

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH G. SULLIVAN,)	CASE NO. 4386-U-82-701
Complainant,)	
vs.)	DECISION NO. 1911-A - PECB
PUBLIC HEALTH HOSPITAL)	
PRESERVATION AND DEVELOPMENTAL)	RULING ON MOTION TO
AUTHORITY, d/b/a SEATTLE PUBLIC)	WITHDRAW EXAMINER'S
HOSPITAL,)	DECISION
Respondent.)	

The undersigned Examiner issued finding of fact, conclusions of law and order in the above-entitled matter on May 11, 1984, dismissing the complaint. On May 15, 1984, the complainant filed a written request to have the decision withdrawn and to have the hearing in the matter reopened.

The hearing in this matter was conducted in accordance with Chapter 41.56 RCW and Chapter 391-45 WAC. The Public Employment Relations Commission is an "administrative agency" created by Chapter 41.58 RCW and governed by Chapter 34.04 RCW with respect to the conduct of contested case hearings. When an agency such as the Commission conducts hearings, it must insure that the hearings are "adequate and fair." Hood vs. Washington State Personnel Board, 82 Wn.2d 396, (1972). An administrative agency has the discretion to consider a re-hearing. Alaska S.S. Co. vs. Federal Maritime Commission, 356 Fed. 2d 59 (1966). The Courts have stated:

Unless specifically prohibited by statute and subject to judicial review as to reasonableness, administrative agencies are free to exercise discretion and judgment.

Savage vs. State, 75 Wn.2d 6181 (1969).

The key concept articulated by the Court is judgment. The Commission, in a unit determination case, set forth standards for re-hearing as follows:

This matter was remanded for further hearing because the employer claimed that a significant change of circumstances had occurred since the case was originally heard. Unit determination orders of the Commission are final administrative orders, under RCW 34.04, to which res judicate principles apply; and it follows that 'changed circumstances' are an important element of proof for a party seeking to overcome a previous determination by the Commission. However, the motions

on which remand was granted in this case were made prior to the entry of a final order by the Commission. While the Commission was critical of the procedure followed by the employer, and cautioned against reliance on similiar procedure in the future, its ultimate order was for the taking of additional evidence in the same proceeding.

City of Seattle, Decision 689-C (PECB, 1981). (Emphasis supplied)

The complainant's motion for withdrawal of the Examiner's decision and request for re-hearing in this case are based upon the complainant's contention that the Examiner erred in interpreting the entire record in this matter. Upon review of the motion, the Examiner finds no new arguments or anything indicating that a mistake has been made which would warrant withdrawal of the decision.

The complainant also moves to reopen the hearings, based on his claim of having obtained newly-discovered evidence which he could not have known about or produced throughout the four days of hearings. He cites several examples of newly found evidence to support his contentions, but the examples cited relate to the just cause standard of the collective bargaining agreement, rather than to the four issues identified for hearing in this matter. Therefore, the Examiner, having considered the complainant's request, concludes that the newly-discovered evidence is beyond the scope of the hearing framed by the Executive Director.

The motion is denied.

DATED at Olympia, Washington, this 17th day of May, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


REX L. LACY, Examiner