

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

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On June 20, 1989, Public, Professional and Office-Clerical Employees and Drivers Local Union No. 763,<sup>1</sup> 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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<sup>1</sup> 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.<sup>2</sup>

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. The Medic 7 Paramedic Association petitioned the Public Employment Relations Commission for review of the Executive Director's action to invoke the "blocking charge" rule.

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 sought, if allowed to intervene, a summary judgment dismissing the unfair labor practice charges.

On September 25, 1989, this Examiner denied both the motion to intervene and the motion for summary judgment.<sup>3</sup> The Medic 7 Paramedic Association petitioned the Public Employment Relations Commission for review of the Examiner's order.

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<sup>2</sup> The petition was filed on May 11, 1989, and was docketed as Case 7966-E-89-1346.

<sup>3</sup> Decision 3289 (PECB, 1989).

In Southwest Snohomish County Public Safety Communications Agency, Decision 3309 (PECB, October 12, 1989), the Commission reversed the order of the Executive Director suspending the representation proceeding. In that decision the Commission also noted:

We observe . . . in light of the conclusion reached herein, that the association would appear to have a substantial interest, as petitioner in the "blocked" representation case, in the outcome of the unfair labor practice case. While not suggesting that any mischief has actually occurred, or is even contemplated by the parties in this situation, it is not difficult to envision that the Commission's representation case processes and the rights of employees could be subject to abuse by an employer who, in the absence of participation by a representation petitioner, fails to assert available defenses or defaults in response to "blocking" unfair labor practice charges filed by a favored incumbent. If an unfair labor practice violation were to result in dismissal of a representation petition under the precedent of Lewis County, Decision 645 (PECB, 1979), the representation petitioner's rights would be adversely affected by the employer's failure to defend.

The Commission thus remanded this unfair labor practice case to the Examiner for reconsideration in light of its order.

#### 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. The statute itself does, however, 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. Based upon the Commission's discussion quoted above, the Commission has exercised that discretion. Therefore, upon reconsideration, the association's motion for intervention is granted.

#### The Motion for Summary Judgment

With the granting of the motion for intervention, the motion for summary judgment must be considered on its own merits.

The standards for making a preliminary ruling are set forth in WAC 391-45-110 and in numerous decisions of the Commission. All of the 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 the complainant's 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.

A summary judgment is appropriate under WAC 391-08-230 only if there are no contested issues of fact to be decided in the case. 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 are put before the Commission as hearsay. 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. The employer and the association 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 and to cross-examine witnesses called by other parties. 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.

NOW, THEREFORE, it is

ORDERED

1. The motion of the Medic 7 Paramedics Association for intervention in the above-entitled proceedings is granted.

2. The motion of the Medic 7 Paramedic Association for summary judgment is denied.

Dated at Olympia, Washington, the 6th day of November, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner