

collective bargaining agreements since 1980. In November, 1982, the union demanded expanded negotiations on issues beyond wages and related monetary benefits. This demand was refused. It is from this refusal that the unfair labor practice complaint springs.

Prior to 1978, probationary counselors and persons in charge of detention facilities were appointed by the superior court judges as authorized in RCW 13.04.040. In 1978 the legislature amended this provision to allow such appointment to be made exclusively by the juvenile court administrator. The applicable statute reads:

13.04.035 Administrator of juvenile court, probation counselor and detention services--Appointment. Juvenile court, probation counselor, and detention services shall be administered by the superior court, except that by local court rule and agreement with the legislative authority of the county they may be administered by the legislative authority of the county in the manner prescribed by RCW 13.20.060: Provided, That in any class AA county such services shall be administered in accordance with chapter 13.20 RCW. The administrative body shall appoint an administrator of juvenile court, probation counselor, and detention services who shall be responsible for day-to-day administration of such services, and who may also serve in the capacity of a probation counselor. One person may, pursuant to the agreement of more than one administrative body, serve as administrator of more than one juvenile court. (emphasis added)

RCW 13.20.060 referenced in the above-cited statute, calls for the transfer of administration of juvenile court services to the county executive after authorization by a majority vote of the superior court judges and "subject to approval by ordinance of the legislative authority of the county to transfer to the county executive the responsibility for, and administration of, all or part of juvenile court services, including detention, intake and probation." Although encouraged by the union to transfer the administrative authority to the county, the judges have declined.

Charles Gruver was appointed by the superior court judges to be the administrator of the Thurston County Court July 1, 1978. Gruver had been an employee of the court since 1959 and had served as director from 1964 until his appointment as the administrator under the amendment to RCW 13.04.035, supra. While under RCW 13.04.035, Gruver would be responsible for the day-to-day administration of the department,^{1/} the record indicated that he does discuss personnel matters with the judges.

^{1/} As per RCW 13.04.040, Gruver could also hire and fire employees:

13.04.040 Administrator--Appointment of probation counselors and persons in charge of detention facilities--Powers and duties, compensation--Collection of fines. The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator.

Gruver has consulted with the judges prior to terminating employees. He has on occasion met with the judges to discuss budgets, over-population of detention and other matters related to the court system. While Gruver has been administrator, the court received complaints of inappropriate behavior by some employees at detention and contacted the administrator to investigate the situation. The administrator made a report back to the judges. Gruver has adopted personnel rules with the encouragement and approval of the judges. The administrator's decisions on personnel matters are final under the grievance procedure. When there were budget cuts, the administrator consulted with the judges regarding lay-offs of personnel, but the judges did not dictate direction. The judges approve the administrator's expense vouchers before they are submitted to the county for payment. Although the administrator has the authority to hire and fire his employees, in one instance the judges ordered Gruver to either leave his employment or discharge the bookkeeper, who was Gruver's wife, due to the judges' perception of a conflict of interest. The judges take an active interest in what the salary should be for the administrator and the juvenile department employees. Gruver and the juvenile department employees are paid by the county and enjoy the same related monetary benefits such as vacation and sick leave as other county employees.

POSITIONS OF THE PARTIES

The union acknowledges that the Washington State Supreme Court has held that the employees of a juvenile court are "dual status employees" since they are hired, controlled and terminated by the judges but paid by the county. This status was changed, the union argues, by the 1978 amendments to RCW 13.04.035 and RCW 13.04.040 whereby the administrator is granted the day-to-day supervision of the employees of the juvenile court and authorized to hire and fire employees.

The county argues that while the administrator has been given the day-to-day administration over the court employees, the superior court has not, under RCW 13.04.035, relinquished its overall control of the juvenile department employees and, therefore, they remain dual status employees. It contends that the administrative body, which is the court, retains the right to hire and fire the administrator and thus it retains the ultimate control over the employees.

DISCUSSION

There is no documentation in this record of both the conditions precedent existing as required by RCW 13.04.035 to allow for a transfer of authority,

i.e., there is no local court rule or concomitant ordinance from the county. To find for the complainant one would have to determine that there has been a transfer and acceptance of authority by binding implication. This decision cannot so hold. Although the union sought through testimony and argument to show that Gruver was autonomous and solely responsible for setting the terms of employment, there exist incidents to the contrary which do not allow for this conclusion. The judges' ultimatum regarding the termination of the bookkeeper, Gruver's consultation with the judges before setting policy for the juvenile court, the joint discussions involving the budget or termination matters are a few examples. The other basis for finding a de facto transfer of authority is found in the union's motion for summary judgment. In support of this motion the union submitted a memorandum of authorities filed by the county as the defendant in a sex discrimination complaint. In that case before the superior court (No. 79 2 00576 0) the judges, as defendants, argued that the 1978 statutory amendments of the Basic Juvenile Court Act, Chapter 13.04 RCW, were designed to free the court, and hence the judges, from the day-to-day administrative activities of the juvenile court. The judges had claimed in that memorandum "they possess neither statutory authority nor the right to control the administrator when he exercised his discretion in the day-to-day personnel matters of the juvenile court." The judges argued in that situation that they had no right of control, thus there was no employer-employee relationship necessary to render the doctrine of respondiat superior applicable. The judges' argument in defense of a sex discrimination claim against the court that the judges had no right to control is troublesome. However, that argument is submitted by the union in this case based upon the judges' motion to dismiss in another case. There is no evidence in the record that the trier of fact in the sex discrimination case gave credence to the judges' arguments. Nor is there any recording of a final outcome in the sex discrimination claim. Even if the judges' statements in that case were read to be an admission against interest for this case, there is no showing of the concomitant acceptance of the transfer by the county which is required by the statute.

In Zylstra v. Piva, 85 Wa.2d 743 (1974), the Washington State Supreme Court decided that for purposes of the Public Employees Collective Bargaining Act (Chapter 41.56 RCW), the juvenile court employees are county employees insofar as wages and related monetary matters are concerned, but are state employees as to matters controlled by the juvenile court judges, such as hiring, firing and working conditions pursuant to RCW 13.04.040. It ruled that the employees had a right to bargain over wages and related monetary matters - vacation, sick leave and insurance - which were controlled by the county. However, as state employees they were not subject to the collective bargaining law, and they could not bargain over other conditions and terms of employment. The union appears to read Zylstra as pivoting on the fact that

the judges were the only body authorized to hire and fire the employees under RCW 13.04.040 prior to the amendments. The union's main argument, that the statute as amended now empowers an administrator to hire and fire and be responsible for the daily activities of the department instead of the court, is framed to show that there was a legislative intent to remove these employees from the court's jurisdiction. To uphold the union's position, the amendments would have to be interpreted as automatically removing the employees from the jurisdiction of the court. There is not enough evidence to establish that the amendments to the statute were intended to change the status of the juvenile court employees from state employees to county employees merely by allowing for the possibility of a grant of day-to-day responsibility for supervision to an administrator. The legislature did not repeal the required steps to transfer the administration of the juvenile court from a superior court to a county. The amendments were enacted four years after the supreme court issued Zylstra. If the legislature had wanted to change the ramifications of Zylstra, it clearly could have done so; it chose not to.

The complainant carries the burden of proof in its refusal to bargain charge. In order to meet its burden, the complainant must show that the "dual status" of the juvenile department employees as determined by the Zylstra decision has been changed. RCW 13.04.035 and 13.20.060 require that such a change can only be effected by the enactment of a local court rule and a county ordinance. There is no evidence of such enactments. Lack of proof of the transfer of control to Thurston County is particularly crucial because, absent proof of authority of the county to bargain, the county's refusal to bargain cannot be found to be an unfair labor practice.

FINDINGS OF FACT

1. The Office and Professional Employees International Union, Local 23, is a bargaining representative within the meaning of RCW 14.56.030(3) and represents the juvenile court employees of Thurston County in an appropriate bargaining unit described as:

Regular and part-time office and clerical employees, detention employees, probation officers, and all other employees, excluding guards and supervisors.

2. In November, 1982, Thurston County and the union were engaged in collective bargaining wherein the union demanded negotiations beyond wages and related monetary benefits. The county refused the demand.

3. The judges of the Superior Court of Thurston County have appointed Charles Gruver as the administrator of the juvenile court, and he serves at their pleasure. Gruver exercises the authority outlined in RCW 13.04.040, including the hiring and firing of employees and the administration of the day-to-day activities of the department. Gruver consults with the superior court judges on matters relating to the department.
4. The superior court judges have directed the termination of an employee of the juvenile court against the wishes of Gruver. Gruver did terminate the employee.
5. There is no local court rule of Thurston County Superior Court transferring the administration of the juvenile court to Thurston County.
6. There is no ordinance adopted by Thurston County accepting the transfer of the administration of the juvenile court from the Thurston County Superior Court.
7. Thurston County Superior Court judges admitted in the defense of a sex discrimination claim against the court that the judges have no right of control over the day-to-day operations of the juvenile court.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to RCW 41.56 et seq.
2. Thurston County is a political subdivision of the state and as such is a public employer within the meaning of RCW 41.56.030(1).
3. Thurston County Superior Court, as a constitutionally created court, is a state agency and is not a public employer within the meaning of RCW 41.56.030(1).
4. The employees of Thurston County Juvenile Department are dual status employees for purposes of collective bargaining. As employees of Thurston County Superior Court, they are state employees and outside the scope of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, for non-wage related matters. They are employees of Thurston County and within the definition of "public employee" contained in RCW 41.56.030(2), for purposes of wage and related monetary benefits.

5. There has been no actual or de facto transfer of administrative authority for the operation of the juvenile court from Thurston County Superior Court to Thurston County, within the meaning of RCW 13.04.035.
6. There has been no actual or de facto acceptance of administrative authority for the operation of the juvenile court by Thurston County from Thurston County Superior Court, within the meaning of RCW 13.04.035.
7. By refusing to bargain non-wage related items with the union representing the employees of the juvenile department, Thurston County did not violate RCW 41.56.140(1) and (4).

Based on the testimony of the witnesses, the evidence admitted in the hearing, the briefs of the parties and the record as a whole, it is

ORDERED

The complaint of unfair labor practices be dismissed.

DATED at Olympia, Washington, this 12th day of March, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker
KATRINA I. BOEDECKER
Examiner