STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERMITTENT WORKERS FEDERATION and RUTH BLANKENSHIP, Complainants, vs. INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 17 and CITY OF SEATTLE, Respondents,	CASE NO. 1952-U-79-265
RUTH A BLANKENSHIP, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE NO. 2018-U-79-277 DECISION NO. 802-B PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

John Scannell, Field Secretary, of Intermittent Workers Federation and Ruth Blankenship, pro se, appeared on behalf of the Complainants.

Michael T. Waske, Business Manager, and Bobbie Baker, Business Representative, appeared on behalf of the International Federation of Professional and Technical Engineers, Local 17, Respondent.

P. Stephen Di Julio, Assistant City Attorney, appeared on behalf of the City of Seattle.

On February 1, 1979, the Intermittent Workers Federation (I.W.F.) and Ruth Blankenship jointly filed a complaint of unfair labor practices naming as joint respondents the City of Seattle and the International Federation of Professional and Technical Engineers, Local 17. On March 20, 1979, Blankenship filed a separate complaint of unfair labor practices against the City, which was later amended and consolidated with the other complaint. In case number 1952-U-79-265, complainants allege that the City violated RCW 41.56.140(1) and (2) and Local 17 violated RCW 41.56.150(1) and (2) by establishing an unlawfully assisted and dominated union, specifically by agreeing to a contract which adversely affected temporary and part time employees without consulting temporary and part time employees. In case number 2018-U-79-277, Blankenship alleges that the City discriminated against her in violation of RCW 41.56.140(1) and (3) for filing a grievance with the City and a complaint of unfair labor practices with the Public Employment Relations Commission (PERC).

The Facts:

The factual situation presented by the complainants at the hearing was sketchy. No testimony was offered concerning what the I.W.F. is or who it claims to represent.

In December 1976, Local 17 was certified by PERC as the collective bargaining representative of certain clerical employees of the City. The City maintains a Temporary Employment Service (T.E.S.) which dispatches on-call employees for temporary service in various City departments. Certain of these T.E.S. employees performed temporary clerical work for City departments referred to in the Local 17 certification. This "temporary" work sometimes meant full time employment for a single department for periods in excess of a year, performing work similar to that performed by Local 17 members. However, these T.E.S. clerical employees were not eligible to vote in the election which led to the PERC certification of Local 17, and are not specifically referred to in the certification.

In February 1978, Local 17 and the City signed a collective bargaining agreement effective from October 1, 1977 until August 31, 1978. During negotiations for that contract, Local 17 demanded that it cover all employees performing the work, including T.E.S. employees. The City resisted this demand. The contract reflected a compromise. T.E.S. employees who worked less than 520 hours were not covered. After working 520 hours, the T.E.S. employee was covered by the contract, but received an additional 10% in salary in lieu of fringe benefits. The T.E.S. employee received full benefits after working 1040 hours. It was also agreed that T.E.S. employees would not supplant regular positions. As a result of this agreement, T.E.S. employees no longer received assignments in excess of ninety days and many T.E.S. employees were offered permanent assignments in one of the City departments.

In December 1978, Ruth Blankenship, a T.E.S. clerical employee, was notified by the City that inasmuch as she had worked 1040 hours, she would not be eligible to work again until September 1979. Although Blankenship was required to, and did join Local 17 after completing 520 hours of employment, she elected to file a grievance regarding her employment status pursuant to the City's non-represented employee grievance procedure, rather than the grievance procedure outlined in the Local 17 agreement.

The grievance which was dated December 22, 1978, protested the application of the "1040" rule and the Local 17 collective bargaining agreement to her. The grievance was investigated by the City, considered on its merits, and rejected.

Positions of the Parties:

The Complainants argue that the City's recognition of Local 17 as the representative of the T.E.S. clerical employees was contrary to the

desires and interests of those employees and was aimed at crippling the efforts of the I.W.F. to be their collective bargaining representative. Complainants allege that this amounts to unlawful assistance to and domination of Local 17 by the City. It is further argued that Blankenship's termination was caused by her filing of the grievance and unfair labor practice complaint. The City and Local 17 deny that any assistance or domination occurred. The City asserts that the only reason that Blankenship's employment was discontinued was because of the 1040 rule.

Discussion:

> RCW 41.56.140 provides:
>
> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
> (2) To control, dominate or interfere with a bargaining representative;
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
>
> * * *
>
> RCW 41.56.150 provides:
>
> It shall be an unfair labor practice for a bargaining representative:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
> (2) To induce the public employer to commit an unfair labor practice;
>
> * * *

The City's recognition of Local 17 as the representative of certain of the T.E.S. clerical employees was not inappropriate. These employees were performing work identical to that performed by members of the bargaining unit and having worked more than 520 hours in a year, could certainly be considered more than casual employees.

In the context of the Educational Employment Relations Act, PERC has held that on call employees who work a sufficient number of days in a year should be included in the bargaining unit. Everett School District, Decision 268 (EDUC, 1977); Tacoma School District No. 10, Decision 655 (EDUC, 1979); Renton School District No. 403, Decision 760-A (EDUC, 1980). Parties to a collective bargaining relationship may, and normally should, bargain for regular part time employees as well as full time employees.

Local 17 acted in a reasonable manner after considering the somewhat competing interests of all of its members. See Humphrey v. Moore, 375 U.S. 335 (1964). It was in the interest of most of the employees represented by

Local 17 to attempt to cover all employees performing unit work, and to standarize wages and benefits. No facts were presented which indicated that the City controlled, dominated, or interfered with Local 14. Rather it appears that an adversarial relationship existed between the City and Local 17. Their agreement concerning the T.E.S. clerical employees was achieved after give and take by both sides with advantages and disadvantages accruing to both sides.

Blankenship's discharge obviously did not result from the filing of her grievance or the unfair labor practice complaint, since both events occurred subsequent to her discharge. Rather, her discharge resulted from the City's application of the 1040 rule.

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

2. The Intermittent Workers Federation and the International Federation of Professional and Technical Engineers, Local 17 are bargaining representatives within the meaning of RCW 41.56.030(3).

3. Ruth Blankenship is a public employee within the meaning of RCW 41.56.030(2).

4. In December, 1976, Local 17 was certified by PERC as the collective bargaining representative of certain clerical employees of the City.

5. In February, 1978, Local 17 and the City signed a collective bargaining agreement which for the first time covered clerical employees who worked on an on-call basis. Coverage was limited to those on-call clerical employees who worked at least 520 hours in a one-year period. The contract provided that the on-call employee who worked more than 520 hours but less than 1040 hours would receive an additional 10 percent in salary in lieu of fringe benefits. The on-call employee received full benefits after working 1040 hours. It was also agreed that on-call employees would not supplant regular positions.

6. In December, 1978, Ruth Blankenship, an on-call employees, was notified by the City that inasmuch as she had worked 1040 hours, she would not be eligible to work again on an on-call basis until September, 1979. Later in December, 1978, Blankenship filed a grievance pursuant to the City's non-represented employee grievance procedure, despite the fact that she was a member of Local 17. In February and March of 1979, Blankenship filed complaints of unfair labor practices with PERC, against the City and Local 17.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to chapter 41.56 RCW.

2. By the events described in Findings of Fact 4 through 6, neither the City nor Local 17 committed an unfair labor practice violative of RCW 41.56.140 or RCW 41.56.150.

ORDER

The complaints charging unfair labor practices are hereby dismissed.

DATED at Olympia, Washington this 7th day of November, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Alan R. Krebs

ALAN R. KREBS, Examiner