STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE NO. 4227-U-82-673 DECISION NO. 2079-A PECB ORDER FOR REMAND

Hafer, Price, Rinehart and Schwerin, by John Burns, attorney at law, appeared on behalf of the complainant.

Perkins, Coie, Stone, Olsen & Williams, by Russell L. Perisho, attorney at law, appeared on behalf of the respondent.

This case was heard by Examiner Katrina I. Boedecker, who issued her findings of fact, conclusions of law and order on December 3, 1984, finding certain violations and ordering certain remedies. The complainant union filed a petition for review, alleging that a finding was erroneous, seeking additional affirmative relief for victims of unfair labor practices, and seeking attorneys' fees. The respondent school district then cross-petitioned for review, raising numerous questions about the examiner's findings and rulings on waivers and on the question of deferral to arbitration.

Ordinarily, in reviewing an Examiner's decision we first address the facts and then apply the law. Here we shall alter the procedure to first discuss a basic point of law that undergirds the entire decision under review.

We must construe the last sentence of RCW 41.56.070, which provides:

> . . . Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years.

This sentence was enacted as part of Section 7, Chapter 108 of the Laws of 1967. It has not been applied or cited by any Washington appellate court.

The parties to this case had been parties to a two-year collective bargaining agreement. Article XXIV of the agreement provided:

> This two (2) year Agreement is effective September 1, 1980 through August 31, 1982, providing that the Agreement shall continue in effect, thereafter, unless and until either party gives written notice of complete termination of the Agreement, which notice can be effective no sooner than ten (10) days after its delivery to the other party.

The Agreement did not extend beyond three years. Nor did it provide for automatic renewal or extension for a fixed term upon a failure of the parties to reopen in a timely manner, as in Vapor Recovery Systems, Inc., 311 F.2d 782 (9th Cir., 1962). But it had a clause whereby it automatically continued terminable at the will of either party on ten days notice. Such a notice was given by the school district on February 22, 1983, effective March 4, 1983.

What did the Legislature intend by the last sentence of RCW 41.56.070? The sentence does not appear ambiguous on its face, but as applied here it seems at odds with the intent of Chapter 41.56 RCW as a whole. A diligent search has brought to light no legislative history.

Applied literally, the last sentence of RCW 41.56.070 would render Article XXIV, and perhaps the entire collective bargaining agreement, void ab initio, for all purposes. The Examiner stopped short of holding that the agreement was void ab initio, relying in part on our holding in Seattle School District, Decision 1803 (PECB, 1984). This led the Examiner to conclude that the collective bargaining agreement between the parties expired absolutely and for all purposes on its stated August 31, 1982 expiration date, and that just the automatic extension of the agreement beyond August 31, 1982 was void. The examiner misread Decision 1803. In that case, a contract executed in 1969 contained a provision extending it for a year at a time upon a failure to give timely notice to reopen. Under the literal reading of the statute, that contract was void ab initio, or, under the examiner's construction of the statute, was void after July 1, 1970. Yet this Commission honored eleven automatic annual extensions through July 1, 1981 in the absence of any suggestion by either party that they were invalid. The extensions as well as the contract were treated as valid for purposes of that case up to the point that one of the parties gave timely notice to reopen. We do not think we erred in so doing.

Article XXIV of the Agreement may well be read to be in substantial compliance with RCW 41.56.070, since it allows the agreement to continue in effect only for an indefinite period subject to termination on ten days notice by either party. Such notice could have been given on August 21, 1982, effective August 31, 1982, which would have coincided with the termination date stated in the contract. There is nothing which would have prevented these parties from signing another piece of paper at the expiration

of even a three-year contract, incorporating the expired agreement by reference and continuing it in effect until further notice. Such a document would not bar a representation petition from a rival organization, but would keep the machinery established by the parties functioning from day to day while they negotiated. The examiner did not so read the article and held that certain actions of the school district which might have been lawful, had the contract been in effect, were unfair labor practices because done after August 31, 1982, the extension of the contract being illegal, and that deferral to three arbitration awards was inappropriate because they were based on the assumption that the contract was in effect when it was not.

We do not believe that the legislature intended to render collective bargaining agreements such technically fragile instruments, especially in a section of the statute dealing not with substantive contract provisions, as do RCW 41.56.110, 41.56.120 and 41.56.122, but in a section relating to elections. In the instant case, both parties believed they had a contract and conducted themselves accordingly. The union enjoyed the continued benefits of the union security clause and of the grievance procedure. It is hardly conducive to stable or harmonious labor relations to tell the parties that everything they have done for the past six months in reliance on a supposed contract is invalid because of a technicality. This inference is consistent with the decision of the United States Court of Appeals for the Eighth Circuit in Teamsters Local 688 v. NLRB (Crown Cork & Seal Co.), ___ F.2d ___; D.L.R. 3-18-85, Sec. D-1 (March 6, 1985), where the NLRB had held that an offer by the employer to the union had expired by lapse of time but the court reversed, noting that the union believed the offer to be open and that the employer conducted itself as if it was open, therefore it was open. A different inference would serve no constructive purpose.

Both parties to this unfair labor practice case acted during the September, 1982 - February, 1983 period as if they were acting under a valid collective bargaining agreement. Had either party gone to court to enforce the contract, the adverse party might have successfully challenged its validity, but neither party did so. Each believed itself to be complying with the agreed exchange of performances. The only provision of the contract contrary to public policy was the extension clause itself, and neither party is seeking in this proceeding to do anything about that.

Corbin on Contracts, (1963) Section 7 says:

> In cases where the transaction of the parties is in fact a mutual agreement, but is legally void, and also in cases where there is no contract for the reason that there are no mutual expressions of assent, the parties may nevertheless follow the transaction by action that is itself legally operative. A party may make a conveyance of land, even though there was no contract making it his duty to make the conveyance. The agreement may have been void, but the conveyance is not. A party may render service to another, both of them erroneously thinking that an agreement has been reached and a contract has been made. In such a case the rendition of the service is a legally operative act, even though there was no contract and there was a misunderstanding instead of an agreement.
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> Illustrations of agreements that are wholly void of legal effect are not very numerous; but several classes of them can be found. The cases in which an illegal bargain is actually void and those in which it is enforceable by one or both of the parties will be considered in the chapters dealing with illegality.
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> Again, courts often declare that a contract within the statute of frauds that is not evidenced by the required writing is void; indeed, the statutes of a few states expressly declare such an agreement to be "void." Nevertheless, as will appear in the chapters dealing with the statute of frauds, there is no case in which such an agreement is totally without legal operation. Even if a statute expressly declares an agreement to be illegal or void, justice requires and the courts have continually decided that the effect of such a statute upon a particular case must depend upon the circumstances of that case. The words of the statute will be interpreted in the light of the purpose of the statute, with due regard to the result that will be reached by the interpretation. One result of this is that agreements will often be found to have some legal operation even though the statute may have used the word "void." (Emphasis supplied.)

And see Williston on Contracts, (3rd ed., Jaeger) Sections 1630, 1630A, where the author observes:

> No doubt, wherever it is possible, the courts will interpret the contract so as to uphold it.

If what the parties did while they thought the contract was in effect was fair, that action can hardly become unfair by reason of a technicality neither of them suspected.

We hold that the collective bargaining agreement terminable on August 31, 1982 was in substantial compliance with RCW 41.56.070, and that, in any event, it was valid as between the parties until the school district terminated it by notice effective on March 3, 1983. Since we are reversing the examiner on this novel point of law which undergirds the entire decision, we remand the case to the examiner, who saw and heard the witnesses.

ORDER

The matter is remanded to Examiner Katrina I. Boedecker, to make findings of fact, conclusions of law and order consistent with this opinion. No attorneys' fees will be allowed.

DATED at Olympia, Washington, this 13th day of June, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Mary Ellen Krug

MARY ELLEN KRUG, Commissioner