

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	CASE NO. 5896-U-85-1097
LOCAL 1533,)	
)	
Complainant,)	
)	
vs.)	DECISION NO. 2280 - PECB
)	
KLICKITAT COUNTY,)	
)	
Respondent.)	
<hr/>		
WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	CASE NO. 5897-U-85-1098
LOCAL 1533,)	
)	
Complainant,)	DECISION NO. 2281 - PECB
)	
vs.)	
)	
KLICKITAT COUNTY,)	PRELIMINARY RULING
)	
Respondent.)	

On July 12, 1985, Washington State Council of County and City Employees, Council 2, AFL-CIO, filed a complaint charging unfair labor practices with the Public Employment Relations Commission. Two separate cases were docketed under the case numbers indicated above, in order to separate allegations concerning a unit of supervisors from allegations concerning employer actions against a non-supervisory employee. The matters are presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether the complaints, or either of them, state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

The material allegations of the complaints are set forth in full as follows:

"FACTUAL BASIS

1. On June 8, 1985, Washington State Council of County and City Employees, Council 2 together with AFSCME Local 1533 submitted to the Klickitat Board of County Commissioners, a request for voluntary recognition of the Public Works Supervisors. Also, submitted were payroll deduction cards allowing due deductions and Union membership under Article I - Recognition of the Agreement between Klickitat County and AFSCME Council 2, and Local 1533.
2. With the issue still unresolved in August 1984, the Union submitted to negotiations, for the 1985 contract a proposal to recognize and include the Supervisors under the existing Bargaining Agreement. Additionally, the Union filed a petition, for investigation of a question concerning representation with PERC.
3. Failing to resolve the issue in negotiations a cross check agreement was executed January 30, 1985, resulting in issuance of certification of the bargaining unit of February 7, 1985, Dec. No. 2156 - PECB.
4. On February 21, 1985, the Union issued a new proposal, for negotiating contract coverage of the Supervisors by inclusion under the existing contract.
5. On March 23, 1985, a negotiation session was set to begin discussion of Supervisor's contract coverage. Purpose of the meeting was to lay the ground rules for continued negotiations, and for the Union to receive the County's initial position in negotiations. At the meeting discussion centered around composition of the Union's negotiating team with the County demanding that Local 1533 President, Jim Kern, not be allowed to participate. The County refused to make any offer, or take any position, or counter the Union's proposal.
6. On his next pay check Jim Kern, was refused two hours pay spent, for time at the March 23, 1985 negotiations. Even though, it had been the long standing practice, for the Local Union President to attend all negotiations during worktime at the County's expense.
7. On April 8, 1985 Jim Kern, filed a grievance seeking the two hours pay.

8. In the March 23, 1985 negotiation session the County promised the Union a written proposal by April 19, 1985. In mediation on May 21, 1985, the County again promised a written proposal to the Union. To date the County refused to provide the Union with any kind of offer until the Union acquiesces to the County's demand to control the composition of the Union's bargaining team and the Union agrees to a separate contract for the Supervisors.

CHARGES

1. Klickitat County's refusal to pay Jim Kern, Local 1533 President for time in negotiations is a coercive action taken to deny employees their rights guaranteed R.C.W. 41.56.
2. Klickitat County's refusal to bargain a contract coverage of the Supervisor's unless the Union submits to the County's pre-conditions of bargaining team composition and a separate contract is an attempt to control, dominate, and interfere with the exclusive bargaining representative, Council 2, and Local 1533.
3. The County's refusal to respond to the Union's February 21, 1985 proposal, for supervisors contract coverage constitutes a refusal to engage in collective bargaining."

Paragraph 1 of the complaint appears to begin with an erroneous date, as the balance of that paragraph and the following paragraphs recite a course of events which would appear to have commenced a year earlier than the date indicated. When taken in the context of the following paragraphs, it is inferred that the employer and Local 1533 had a pre-existing collective bargaining relationship covering non-supervisory employees of the employer.

Paragraph 2 of the statement of facts is taken to refer to the commencement of negotiations for the non-supervisory bargaining unit. Questions of unit definition can be negotiated by parties under Chapter 41.56 RCW, but unit determination is not a mandatory subject of collective bargaining. City of Richland, Decision 279-A (PECB, 1978); aff. 29 Wa.App. 599 (Division III, 1981); cert. den., 96 Wn.2d 1004 (1981). The allegation is thus taken as background to what follows, and does not state a cause of action as a refusal to bargain.

Paragraph 3 of the statement of facts is similarly taken to be background to the allegations which follow. Notice is taken of the proceedings and decision in Klickitat County, Decision 2156 (PECB, February 7, 1985) in which "Washington State Council of County and City Employees" was certified as exclusive bargaining representative of a separate bargaining unit of supervisors.

It is in paragraph 4 and the initial portion of paragraph 5 of the statement of facts that the complaint in the supervisory unit (Case Number 5896-U-85-1097) falls among thorns. While parties may agree on matters of unit determination, neither party is entitled to demand bargaining in a unit different than that certified by the Commission. Orient School District, Decision 2174, 2174-A (PECB, 1985); Decision 2175, 2175-A (EDUC, 1985). Thus, to the extent that the complainant seeks a remedy for the employer's refusal to bargain coverage of the supervisors under the same contract as the non-supervisory employees, the complaint fails to state a cause of action.

In the latter portion of paragraph 5 and in paragraph 6, the complainant recites a refusal on the part of the employer to meet with an officer of Local 1533 concerning the supervisor unit and, potentially, a discriminatory docking of that employee's pay in connection with his efforts to represent the supervisors. These allegations will be assigned to an Examiner for hearing, so that a full record might be developed. On the one hand we have the certification of Council 2 rather than of Local 1533 in particular, and the policy of separation enunciated by the Commission in City of Richland, Decision 1519-A (PECB, 1983) (now on appeal in the Court of Appeals). On the other hand, we have the strong protections of RCW 41.56.040 and 41.56.140(1) and (2), protecting the right of public employees to engage in lawful union activity, together with an absence of any previous litigation testing the legitimacy of an assignment by Council 2 of its bargaining rights for the supervisor unit to the same local which represents the subordinates of those supervisors.

The allegations of paragraphs 7 and 8 of the complaint (concerning the processing of a grievance) present neither a separate cause of action nor a basis for deferral of the allegations concerning interference with the internal affairs of Local 1533 or discrimination against its President.

NOW, THEREFORE, it is

ORDERED

1. Decision No. 2280 - PECB. The allegations concerning refusal to bargain in the supervisor unit (Case No. 5896-U-85-1097) are dismissed for failure to state a cause of action.
2. Decision No. 2281 - PECB. Jack T. Cowan of the Commission staff is designated to act as Examiner to conduct further proceedings pursuant to Chapter 391-45 WAC concerning the allegations of interference with the internal affairs of Local 1533 and discrimination against its president (Case No. 5897-U-85-1098).

DATED at Olympia, Washington, this 1st day of August, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director