STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	CASE NO. 5593-E-84-1009
JUDY STRATTON	)	
Involving certain employees of:	)	DECISION 2276-A-PECB
MORTON GENERAL HOSPITAL	)	DECISION OF COMMISSION

Judy Stratton filed the petition in the matter.

Lewis L. Ellsworth, Consultant, Donworth, Taylor & Company, appeared on behalf of the employer.

Hafer, Price, Rinehart & Schwerin, by Richard H. Robblee, attorney at law, appeared on behalf of the union.

Lewis County Public Hospital District No. 1, d/b/a Morton General Hospital, seeks review of an order issued by the Executive Director on July 30, 1985, dismissing a petition for investigation of a question concerning representation. The Executive Director ruled that unfair labor practices committed by the employer constituted a "re-certification of the [incumbent] union's exclusive bargaining representative status" for a period of one year following the commencement of good faith bargaining by the employer.

The chronology of events, as gleaned from prior unfair labor practice proceedings between the employer and the union, [1] is as follows:

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[1] Morton General Hospital, Decision 2217 (PECB, May 9, 1985). The hearing in this proceeding was held on January 21, 1985. There was no appeal taken from the examiner's decision.

On May 9, 1983 the incumbent union, the Washington State Nurses Association, was certified as the exclusive bargaining representative of two separate units of employees of Morton General Hospital. Negotiations between the parties did not begin, however, until April 12, 1984, and their first face-to-face meeting was not held until July 9, 1984. Unfair labor practice charges were filed on October 10, 1984. The Examiner concluded that between August 23, 1984 and October 16, 1984 the employer refused to bargain in good faith with the union. He also concluded that in July and August, 1984, the employer committed unfair labor practices by certain unilateral actions concerning mandatory subjects of bargaining. The examiner's opinion noted that two negotiating sessions were held in October, 1984. The parties did not meet between October 30, 1984 and January 21, 1985, although the negotiators engaged in several telephone conversations. The employer submitted its "best and final offers" for the two bargaining units on November 15, 1984. A union witness testified that charges were not filed regarding events which occurred during the first year following certification because the union did not want to get off to a bad start.

The Examiner's decision cited events occurring within one year of the union's certification which indicated a lack of good faith bargaining on the part of the union. Charges regarding such events were not, however, timely filed under RCW 41.56.160. Therefore, no findings were entered.

The issues presented are:

1. Does the certification-bar rule apply when:

   a. conduct on the part of the employer constituting bad faith bargaining takes place more than one-year after the union is certified;

or

b. there is evidence that the employer bargained in bad faith during the year following certification, but an unfair labor practice finding is precluded because of the statute of limitations?

2. Does an employer's refusal-to-bargain unfair labor practice which occurs after the expiration of the union's certification year create a new "bar" period during which a representation petition will not be entertained, and, if so, how long is that period?

The Executive Director's Order of Dismissal relies, in part, upon our decision in Lewis County, Decision 645 (PECB, 1979) in which we held that, after certification, a union is entitled to a year of good faith bargaining. On the facts of that case, the employer's refusal to bargain during the certification year entitled the union to an extension of that year. Accord, Mar-Jac Poultry, 136 NLRB 785 (1962).

The employer contends that Lewis County is inapplicable to this case because the adjudicated unfair labor practices occurred after the expiration of the union's certification year, citing Douglas & Lomason Co., 253 NLRB 277 (1980). The employer argues that the record of the prior unfair labor practice proceeding shows that:

a. The union squandered its time during its certification year and evidence is lacking showing that the non-occurrence of negotiations was the fault of the employer; or

b. Even if evidence exists showing the employer's culpability, a finding of refusal to bargain, which is necessary to extend the certification year, is precluded by RCW 41.56.160.

Although evidence appears to exist that the employer did not bargain in good faith during the union's certification year, we agree with the employer that RCW 41.56.160 precludes the use of such evidence as a basis now for the extension of the certification year. [2] To hold otherwise would allow an unjustifiable circumvention of that statute limiting the period in which unfair labor practice charges may be processed. Although the statute, on its face, does not prohibit evidence of unlawful conduct occurring prior to the limitations period, it prohibits the processing of charges arising from that conduct. Lewis County, supra, is predicated upon a prior adjudication that unfair labor practices had occurred during the certification year. Evidence of unfair labor practice

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[2] RCW 41.56.160 states:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The examiner's decision in Morton General Hospital, supra, stated, at 11:

> [T]he record traces a course of conduct which began with hospital's decision to modify work shifts by implementing a census-based staffing pattern. Respondent made its decision in January, 1984, and repeatedly contacted bargaining unit employees to discuss the new system without notifying complainant. However, complainant did not file a timely unfair labor practice complaint....

If an unfair labor practice charge had been timely filed during the union's certification year, it would have pertained to one, not both, of the units at issue in the instant case.

conduct occurring during the certification year cannot be used to extend that period when the statutory limitations period precludes an adjudication of a claim arising from such conduct. If such adjudication has not and can not occur, then Lewis County is inapplicable.

We turn now to the question of whether adjudicated unfair labor practices occurring after the initial certification bar year give rise to a new bar period.

The union, citing Poole Foundry & Machine Co., 95 NLRB 34 (1951), enf'd 192 F.2d 740 (4th Cir. 1951), cert. den. 342 U.S. 954 (1952), maintains that the dismissal of the decertification petition must be upheld in order to give full effect to the prior unfair labor practice findings (based on conduct which occurred after the expiration of the certification year) and the remedial order resulting therefrom. In Poole Foundry & Machine Co., supra, refusal to bargain charges were settled in December of 1949, with the employer agreeing to bargain. In March, 1950, a decertification petition was filed and, shortly thereafter, the employer ceased bargaining. The National Labor Relations Board stated, 95 NLRB at 36:

> It is well settled that, after the Board finds that an employer has failed in his statutory duty to bargain with a union and orders the employer to bargain, such an order must be carried out for a reasonable time thereafter without regard to whether or not there are fluctuations in the majority status of the union during that period. Such a rule has been considered necessary to give the order to bargain its fullest effect, i.e., to give the parties to the controversy a reasonable time in which to conclude a contract.

The Board, in holding that the employer's obligation to bargain continues for a reasonable period of time, found that

bargain continues for a reasonable period of time, found that the employer had committed a refusal-to-bargain unfair labor practice. It held that three-and-half months of bargaining in that case was not a reasonable period, and also noted that the petition for decertification had been dismissed in a separate proceeding. Other cases upholding this principle are Dick Bros., Inc., 110 NLRB 451 (1954), and Tajon, Inc., 269 NLRB 327 (1984). In the latter case, the Board held that what constitutes a "reasonable" period of time depends on the facts and circumstances of the case. Arbitrary time limits will not be set; rather, the Board will review the actual negotiations that have taken place. In the Tajon case, the Board held that 12 weeks was a reasonable period of time, in view of the intensive bargaining which took place during that period.

In the case at hand, we are informed by the Examiner's decision in the prior unfair labor practice proceedings that between August and October, 1984, the employer did not engage in good faith bargaining. During October, 1984, negotiations did take place, but they virtually ceased after October 30, 1984. It is clear from the Examiner's decision that there had been no bargaining between October 30, 1984 and January 21, 1985, the date of the hearing in the unfair labor practice case. This representation case was filed on December 11, 1984. It is quite possible that bargaining was shut down thereafter due to this pending representation case, consistent with the policy set forth in Yelm School District, Decision 704-A (PECB, 1980). On the other hand, a tender of compliance dated June 25, 1985, submitted in response to the Examiner's decision, recited that the employer would bargain in good faith with the union, with meetings scheduled for July 1 and 3. Assuming that bargaining did take place as recited in the tender of compliance, the Executive Director was nevertheless correct in dismissing this petition, since we can easily conclude that

four weeks is not a reasonable or sufficient period for collective bargaining pursuant to the remedial order. Accordingly, we affirm the dismissal of the petition.

Whenever a party is able to show that bargaining between the employer and the union has taken place for a reasonable period of time without an agreement being reached,[3] then a new petition for investigation of a question concerning representation will be entertained.

DATED at Olympia, Washington, this 3rd day of December, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

MARK C. ENDRESEN, Commissioner

MARY ELLEN KRUG, Commissioner

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3 If an agreement is reached, the contract bar policy set forth in RCW 41.56.070 and WAC 391-25-030 will govern the filing of any future petition for investigation of a question concerning representation.