Clark County, Decision 9080 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLARK COUNTY DEPUTY SHERIFF'S GUILD, Complainant, vs. CLARK COUNTY, Respondent.	CASE 19474-U-05-4943 DECISION 9080 - PECB ORDER DENYING MOTION TO DEFER TO ARBITRATION

On May 16, 2005, the Clark County Deputy Sheriff's Guild (union) filed charges of unfair labor practices against Clark County (employer). The union represents a bargaining unit of deputy sheriffs in the county. The allegations concern:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), and refusal to bargain in violation of RCW 41.56.140(4), by breach of its good faith bargaining obligations in implementing changes in terms and conditions of employment for corporals which are alleged to affect mandatory subjects of bargaining, before the parties reached an impasse in collective bargaining negotiations, and by comments of chief civil prosecutor Denny Hunter, chief criminal deputy Mike Evans and Sheriff Garry Lucas to reserve commander Winsor, not to meet with the deputy sheriff's guild to discuss representation fo reserve employees by the guild, in reprisal for union activities protected by Chapter 41.56 RCW.

On June 28, 2005, the Commission issued a preliminary ruling on the charges and found that, if all of the facts alleged in the

complaint are true and provable, it appears an unfair labor practice violation could be found. The preliminary ruling ordered the employer to file an answer to the complaint. The undersigned Examiner was assigned to the case on July 18, 2005, and on July 25, 2005, the employer's answer was filed. A hearing in the matter has been scheduled for October 12 and 13, 2005, in Vancouver.

On August 22, 2005, the employer filed a motion to defer the case to arbitration under WAC 391-45-110(3) which states:

> (3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.
>
> (a) Deferral to arbitration may be ordered where:
>
> (i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;
>
> (ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and
>
> (iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

The employer noted in its motion that the union has filed a grievance over the employer's process of filling the corporal positions. The employer also quoted sections of the parties' collective bargaining agreement concerning the upgrading and requirements for the filling of the corporal positions and the provisions for arbitration of contractual grievances.

DECISION

In *City of Yakima*, Decision 3564-A (PECB, 1991), the Commission reviewed and restated its policies on deferral to arbitration.

> This Commission has taken a conservative approach, limiting "deferral" to situations where an employer's conduct at issue in a "unilateral change" case is arguably protected or prohibited by an existing collective bargaining agreement. The goal of "deferral" in such cases is to obtain an arbitrator's interpretation of the labor agreement, to assist this Commission in evaluating a "waiver by contract" defense which has bee or may be asserted in the unfair labor practice case.

(Citations omitted)

Thus deferral to arbitration is only appropriate in unilateral change cases where the legislative policy favoring arbitration set forth in RCW 41.58.020(4) can be implemented by leaving interpretation of the contract to an arbitrator.

Although the employer is correct that a charge of unilateral change in the terms and conditions of employment is part of the union's allegations, it is only one part out of a total of four allegations which also include: interference, domination and discrimination. The latter are not allegations which the Commission defers to arbitration. *Tacoma Housing Authority*, Decision 7390 (PECB, 2001). Furthermore, if the employer is suggesting that the Commission should defer part of the union's charges, such is not the policy of the Commission. Deferring part of unfair labor practice charges provides no economy if, as a result of the arbitrator's decision, a second unfair labor practice hearing must be convened. Finally, the allegations in the instant case are factually intertwined and

deferral would, in effect, result in two or perhaps three hearings over the same factual matters.

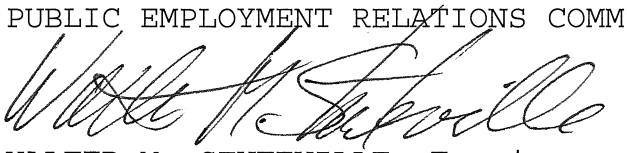
NOW, THEREFORE, it is

ORDERED

The employer's motion for deferral to arbitration in the above-captioned matter is DENIED.

ISSUED at Olympia, Washington, this 14th day of September, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner