STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS UNION LOCAL NO. 763,	)	CASE 8045-U-89-1741
Complainant,	)	DECISION 3289 - PECB
vs.	)	
SOUTHWEST SNOHOMISH COUNTY PUBLIC SAFETY COMMUNICATIONS AGENCY,	)	ORDER DENYING MOTIONS FOR INTERVENTION AND SUMMARY JUDGMENT
Respondent.	)	

On June 20, 1989, Public, Professional and Office-Clerical Employees and Drivers Local Union No. 763,[1] filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Southwest Snohomish County Public Safety Communications Agency had committed unfair labor practices in violation of RCW 41.56.140(1). Specifically, Local 763 alleged that representatives of the employer had made statements to members of a bargaining unit represented by that union, during the course of collective bargaining, to the effect that:

> [T]he employees would be "more respected" by the Employer if they were not represented by [Local 763], and, by implication, would achieve a more favorable Labor Agreement.

Subsequent to the alleged statements having been made, but prior to the filing of the unfair labor practice charges, the Medic 7

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[1] The union is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

Paramedics Association filed a representation petition with the Commission pursuant to Chapter 391-25 WAC, seeking to replace Local 763 as exclusive bargaining representative of the bargaining unit.[2]

On August 7, 1989, the Executive Director of the Commission issued a preliminary ruling on this unfair labor practice case, pursuant to WAC 391-45-110, describing the cause of action as:

> Interference with the rights protected by Chapter 41.56 RCW, by the employer's statements to employees disparaging the incumbent exclusive bargaining representative.

At the same time, the Executive Director suspended the processing of the representation proceedings pursuant to WAC 391-25-370.[3]

On August 18, 1989, the Medic 7 Paramedics Association filed a motion for intervention "as a respondent" in the above-captioned unfair labor practice case. As part of the same filing, the Medic 7 Paramedics Association seeks, if allowed to intervene, a summary judgment dismissing the unfair labor practice charges.

POSITIONS OF THE PARTIES

First telephonically, and then by letter dated September 12, 1989, the parties were invited to submit responses to the association's motion to intervene and dismiss by September 19, 1989.

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[2] The petition was filed on May 11, 1989, and was docketed as Case 7966-E-89-1346.

[3] The Medic 7 Paramedic Association has petitioned the Public Employment Relations Commission on August 18, 1989, for review of the Executive Director's action to invoke the "blocking charge" rule.

The employer did not submit a response.

Local 763 responded with the argument that the association had earlier attempted and failed to secure the election prior to the resolution of the unfair labor practice charges through an appeal of the order suspending the representation proceedings. Now, it asserts, the association is attempting to litigate the same issue through a motion for intervention without demonstrating an independent interest in the substance of the unfair labor practices charge. The union argues that genuine issues of material fact exist which require a hearing and examination of witnesses.

DISCUSSION

The Motion for Intervention

The Commission's unfair labor practice rules, Chapter 391-45 WAC, make no provision for a motion for intervention in an unfair labor practice case. Medic 7 Paramedics Association does not cite any Commission rule or precedent as the basis for its motion for intervention in the above-captioned unfair labor practice case. The statute itself does leave open the possibility of intervention, under limited circumstances:

> RCW 41.56.170 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS--PROCEDURE--COMPLAINT--NOTICE OF HEARING--ANSWER--INTERVENING PARTIES--COMMISSION NOT BOUND BY TECHNICAL RULES OF EVIDENCE. Whenever a complaint is filed concerning any unfair labor practice, the commission shall have power to issue and cause to be served a notice of hearing before the commission at a place therein fixed to be held not less than seven days after the serving of said complaint. Any such complaint may be amended by the commission any time prior to the issuance

> of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise to give testimony at the place and time set in the complaint. In the discretion of the commission, any other person may be allowed to intervene in the said proceedings and to present testimony. In any such proceeding the commission shall not be bound by technical rules of evidence prevailing in the courts of law or equity. (emphasis supplied)

Thus, the association may not intervene as a matter of right, as it argues, but only at the discretion of the Commission.

In Renton School District, Decision 2004 (PECB, 1984), a motion on behalf of bargaining unit employees for intervention in an unfair labor practice case between their union and employer was denied. It was found there that the would-be intervenors were not seeking to continue litigation of the original "refusal to bargain" charges, but rather sought to enlarge the litigation or to substitute an issue concerning the union's conduct in accepting a settlement of the underlying case. The Examiner in that case found that the claim advanced by the proposed intervenor involved no question of law or fact raised in the original complaint. Finally, the Examiner in Renton found that denial of the motion for intervention would not impede the ability of the moving party to protect her interests.

Importantly, the association does not allege here that it has been accused of any wrongdoing, either directly or indirectly.[4] Nor does it allege that the employer has committed any "interference"

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[4] For example, it is not difficult to envision that a union would have a legitimate interest in intervention in an unfair labor practice case where it was the alleged beneficiary of employer assistance made unlawful by RCW 41.56.140(2).

or "discrimination". The petitioner is not a party to the current collective bargaining agreement. It is neither protected by nor responsible for the legal rights and obligations established by the existing bargaining relationship between the employer and Local 763. Since the purported interference by the employer in the statutory rights of the incumbent exclusive bargaining representative does not involve the association, either factually or legally, the Examiner concludes that the association is not moving to intervene to litigate any question of law or fact raised by the original complaint in this case.

The association bases its motion for intervention entirely upon its status as the petitioner in the blocked representation case. It asserts that the right of the employees to petition for a change of exclusive bargaining representative has been frustrated by the imposition of the blocking charge rule. It reasons that, as the representation petitioner, it should have a right to intervene and seek dismissal of the blocking charge. The fact that the association is a party to the representation case, and its desire to move ahead with the processing of its petition, are not, however, a compelling basis to permit its intervention in a case where it otherwise has no role or interest. As in Renton, supra, the statutory rights of the employees vis-a-vis the representation petition have not been, and will not be, substantially harmed by a delay pending the disposition of the unfair labor practice charges. The delay that occurs whenever the "blocking charge" rule is invoked is necessary to ensure that the statutory rights of all parties are observed and preserved. It would be an abuse of discretion for the Commission to permit intervention in this case.

The Motion for Summary Dismissal

With the denial of the association's motion for intervention, its motion for dismissal of the unfair labor practice charges could,

naturally, be denied on entirely procedural grounds. Even on its own merits, however, the argument for a summary judgment dismissing the unfair labor practice charges must fail.

Under the standards for a making a preliminary ruling,[5] all facts alleged in a complaint are assumed to be true and provable. The Executive Director does not exercise a prosecutor's discretion about the quality of evidence or chance of success in a case that is to be prosecuted by the complainant at its own expense. The administrative procedures act, Chapter 34.05 RCW, entitles a party to a hearing on allegations which state a cause of action.

The Medic 7 Paramedics Association has supplied affidavits of bargaining unit employees, and argues that the alleged employer references to the incumbent union were never made. It also argues that the alleged employer statements were hearsay, and therefore inadmissible in evidence. Local 763 has responded with a signed statement of one of its officials, re-affirming the claim that the employer made statements disparaging that union. The association's own arguments underscore that there are contested issues of fact to be heard, and legal arguments to be made, on the allegations of the complaint. As the respondent, the employer will be at liberty to call the individual affiants as witnesses, just as Local 763 will be entitled to call its business agent to testify about what was reported to him. Rulings on the admissibility of evidence are for the Examiner, upon objection made at a hearing. The decision of the Examiner must be based upon the record made at hearing, and cannot be hurried by reliance upon affidavits made without opportunity for cross-examination.

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[5] WAC 391-45-110.

NOW, THEREFORE, it is

ORDERED

The motions of Medic 7 Paramedics Association for intervention and for summary judgment are DENIED.

Issued at Olympia, Washington, the 25th day of September, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, Examiner