entire bargaining unit. Chapter 41.56 RCW provides an employer the right to insist that employees who have access to confidential information concerning its labor relations policies be excluded from membership in a bargaining unit, in order to avoid a conflict of interest and to maintain the confidentiality of information where disclosure would be harmful to the bargaining process. A union has similar legitimate concerns affecting its security, and is entitled under the statute to maintain direct communication with the members of the bargaining unit.

The legality of the employer's offer to allow the union access to the county's internal mail delivery system, as an alternative to providing the union with employee addresses, must be questioned in light of the decision in Regents of University of California v. PERB, ___ U.S. ___ (1988) (86-935, 4/20/88). The Supreme Court of the United States held there that such a practice is an infringement on the exclusive right of the U.S. Postal Service to deliver first class mail.

It is immaterial that there is no currently pending grievance or bargaining dispute that underlies the union's request for residential addresses. See, Tom's Ford Inc., 253 NLRB 888 (1980). Likewise, it is immaterial that individual bargaining unit employees failed to respond affirmatively when notified that the union lacked their current residential addresses, as RCW 41.56.080 obligates the union to represent all members of the bargaining unit regardless of their membership in or support of the union.

FINDINGS OF FACT

1. King County, Washington, a political subdivision of the state of Washington, is a public employer within the

- meaning of RCW 41.56.030(1). At all times pertinent hereto, Wes Moore was the employer's Manager of Labor Relations and Michael Frawley was the employer's personnel representative for the Department of Assessments.
2. Teamsters Union Local 763, a bargaining representative within the meaning of RCW 41.56.030(5), represents a bargaining unit composed of employees in the King County Department of Assessments. At all times pertinent hereto, Gregory Slaughter was a business representative of the union responsible for the bargaining unit at the King County Department of Assessments.
 3. During the summer of 1987, the union mailed a meeting notice to the last known residential address of each member of the Department of Assessments bargaining unit.
 4. Eleven notices were returned to the union by the U. S. Postal Service, as non-deliverable because the addresses were incorrect and they were not forwardable to the addressee.
 5. In August, 1987, Slaughter made a request to Frawley for the current residence addresses of the 11 individuals referred to in paragraph 4 of these Findings of Fact.
 6. Frawley declined to provide the addresses to the union, but suggested that Slaughter could communicate with the members of the bargaining unit by using union information bulletin boards, by direct contact with employees at their work stations, by use of the employees' office addresses and telephone numbers, by use of the respondent's internal inter-office delivery system, or by supplying the respondent with pre-posted envelopes specifying the names

of the employees with space for the employer to insert the employees' residence addresses prior to deposit of the envelopes in the mail.

7. By letter dated September 9, 1987, directed to Moore, Slaughter reiterated his request for residence addresses, stating that the information was needed by the union to fulfill its responsibilities as the exclusive bargaining representative.
8. Moore told Slaughter in a subsequent telephone conversation that the employer was concerned about the effect of then-recent amendments to RCW 42.17.310, relating to the disclosure of public records. The employer based its denial of the union's request for information upon avoidance of a violation of the amended law.
9. The respondent notified the 11 employees referred to in paragraph 4 of these Findings of Fact that the union did not have current addresses, and that they should contact the union if they desired the union to have their current residence addresses. Two of the 11 employees thereafter provided their residence addresses to the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By refusing to provide Teamsters Union Local 763 with information concerning the residence addresses of its employees in a bargaining unit for which Local 763 is the exclusive bargaining representative, King County has failed and refused to bargain in good faith, and has

interfered with its employees in the exercise of their rights guaranteed by RCW 41.56.040, and so has engaged in unfair labor practices within the meaning of RCW 41.56.140(4) and (1).

ORDER

IT IS ORDERED that the respondent, King County, its officers and agents, shall immediately:

1. Cease and desist from:

- A. Refusing to provide Teamsters Union Local 763 with information reasonably necessary to the performance of its functions as exclusive bargaining representative of King County employees, including the current residence addresses of bargaining unit employees.
- B. Interfering with the exercise of the rights of employees to engage in protected activities as detailed in RCW 41.56.040.

2. Take the following affirmative action to effectuate the purposes and policies of Chapter 41.56 RCW:

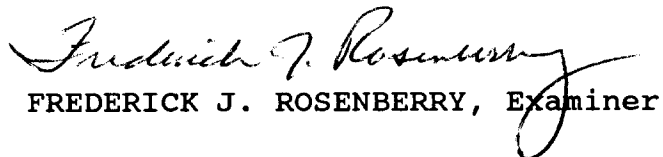
- A. Provide Teamsters Union Local 763 with information concerning the current residence addresses of all employees in the bargaining unit for which Local 763 is the exclusive bargaining representative.
- B. Post, in conspicuous places on the employer's premises where notices to Department of Assessments employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices

shall, after being duly signed by an authorized representative of King County, be and remain posted for sixty (60) days. Reasonable steps shall be taken by King County to ensure that said notices are not removed, altered, defaced or covered by other material.

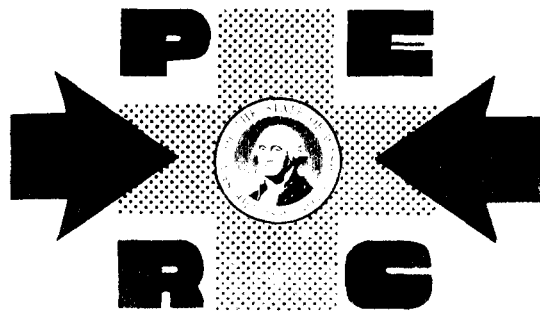
- C. Notify Teamsters Union Local 763, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide Teamsters Union Local 763, with a signed copy of the notice required by the preceding paragraph.
- D. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 1st day of November, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


FREDERICK J. ROSENBERRY, Examiner

This order may be appealed
by filing a petition for
review with the Commission
pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AND IN ORDER TO EFFECTUATE THE POLICIES OF THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT, CHAPTER 41.56 RCW, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL, upon request, provide Teamsters Union Local 763 with information necessary for the performance of its functions as exclusive bargaining representative of employees of the King County Department of Assessments, including the residential addresses of all employees employed in the bargaining unit.

WE WILL NOT interfere with employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining.

DATED: _____

KING COUNTY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza, FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.