

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF)	
PROFESSIONAL AND TECHNICAL)	
ENGINEERS, LOCAL 17,)	CASE 8640-U-90-1883
)	
Complainant,)	DECISION 3815-B - PECB
)	
vs.)	
)	
PUBLIC UTILITY DISTRICT 1)	
OF CLARK COUNTY,)	ORDER DENYING STAY
)	
Respondent.)	
)	
)	

Richard D. Eadie, Attorney at Law, appeared on behalf of the union.

Davis Wright Tremaine, by Stephen M. Rummage, Attorney at Law, appeared on behalf of the employer.

This matter came before the Public Employment Relations Commission on May 18, 1992, for a report on compliance with the remedial order issued by the Commission in the above-captioned case on March 26, 1992. Clark County PUD, Decision 3815-A - PECB [CLARK PUD III].¹ The employer had previously filed a petition for judicial review of

¹ These proceedings were commenced by a complaint charging unfair labor practices filed by the union on June 15, 1990. An Examiner issued a decision holding that the final order in an earlier case, Clark County PUD, Decision 2045-B (PECB, 1989) [CLARK PUD II], was res judicata on certain procedural defenses, in the absence of a timely petition for judicial review, and that the employer had committed additional unfair labor practices by its ongoing refusal to bargain with the union. See, Decision 3815 (PECB, 1991). The employer filed a timely petition for Commission review, and the Commission affirmed the Examiner's decision, including an award of attorney fees to the union based on a finding that an extraordinary remedy was necessary "to curtail dilatory tactics and prevent recurrences".

our CLARK PUD III decision in the Superior Court for Clark County, and it used the occasion of the compliance report to request that the Commission suspend proceedings on a more recent unfair labor practice case filed by the union.² Although not denominated as such, the Commission has treated the employer's request as a motion under RCW 34.05.550, for a "stay" of our CLARK PUD III order.

Applicable Law

The employer's general reliance on precedent under the National Labor Relations Act is neither conclusive nor persuasive. While the Commission and the Washington courts have considered the rules, practices and precedents developed under the federal law in their interpretation and application of state collective bargaining laws, the issues now before the Commission concern Washington procedure.

Prior to deciding any of the unfair labor practice allegations in CLARK PUD II or CLARK PUD III, the Commission had issued a declaratory ruling,³ holding that it has jurisdiction to regulate collective bargaining between public utility districts and their employees, under Chapter 41.56 RCW. Public Utility District 1 of Clark County, Decision 2125 (PECB, 1985), affirmed, 110 Wn.2d 114 (1988) [CLARK PUD I]. The clear effect of CLARK PUD I is that Washington state **procedures** apply, even if these parties and/or the affected employees have some **substantive rights** which derive by

² Case 9225-U-91-2045 [CLARK PUD IV]. That complaint filed on June 24, 1991 is based on a bargaining request and refusal to bargain which allegedly occurred shortly after the Supreme Court of the State of Washington dismissed the employer's petition for judicial review of CLARK PUD II as untimely, by an order signed by the Chief Justice on March 7, 1991. An amended complaint filed on April 30, 1992 in CLARK PUD IV is based on a bargaining request and refusal to bargain which allegedly occurred shortly after the Commission issued its CLARK PUD III decision.

³ The petition for declaratory ruling was filed by the employer.

reference to federal law.⁴ Consistent with that approach, the Supreme Court's dismissal of the employer's petition for judicial review of the CLARK PUD II decision was based on the employer's failure to timely serve the Commission, as required by the state Administrative Procedures Act then in effect.⁵

The above-captioned proceeding is conducted under the 1988 Administrative Procedures Act (APA), Chapter 34.05 RCW, which became effective on July 1, 1989.⁶ We dispose of the question before us under that state law.

Effectiveness of the CLARK PUD III Order

Our CLARK PUD III decision directed the employer to "immediately" take steps to remedy its unfair labor practices. The APA deals specifically with the effectiveness of orders issued by Washington state administrative agencies, as follows:

34.05.473 EFFECTIVENESS OF ORDERS. (1)
Unless a later date is stated in an order or a stay is granted, **an order is effective when entered**, but:

(a) A party may not be required to comply with a final order unless **the party has been served** with or has actual knowledge of the final order.

...

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the **determinative date is the date of service** of the order.

[Emphasis by **bold** supplied.]

⁴ RCW 54.04.170 and 54.04.180 grant bargaining rights by reference to the bargaining rights of employers and employees in private industry.

⁵ Chapter 34.04 RCW.

⁶ Chapter 288, Laws of 1988.

The Commission's computerized docket records, as well as the "Record of Service" mailed with the CLARK PUD III decision, all reflect that the Commission's order was duly served on the employer on March 26, 1992. That order is now in effect.

The Request for a Stay

The procedures for a "stay" of the order of a Washington state administrative agency are also controlled by the 1988 Administrative Procedures Act, as follows:

34.05.550 STAY AND OTHER TEMPORARY REMEDIES. (1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy.

(2) **After a petition for judicial review has been filed**, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

...

[Emphasis by **bold** supplied]

The employer has **not** requested the Superior Court for Clark County to grant a stay of the Commission's CLARK PUD III decision.⁷ We are not persuaded by the employer's reasons for failing to do so, which relate more to the interlocutory nature of the proceedings in CLARK PUD IV than to the judicial review proceedings on CLARK PUD III.⁸

⁷ In discussing the propriety of an extraordinary remedy in CLARK PUD III, this Commission specifically noted that the employer had continued to refuse to bargain without ever seeking, let alone obtaining, any stay of the Commission's bargaining order in CLARK PUD II.

⁸ During the argument of this question before the Commission on May 18, 1992, a Commission member asked the employer to address the possibility of its seeking a stay of the CLARK PUD III decision from the superior court.

Assuming, arguendo, that this Commission still has jurisdiction to issue a stay after a petition for judicial review has been filed, we see no basis for doing so in this case.

The complaint in CLARK PUD IV alleges that the union has renewed its bargaining demands in 1991 and 1992, and that the employer continues to refuse to bargain. Acting pursuant to WAC 391-45-110, the Executive Director has made a preliminary ruling, finding that the complaint in CLARK PUD IV states a claim for relief available through the unfair labor practice provisions of a statute administered by the Commission.⁹ Under normal procedure, an Examiner has been assigned to conduct further proceedings in that case under Chapter 391-45 WAC.

CLARK PUD IV involves different facts than were involved in either CLARK PUD II or CLARK PUD III. We do not share the employer's view that the judicial review proceedings on CLARK PUD III will necessarily resolve all potential issues in CLARK PUD IV. Moreover, the union has indicated that it will seek additional extraordinary remedies in Clark PUD IV, relying on Municipality of Metropolitan Seattle (METRO), Decision 2845-A (PECB, 1988), affirmed ___ Wn.2d ___ (March 12, 1992).¹⁰ While we have formed no conclusion as to whether such a remedy should be granted, it is clearly an issue the union is entitled to have addressed.¹¹

⁹ At that stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable.

¹⁰ In METRO, the Supreme Court affirmed a Commission decision imposing "interest arbitration" as an extraordinary remedy for repetitive "refusal to bargain" violations.

¹¹ An "interest arbitration" remedy was requested by the union in CLARK PUD III, but was not granted by the Examiner. The union did not petition for Commission review of the Examiner's decision, and so we did not have occasion to consider that question in CLARK PUD III.

The processing of CLARK PUD IV during the pendency of the judicial review proceedings on CLARK PUD III could cut off years of delay on such added issues as may be raised in CLARK PUD IV. We also find merit in the union's argument that a "stay" granted at this juncture could tend to undermine the union in the eyes of the employees. In a case where this Commission has already expressed concern about dilatory tactics, we see no reason to contribute to further delay.

For all of the reasons indicated herein, we decline the employer's suggestion that we stay our order in CLARK PUD III or otherwise delay the proceedings in CLARK PUD IV.


NOW, THEREFORE, it is

ORDERED

The request of Clark County Public Utility District 1 for a stay of the remedial order issued by the Commission in Clark County PUD, Decision 3815-A (PECB, 1992), and/or for a suspension of proceedings in Case 9225-U-91-2045 is DENIED.

Entered at Olympia, Washington, the 17th day of June, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANET L. GAUNT, Chairperson


MARK C. ENDRESEN, Commissioner


DUSTIN C. MCCREARY, Commissioner