

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH G. SULLIVAN,

Complainant,

vs.

PUBLIC HEALTH HOSPITAL PRESERVATION
AND DEVELOPMENTAL AUTHORITY d/b/a
PUBLIC HEALTH HOSPITAL,

Respondent.

CASE NO. 4386-U-82-701

DECISION NO. 1911-B PECB

RULING ON MOTION TO
MODIFY EXAMINER'S
DECISION

The undersigned Examiner issued findings 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 On May 15, 1984, the complainant filed a written request to have the Examiner's decision withdrawn and to have the hearing in the matter reopened. On May 17, 1984, the Examiner denied the complainant's request. On May 22, 1984, the complainant filed a written request for modification of the Examiner's decision.

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 judicata 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 similar 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 modification of the Examiner's decision and request for reopening the hearing in this case is based upon "newly-discovered evidence". The newly-discovered evidence consists of answers to Federal Court interrogatives filed by the respondent's attorney. Upon review of the motion for modification of the decision, the Examiner concludes that assuming, without making a formal ruling, the newly-discovered evidence is true and provable, it would not alter the Examiner's decision.

The motion is denied.

DATED at Olympia, Washington, this 23rd day of May, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


REX L. LACY, Examiner