

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF	)	
COUNTY AND CITY EMPLOYEES,	)	CASE NO. 6562-U-86-1299
LOCALS 1553 AND 1553-S,	)	
	)	DECISION NO. 2674 - PECB
Complainants,	)	
	)	PRELIMINARY RULING
	)	
vs.	)	
	)	
	)	CASE NO. 6824-U-87-1374
SPOKANE COUNTY,	)	
	)	DECISION NO. 2675 - PECB
Respondent.	)	
	)	ORDER OF DISMISSAL
	)	
	)	

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On September 16, 1986, the Washington State Council of County and City Employees (complainant) filed a complaint charging unfair labor practices against Spokane County (respondent), alleging that respondent violated RCW 41.56.140(1) and (4) through a series of actions concerning promotion of employees to a bargaining unit of supervisors represented by WSCCCE Local 1553-S from a rank-and-file bargaining unit represented by WSCCCE Local 1553. Initially, a single case was docketed under Case No. 6562-U-86-1299.

The matter is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is assumed that all facts contained in an unfair labor practice complaint are true and provable. The allegations set forth in the statement of facts are:

1. January 21, 1985, the Washington State Council of County and City employees was certified as exclusive bargaining

representative of a unit of supervisory Spokane County Courthouse employees (Dec. No. 2141 in Case No. 5559-E-84-1005) ("supervisors' unit").<sup>1</sup>

2. The majority of the employees in the supervisors' unit had been in the unit represented by WSCCCE and AFSCME Local 1553 ("the courthouse unit") before the supervisors' unit was created.
3. The supervisors' unit is represented by WSCCCE and AFSCME Local 1553-S.
4. Spokane County representatives have stated that they sought creation of the supervisors' unit in order to limit or stop promotions of employees in the courthouse unit to supervisory positions on the basis of seniority and ability.
5. For many years, contracts have provided that promotions to positions in the 1553 unit have been made by seniority and ability: The most recent 1553 contract, which expired December 31, 1985, so provided.
6. One of Spokane County's proposals to the 1553 bargaining unit representa-

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<sup>1</sup> Review of the docket records of the Commission discloses that Spokane County initiated a series of unit clarification cases on March 12, 1984 (Case Nos. 5160-C-84-261, 5161-C-84-262, 5162-C-84-263, and 5163-C-84-264) seeking to have certain claimed supervisors excluded from various bargaining units represented by local unions affiliated with the WSCCCE. Proceedings on those cases were commenced, but were then suspended upon the WSCCCE's filing, on November 15, 1984, of a petition for investigation of a question concerning representation in a separate unit of supervisors. (Case No. 5559-E-84-1005). An election was conducted and the union was certified as exclusive bargaining representative of the separate unit on January 21, 1985. Spokane County, Decision 2141 (PECB, 1985). The unit clarification proceedings were thus mooted, and their dismissal followed.

tives in the current negotiations is that members of that unit could not bid on promotional openings in the supervisory unit. To date the Union has not accepted this proposal.

7. Spokane County has posted at least three notices that positions in the supervisors' unit are open which contain the following statement: "Only members of Local 1553-S are eligible to apply."
8. Neither sets (sic) of negotiations are at impasse.
9. Not all members of the supervisors' unit have become members of AFSCME Local 1553-S.

The question at hand is whether the complainant states a cause of action under the applicable statute. Paragraphs 1 and 3 are introductory of parties. In this situation, review of the document filed on September 16, 1986 has disclosed that two separate issues have been raised, involving two separate local union organizations, two separate bargaining units and two separate causes of action. Accordingly, the matter has been divided into two separate cases, as follows: Case No. 6562-U-86-1299 deals with those allegations affecting Local 1553-S and members of the supervisory bargaining unit; Case No. 6824-U-87-1374 deals with those allegations involving Local 1553 and the employees in the "rank-and-file" bargaining unit.

To the extent that the paragraphs 7 and 9 of the statement of facts allege that promotional opportunities within the supervisory bargaining unit have been tied to membership in a particular labor organization, they state a cause of action for unlawful interference in violation of RCW 41.56.140(1). The exclusive bargaining representative must fairly represent all of the employees in the bargaining unit for which it is

certified or recognized, without regard to membership in the union. RCW 41.56.080. Similarly, an employer is prohibited from discriminating on the basis of union membership or lack thereof. RCW 41.56.040; RCW 41.56.140(1). The statement attributed to the employer may have only been an inarticulate shorthand reference intended to encompass all of the employees in the supervisory bargaining unit, but intent is not controlling in an interference case. By imposing a union membership requirement for positions within the supervisory bargaining unit, the employer could be perceived as creating a "closed shop" prohibited by RCW 41.56.122. A violation could be found if non-member employees within the supervisory unit could reasonably have believed that they were precluded from promotional opportunity on the basis of their union membership status. Further proceedings are warranted in Case No. 6562-U-86-1299.

Case No. 6874-U-87-1374 involves paragraphs 2, 4, 5, 6 and 8 of the statement of facts. The complainant appears to maintain that it somehow has bargaining rights within the "rank-and-file" unit to negotiate about requirements for promotion to positions in the separate bargaining unit of supervisors. For reasons set forth below, those allegations fail to state a cause of action and must be dismissed.

Regardless of how or why they were initially motivated,<sup>2</sup> the inherent effect of the representation proceedings and certifi-

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<sup>2</sup> It can be aptly observed, in response to the union's apparent questioning of the employer's motives, that separation of "supervisors" from the bargaining unit containing their rank-and-file subordinates was and is entirely consistent with Commission precedent that dates back to at least City of Richland, Decision 279, 279-A (PECB, 1978), aff. 29 Wn.App 599 (Division II, 1981), cert. den., 96 Wn.2d 1004 (1981).

cation, is that two separate units now exist. They must be dealt with as such, and history generated prior to the creation of the supervisory unit is not controlling under the changed (current) circumstances. Each bargaining unit is limited to bargaining the wages, hours and working conditions of the employees in that unit. City of Wenatchee, Decision 2216 (PECB, 1985). Thus, while the exclusive bargaining representatives of both bargaining units are affiliated with the same state-wide and national labor organizations, neither Local 1553 nor the WSCCCE itself has the right to impose, through bargaining in the rank-and-file unit, limitations on the employer's ability to set standards for positions within the supervisory unit. The allegations hence do not state a claim on which relief can be granted.


NOW, THEREFORE, it is

ORDERED

1. Walter M. Stuteville of the Commission staff has been designated to conduct further proceedings in Case No. 6562-U-86-1299.
2. The complaint charging unfair labor practices in Case No. 6824-U-87-1374 is hereby DISMISSED.

DATED at Olympia, Washington, this 23rd day of April, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.