

King County, Decision 6994 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF)	
PROFESSIONAL AND TECHNICAL)	CASE 14042-U-98-3471
ENGINEERS, Local 17,)	DECISION 6994 - PECB
)	
Complainant,)	CASE 14454-U-99-3581
)	DECISION 6995 - PECB
vs.)	
)	
KING COUNTY,)	ORDER DENYING MOTION
)	TO RESTRICT ATTENDANCE
Respondent.)	AT HEARING
)	
)	

These cases are before the Examiner for a ruling on a motion filed by King County (employer) on December 30, 1999, seeking to exclude "certain" members of the public from attending the hearing in the above-captioned matters. The motion is denied at this time, in the absence of actual interference with the hearing process.

BACKGROUND

The above-captioned proceedings were initiated by unfair labor practice complaints filed with the Commission under Chapter 391-45 WAC. International Federation of Professional and Technical Engineers, Local 17 (union), alleged that the employer violated RCW 41.56.140, by discrimination in regard to administration of employee leave rights. A preliminary ruling was issued under WAC 391-45-110, finding a cause of action to exist. The undersigned was assigned as Examiner, and the employer filed an answer to the complaint. A notice was issued, setting a hearing to be held at the Commission's office in Kirkland, Washington, on October 7, 1999.

Lynn Baugh was subpoenaed to appear as a witness at the hearing in this matter. As she approached the hearing room on October 7, 1999, Baugh was confronted by protesters in front of the building or in the building foyer, some holding signs of the type normally associated in the labor-management context with picketing. The protest was aimed at Baugh in her role as a manager in the employer's Department of Developmental Services, and particularly concerned zoning decisions of that department. (Transcript at Page 8.) Although some comments directed at Baugh were characterized as "hostile", and some of the picket signs were characterized as "inflammatory", there was no physical contact or jostling.¹

None of the protest conduct was observed by the Examiner, and the hearing was convened without further incident. Two news media representatives were present in the hearing room, as were several of the protesters who had congregated in the parking lot and foyer of the building. The parties made extensive argument with respect to whether the presence of the audience was creating (or would create) a chilling effect on the witnesses who might testify. A motion to sequester witnesses was considered and GRANTED. Motions

¹ The protest was directed at Baugh and the employer for approving the zoning request and plans for what was referred to at the hearing as the "Chu Megahouse". That structure is being constructed in the Finn Hill section of Redmond, in eastern King County. The employer characterizes the structure as a large residence; the protesters complain it is being built as a religious institution ("temple"), where more than one family would be in residence at any time. The protesters, who style themselves the "Finn Hill Residents for Responsible Development", contend that King County Superior Court Judge James Street ruled that Baugh helped to destroy critical documents regarding the zoning approval, while the employer counters that Judge Street allowed the disputed building permit to go forward as approved. The Examiner makes no ruling with respect to the issues involved in that protest.

by both employer and union for summary judgment were DENIED. The employer also moved to exclude some or all of the audience members not directly involved in the hearing. The Examiner recessed the hearing.

The employer renewed its motion concerning the audience on December 30, 1999. That written motion is directed at all audience members who would or might "intimidate" Baugh or other employees of Baugh's department. Subsequent to the filing of the employer's written motion, a notice was issued setting March 30, 2000, as the date for resumption of the hearing.²

DISCUSSION

The Public Employment Relations Commission is a state agency, an unfair labor practice proceedings under Chapter 391-45 WAC are adjudicative proceedings under the Administrative Procedures Act, Chapter 34.05 RCW. The Commission does not conduct its adjudicative proceedings in secret. There is no authority in the Revised Code of Washington or the Washington Administrative Code for the Examiner to generally exclude members of the press or public from hearings in adjudicative proceedings. A complete exclusion of the public from such proceedings would be improper, and ultra vires.

The possibility of disruption of agency proceedings is dealt with in the rules adopted by the Commission:

WAC 391-08-020 APPEARANCE AND PRACTICE
BEFORE AGENCY--STANDARDS OF CONDUCT. **Miscon-
duct at any hearing conducted by the commis-**

² The parties were notified that the hearing will carry over to March 31, 2000, if necessary.

sion or a member of its staff shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the commission after due notice and hearing. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 ...]

...

WAC 391-45-270 HEARINGS--NATURE AND SCOPE. **Hearings shall be public** and shall be adversary in nature, limited to matters concerning the unfair labor practices alleged in the complaint. The complainant shall prosecute its own complaint and shall have the burden of proof. During the course of the hearing, **the examiner may**, upon motion by any party, or on his or her own motion, **sequester witnesses**. It shall be the duty of the examiner to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice so as to obtain a clear and complete factual record on which the examiner and commission may discharge their duties under these rules: Provided, however, That such duty of the examiner shall not be construed as authorizing or requiring the examiner to undertake the responsibilities of the complainant with respect to the prosecution of its complaint or of the respondent with respect to the presentation of its defense. Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58-.050. 96-07-105, § 391-45-270, filed 3/20/96, effective 4/20/96]

[Emphasis by **bold** supplied.]

The matter of what is "misconduct" is for the presiding officer to decide and rule upon, regardless of whether there are motions from one or more of the parties. The question presented here is whether, having sequestered the witnesses under WAC 391-45-270, the Examiner has a sufficient basis to exclude other audience members from the hearing to be held in this case. After due consideration, the Examiner reaches the following conclusions:

- A. The activities of certain members of the general public in advance of the hearing on October 7, 1999, created a distraction which indirectly led to the recess of the hearing, but did not directly disrupt the hearing. Thus, a "prior restraint" characterization would be an apt description for the exclusionary order requested by the employer.
- B. There simply is not enough evidence to conclude that Ms. Baugh or any other witness was actually intimidated by the protesters outside of the hearing room, or that she would be constrained to lie under oath because of the presence of the press or public in the hearing room. Controversy is common in proceedings before the Commission. Consider:

Harassment of fellow employees during the union organizing was openly advanced by the employer as a basis for its decision to discharge M----. No one can contend that the history of unions and union organizing drives in America is a pleasant, artistic, sublime, or inspirational journey. Rather, such events have often been loud and surly, and their history is replete with violence, angry words, and enmities that destroy friendships. Even in the public sector, where the employees help elect the people who later employ them, bringing in a union where there has not been one can be a disturbing and turbulent moment in the life of the community.

The authority (and willingness) of the Examiner to exclude persons who might actually disrupt a hearing is not a basis to presume that members of the public will engage in misconduct if permitted to attend the hearing in this case.

- C. A deviation from the customary practice of holding unfair labor practice hearings at the Commission's Kirkland office is warranted in this case. While the Commission's facilities are adequate for many meetings and hearings conducted by the Commission and its staff, the hearing room is too small to accommodate a large audience, and the surrounding suite is too small to accommodate the sequestration of multiple witnesses.

NOW, THEREFORE, it is

ORDERED

1. The hearing in the above-captioned matters will be re-convened as follows:

March 30, 2000
(and on March 31, 2000, if necessary)

Large Conference Room
Offices of IFPTE, Local 17
2900 Eastlake Avenue East, Suite 300
Seattle, Washington

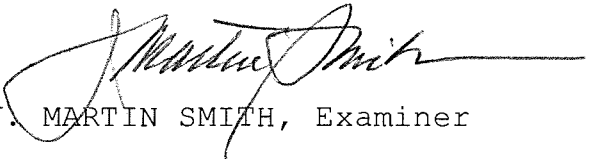
2. Members of the general public who wish to observe the hearing may attend and take personal notes, subject to the availability of seating in the room and subject to the responsibility and authority of the Examiner to maintain order in the proceedings. Members of the audience shall be subject to immediate exclusion by the Examiner for any demonstrations or

disruption of the hearing process, including attempts to communicate with each other or with the hearing participants and witnesses by physical movements, facial expressions or remarks.

3. Persons who are called, or expect to be called, as witnesses shall be excluded from the hearing room (sequestered) until their testimony has been concluded and they have been excused as witnesses.
 - a. Counsel for both parties are directed to provide the Examiner and one another with a listing of the anticipated witnesses, in their approximate order.
 - b. Attempts by media representatives and other members of the public to communicate with the sequestered witnesses in advance of their having been excused as witnesses shall be misconduct warranting exclusion from the premises.

ISSUED at Olympia, Washington, on the 13th day of March, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. MARTIN SMITH, Examiner

