STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TECHNICAL EMPLOYEES' ASSOCIATION,	)	
	)	CASE 12192-U-95-2879
Complainant,	)	DECISION 6063 - PECB
	)	
	)	CASE 12646-U-96-3017
vs.	)	DECISION 6064 - PECB
	)	
	)	CASE 13148-U-97-3192
KING COUNTY,	)	DECISION 6065 - PECB
	)	
Respondent.	)	
	)	ORDER OF DISMISSAL
	)	

The above-captioned unfair labor practice complaints filed with the Public Employment Relations Commission under Chapter 391-45 WAC are presently before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether the complaints state claim for relief available through unfair labor practice proceedings before the Commission.

Procedural Background

Case 12192-U-95-2879 -

On November 29, 1995, the Technical Employees' Association (TEA) filed a complaint charging unfair labor practices with the Commission, alleging that King County (employer) had interfered

with employee rights in violation of RCW 41.56.140(1), by announcing and/or implementing various changes of employee wages, hours and working conditions in connection with an integration of former Municipality of Metropolitan Seattle (METRO) operations and employees into the operations and workforce of King County. The employer requested dismissal of the complaint in letters filed on December 4 and 11, 1995, based on a re-organization plan previously adopted by the King County Council. The TEA responded in a letter filed on January 3, 1996. That response and the original complaint were the basis for an initial review of this case under WAC 391-45-110. In a letter issued on January 11, 1996, the parties were notified that substantial issues which were to be litigated in a companion representation case precluded finding a cause of action to exist in this unfair labor practice case at that time, and that the processing of this case would be suspended pending the outcome of the representation case. The TEA filed an amended complaint in this case on January 25, 1996.

Case 12646-U-96-3017 -

On August 16, 1996, the TEA filed a second complaint with the Commission, this time alleging the employer interfered with employee rights in violation of RCW 41.56.140(1), by unilaterally changing the scope of work performed by King County employees formerly employed at METRO. Initial review of this case under WAC 391-45-110 resulted in a finding that a cause of action existed. An Examiner was assigned on October 8, 1996. The employer filed an answer and affirmative defenses on October 11, 1996, and the case was scheduled and re-scheduled for hearing. On April 30, 1997, the

parties were notified that this case would also be held in abeyance pending the outcome of the related representation case.

Case 13148-U-97-3192 -

On May 8, 1997, the TEA filed a third complaint with the Commission, this time alleging the employer violated RCW 41.56.140(1), by unilaterally implementing classification changes for employees formerly employed at METRO. Initial review of this case under WAC 391-45-110 resulted in a letter issued on June 13, 1997, notifying the parties that this case would also be held in abeyance pending the outcome of the representation case.

The Related Representation Cases

The TEA filed a petition for investigation of a question concerning representation with the Commission on September 5, 1995, seeking certification as exclusive bargaining representative of employees who then worked in a Technical Services Division within a King County Department of Metropolitan Services, and who had formerly worked in a Technical Services Department at METRO. Case 12015-E-95-1982. King County contested the propriety of the proposed bargaining unit as replicating (or preserving) a METRO structure that no longer existed. Teamsters Local 117 and International Federation of Professional and Technical Engineers Local 17 each intervened, and also contested the propriety of the proposed bargaining unit.

On May 21, 1996, the TEA filed a second representation petition with the Commission, seeking a separate bargaining unit of

supervisors who had formerly worked in the Technical Services Department at METRO. Case 12504-E-96-2091. King County and the intervenors also contested the propriety of that bargaining unit.

A full evidentiary hearing was conducted on the representation petitions, with participation by the employer, the TEA, and both intervenors. A decision issued on May 7, 1997, held that the petitioned-for bargaining units failed "to group employees according to a current and/or prospective community of interests", and therefore were not appropriate units under RCW 41.56.060. King County, Decision 5910 (PECB, 1997). That decision included:

> Inaction Following Court Ruling on METRO -
> The die was cast for the demise of METRO long before the first of these petitions was filed. It was widely reported in the news media that the "federated" structure of the METRO Council was declared unconstitutional by a federal court, due to violation of the one-person-one-vote principle. ... Cunningham et al. v. Municipality of Metropolitan Seattle, 751 F.Supp. 885 (W.D.Wash, 1990) ...
>
> ...
> Those developments could easily have caused unrepresented employees of METRO to be concerned about their future wages, hours and working conditions, and even their future job security. It is clear, however, that the petitioned-for employees did not take steps to exercise their collective bargaining rights at that time.
>
> Inaction Following Ballot Measure -
> The record in this matter does not disclose what, if anything, was accomplished by the April 3, 1992 date set by the federal court. This record does disclose that a ballot measure passed by King County voters on November 2, 1992, was subsequently summarized in the King County Code, as follows:
>
> 28.01.020 Statement of policy. On November 2, 1992, King County voters approved

> Proposition No. 1 and King County Charter Amendment No. 1, providing for the assumption by the county of the rights, powers, functions, and obligations of the Municipality of Metropolitan Seattle (Metro), effective January 1, 1994. ...

Coming about 26 months after the structure of METRO was declared unconstitutional, and about 23 months after the federal court established an earlier deadline for a change, both the takeover and the anticipation of further change could easily have triggered concerns among the unrepresented employees of METRO. Again, however, it is clear that the petitioned-for employees did not take steps to exercise their collective bargaining rights at that time.

An additional period of 14 months transpired from the adoption of the ballot measure to the actual assumption of the rights, powers, functions, and obligations of the Municipality of METRO by King County on January 1, 1994. Within that 14-month period, the Legislature adopted Ch 240, Laws of 1993, making extensive amendments to Chapter 35.58 RCW by numerous changes that pave the way for "a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation as provided in chapter 36.56 RCW". Nothing would have prevented the petitioned-for employees from exercising their collective bargaining rights prior to their transfer to King County, but it is clear that they did not take steps to exercise their collective bargaining rights at that time.

Inaction During Transition Period -
METRO ceased to exist as a separate entity on January 1, 1994, and the persons employed by METRO as of that date became employees of King County. It should have been clear that reorganization was a distinct possibility, and King County initiated a process to compare and modify differing job descriptions and salary structures which originated under the King County and METRO personnel systems. The unions which represented various existing bargaining units were participants in those processes. The record indicates that the employees in the Technical Services Division were both aware of and concerned about a

compensation and classification study which was commenced with a purpose of ameliorating differences in wages and job descriptions between ex-METRO positions and King County positions in engineering classes and related technical and office-clerical classes. Nevertheless, the petitioned-for employees still did not take steps to exercise their collective bargaining rights during the initial 19 months of the 24-month transition period.

The Reorganization Plan -
Proposal No. 95-548, titled "AN ORDINANCE relating to reorganization of county agencies" was given a first reading before the King County Council on August 7, 1995. A version of that proposed ordinance dated August 29, 1996 included the following:

> [omitted are details of reorganization which re-distributed former Technical Services Division functions and personnel among two or more King County departments]

Thus, the employer announced: (1) short-term changes of its table of organization (which obliterated the METRO departmental structure); (2) anticipated long-term changes of divisional structures (within the new Department of Natural Resources); and (3) anticipated emphasis on coordination of activities that had traditionally been handled separately by King County and METRO.

The opening statement of counsel for the TEA provided a telling insight which helps to unravel the actual sequence of events, and to resolve the aforementioned chicken-and-egg problem:

> **We were aware that** they - they at King County who was then **the employer had a plan** that they were still developing to try to somehow consolidate the Technical Services Division with two or more County departments. **And we alerted them to the fact that because we were now representing these employees as a single entity** and claimed to have a showing of interest to represent these employees **they could not finalize or execute those plans** until they discharged their collective bargaining obligations, and they couldn't discharge their collective bargaining obliga-

> tions until the petition was filed [sic]. **So we basically asked them to maintain the status quo** during the interim period. We also asked them to maintain the status quo on benefits and other conditions **which had been part of the old METRO system.** ...

An employer has a duty to maintain the "status quo" with regard to employees who are the subject of representation proceedings under Chapter 391-25 WAC, [footnote omitted] but it is well-established that a "dynamic status quo" operates where actions are taken to follow through with changes which were set in motion prior to the filing of the representation petition:

> The filing of a representation petition does not, however, preclude an employer from following through on changes of conditions announced prior to the filing of the representation petition. Bremerton Housing Authority, Decision 3168 (PECB, 1989). Such changes are part of the "dynamic status quo", along with previously scheduled wage and benefits increases that it would be unlawful to withhold just because a representation petition had been filed.

Emergency Dispatch Center, Decision 3255-B (PECB, 1990).

If changes are expected by employees, they do not disrupt a bargaining relationship or undermine support for a union. See, Spokane County, Decision 2377 (PECB, 1986), citing NLRB v. Katz, 369 U.S. 736, 743-744 (1962).

The Executive Director concludes that the reorganization came before the petition in the first of these cases, and that any consideration of "vertical" unit configurations here must be based on the table of organization set forth in the ordinance dated August 29, 1995 ...

[Emphasis by **bold** in original.]

Both of the representation petitions filed by the TEA were thus dismissed as seeking inappropriate bargaining units.

The TEA petitioned for review, and the Commission applied each of the unit determination criteria set forth in RCW 41.56.060. The Commission wrote:

> The fact that the petitioned-for employees did not take steps to exercise their collective bargaining rights during the initial 19 months of the 24-month transition period weighed heavily in the Executive Director's decision to base the unit determination analysis on the table of organization set forth in the ordinance adopted by the King County Council in August of 1995. ... In the case at hand, the employees in the petitioned-for unit here are now spread among two divisions in two separate departments. While their "duties" and "skills" are important factors, we agree with the Executive Director's conclusion that their "working conditions" and the "extent of organization" factors compel a conclusion that the petitioned-for employees do not constitute "an appropriate bargaining unit".
>
> The petitioned-for units do not include all King County employees in any particular occupational group. The employees at issue in this proceeding are assigned to King County departments that include personnel in similar classifications who are within bargaining units represented by Teamsters Local 117 and IFPTE Local 17. [footnote omitted] Considering the coverage of the existing bargaining units represented by IFPTE Local 17 and Teamsters Local 117, certification of the bargaining units sought by the TEA in these cases would create a likelihood that employees performing similar work will be represented by more than one bargaining unit. Such a fragmentation would create a potential for work jurisdiction disputes and would, at a minimum, require the employer to deal with more than one union regarding similar work. [footnote omitted].

The Commission affirmed dismissal of the representation petitions. King County, Decision 5910-A (PECB, 1997). The unfair labor practice cases are reconsidered here in light of that dismissal.

The Specific Allegations

Case 12192-U-95-2879 -

This complaint filed in November of 1995 concerns the employer's actions in announcing various changes of employee salaries and benefits to be implemented on January 1, 1996, in connection with the re-organization plan. Although the TEA alleges that the employer's actions constituted changes during the pendency of the representation petition it filed on September 5, 1995, and that the re-organization was not adopted until September 11, 1995, those issues were fully litigated in the representation cases. The Executive Director is bound by the Commission's decision, which affirmed that the TEA and the employees it represents waited until massive changes were already in motion before they took steps to organize for the purposes of collective bargaining. That ruling precludes a finding that the employer violated its obligation to maintain the status quo during the pendency of representation proceedings. An employer has no obligation to revert to a previous "status quo" because a representation petition is filed. That principle is particularly apt in this case, where the petitioned-for bargaining units were ultimately found inappropriate, and the representation petitions were dismissed. Thus, no cause of action exists for unfair labor practice proceedings on this complaint.

Case 12646-U-96-3017 -

This complaint filed in August of 1996 concerns the employer's contracting out of engineering work formerly performed in-house at METRO. The TEA again alleges that the employer made prohibited changes during the pendency of its representation petitions filed

in September of 1995 and May of 1996. Again, however, those claims were fully litigated in, and are controlled by the Commission's decision in, the related representation cases. The TEA's acknowledgment in this complaint that the alleged changes conformed to long-standing practices and policies of King County presents two additional problems for the TEA:

(1) The complaint filed in this case expressly acknowledges that "King County engineering employees did not handle major projects, and by law the dollar value of projects they were allowed to handle in-house was limited ...". The transfer of METRO operations to King County occurred in 1994, which is long before the six month period for which this complaint could be considered timely under RCW 41.56.160. Any practices which existed at METRO prior to that time are thus of no relevance. The re-organization which obliterated the transitional Department of Metropolitan Services was implemented by January 1, 1996, which was also more than six months prior to the filing of this complaint. Much as they might wish METRO had never been declared unconstitutional and dissolved, the TEA and the employees it represents present no claim for relief from the applicability of the admittedly "quite different" practices at King County.

(2) While a "refusal to bargain" violation can be found under RCW 41.56.140(4) for unilateral "skimming" or "contracting out" of work historically performed by employees in a bargaining unit without notice to the exclusive bargaining representative, no such cause of action can exist in this case. The TEA was not

> the exclusive bargaining representative of the affected employees while they were working at METRO, or even while they were in the transitional Department of Metropolitan Services at King County. The petitions by which the TEA sought to preserve the old METRO structure have been dismissed, so it never acquired status as an exclusive bargaining representative. Individual employees do not have standing to file or pursue "refusal to bargain" charges.

Thus, no cause of action exists for further proceedings on this complaint.

Case 13148-U-97-3192 -

This complaint filed in May of 1997 concerns the employer's implementation of a classification and compensation study. The TEA again alleges that the employer's actions interfered with employee rights by making changes during the pendency of its representation petitions filed in September of 1995 and May of 1996, and those allegations are again controlled by the Commission's decision in the related representation cases. Moreover, close reading of the decisions in the representation cases discloses that the classification and compensation study was ongoing during the METRO-to-county transition period, and was a significant factor in the eventual (if tardy) decision of former METRO employees to organize the TEA. The Executive Director thus concludes that the Commission's decision in the related matters also precludes a finding that the employer was prohibited from continuing with a process already in progress when the representation petitions were filed. As with the first of these cases, dismissal is particularly apt

where the petitioned-for bargaining units were ultimately found inappropriate, and the representation petitions were dismissed. Thus, no cause of action exists for further proceedings on this complaint.

NOW, THEREFORE, it is

ORDERED

1. DECISION 6063 - PECB. The complaint charging unfair labor practices filed in Case 12192-U-95-2879 is DISMISSED.

2. DECISION 6064 - PECB. The complaint charging unfair labor practices filed in Case 12646-U-96-3017 is DISMISSED.

3. DECISION 6065 - PECB. The complaint charging unfair labor practices filed in Case 13148-U-97-3192 is DISMISSED.

Issued at Olympia, Washington, on the 2nd day of October, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.