

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF EMTs)	
AND PARAMEDICS,)	
)	
Complainant,)	CASE 15967-U-01-4071
)	
vs.)	DECISION 7503 - PECB
)	
GRANT COUNTY PUBLIC HOSPITAL)	
DISTRICT 1 d/b/a SAMARITAN)	
HEALTH CARE,)	ORDER DENYING MOTION
)	FOR TEMPORARY RELIEF
Respondent.)	
)	
)	

Harry F. Berman, IAEP Regional Counsel, for the union.

Garvey, Schubert & Barer, by *Bruce E. Heller*, Attorney at Law, for the employer.

This case came before the Commission on a motion for temporary relief filed under WAC 391-45-430. Confirming the action taken by the Commission at a public meeting held on September 11, 2001, the motion is DENIED.

BACKGROUND

Up to August 20, 2001, Grant County Public Hospital District 1 d/b/a Samaritan Health Care (employer) operated a paramedic and ambulance service in and around Moses Lake, Washington, and the International Association of EMTs and Paramedics (union) was the exclusive bargaining representative of the paramedics employed in that operation. On July 23, 2001, the union filed a complaint

charging unfair labor practices with the Commission under Chapter 391-45 WAC, alleging that the employer was committing unfair labor practices in connection with a sale or closure of the operation. Case 15921-U-01-4054 was docketed. A preliminary ruling was issued in that case under WAC 391-45-110 on August 13, 2001, summarizing the allegations as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and employer discrimination for filing unfair labor practice charges in violation of RCW 41.56.140(3), by closing the E.M.S./Ambulance Division in reprisal for union activities protected by Chapter 41.56 RCW.

Assuming all of the facts alleged to be true and provable, the complaint was found to state a claim for relief available through unfair labor practice proceedings before the Commission. The employer was directed to answer that complaint.

On August 27, 2001, the union filed a motion for temporary relief supported by declarations of three employees. A separate case number was assigned for the temporary relief proceedings, as Case 15967-U-01-4071.¹ The Commission staff sent a letter to counsel for both parties on August 28, 2001, describing the procedure followed in processing temporary relief motions and the opportunity for oral argument before the Commission. The motion for temporary relief was placed on the agenda for the Commission meeting to be held on September 11, 2001, and copies of that agenda were mailed to counsel for both parties on September 4, 2001.

¹ This procedure avoids commingling of declarations and other temporary relief materials with the evidentiary record on which the underlying case must be decided.

The employer filed its answer to the underlying complaint on September 5, 2001, and filed a brief and declarations in response to the motion for temporary relief on September 10, 2001.²

Counsel for the employer was present at the time set for the Commission's public meeting on September 11, 2001. Counsel for the union was not present, and there had been no request from the union for a continuance. A member of the Commission staff contacted counsel for the union at his office in California, by telephone, and was told there had been some mixup of assignments within the union staff. Counsel for the employer objected to postponement of the motion, citing the union's claim of urgency and the negative effects that continued doubt would have on the employer. The Commission then initiated a telephone conference call in which all members of the Commission and counsel for both parties participated. The parties' counsel agreed that the Commission should rule on the motion for temporary relief based on the documents already on file.

DISCUSSION

On certain occasions, the Commission has implemented its authority under RCW 41.56.160 to seek temporary relief by authorizing the Attorney General of Washington to file suit in the courts to preserve the status quo pending the outcome of unfair labor practice proceedings. The Commission's rules include:

² The employer's responses include an assertion that the paramedic/ambulance operation was taken over by the City of Moses Lake on August 20, 2001. Thus, the transfer of the operation occurred two days before the motion for temporary relief (styled as a "motion to enjoin") was prepared under date of "August 22, 2001" and a week before the motion was filed with the Commission.

WAC 391-45-430 MOTION FOR TEMPORARY RELIEF. In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

. . .
(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making its determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

. . .
(c) A determination by the commission that temporary relief should not be sought at a particular time shall not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which

unfair labor practice violations have been found
to exist.

(emphasis added).

In this case, the Commission is not persuaded that the injunction requested by the union is the only remedy available to the union. Indeed, other remedies may be available if an unfair labor practice violation is found.

NOW, THEREFORE, it is


ORDERED


The motion for temporary relief made in the above-captioned matter is DENIED.

Issued at Olympia, Washington, on the 21st day of September, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner