Port of Seattle, Decision 8091 (PECB, 2003)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 46, Complainant,	)	CASE 16078-U-01-4103
vs.	)	DECISION 8091 - PECB
PORT OF SEATTLE, Respondent.	)	ORDER OF DISMISSAL

Rinehart, Robblee & Hannah, by *David B. Hannah*, Attorney at Law, for the union.

Lou Pisano, Director of Labor Relations, for the employer.

This case is before the Executive Director for a preliminary ruling under WAC 391-45-110, following a deferral to arbitration, issuance and review of an arbitration award, and issuance of a deficiency notice. The complaint is DISMISSED.

BACKGROUND

The Port of Seattle (employer) is a municipal corporation created under Title 53 RCW. It operates seaport and airport facilities in King County, Washington.

International Brotherhood of Electrical Workers, Local 46 (union) is the exclusive bargaining representative of certain maintenance

electricians employed by the employer. In particular, employees in the bargaining unit represented by the union have historically performed maintenance work on cranes owned by the employer.

The employer and union have been parties to collective bargaining agreements which include procedures for final and binding arbitration of grievances.

During or about October of 2001, the employer decided to "privatize" the crane maintenance historically performed by bargaining unit employees. The union initiated a grievance under the parties' collective bargaining agreement, and also filed the complaint to initiate the above-captioned unfair labor practice proceeding before the Commission.

The union's unfair labor practice complaint was reviewed under WAC 391-45-110, and a "Preliminary Ruling and Deferral Inquiry" letter was issued on December 12, 2001. A cause of action was found to exist on allegations summarized as:

> Employer interference with employee rights in violation of RCW 41.56.140(1), and refusal to bargain in violation of RCW 41.56.140(4), by its subcontracting of crane maintenance work without providing an opportunity for bargaining.

The parties were asked to comment, however, on the propriety of deferral to arbitration. Both parties filed written responses in January of 2002, concurring that the case should be deferred. The parties selected Michael H. Beck as arbitrator, and they proceeded with arbitration of the related grievance.

On March 11, 2003, the employer supplied the Commission with a copy of the arbitration award issued by Arbitrator Beck on November 4,

2002. The case was reviewed again under WAC 391-45-110, on the specific question of whether, taking the arbitration award into account, the complaint states a claim for relief available through unfair labor practice proceedings before the Commission. A letter sent to the parties on April 21, 2003, noted that the arbitration award had included:

> On October 29, 2001 the Union filed an unfair labor practice complaint with the . . . Public Employment Relations Commission . . . asserting that the [employer's] decision to "privatize" the crane maintenance on the Seattle waterfront came *during the course of an existing contract* between Puget Sound NECA and the Union to which the Port was a signatory. Therefore, the Union charged, the Port unilaterally repudiated the terms of that recently ratified Agreement and thereby committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (4).
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> By letter dated January 8, 2002 the Port and the Union were notified by [the Commission] that it had determined to defer to arbitration the unfair labor practice complaint while the parties pursue the grievance and arbitration procedures of their collective bargaining agreement.
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> . . . .
> The Port took the action it deemed necessary to amend the lease agreements on Terminals 18 and 25 to cause Terminal tenant Stevedoring Services of America (SSA) to assume responsibility for the crane maintenance of the container cranes on Terminals 18 and 25. . . . [O]n December 26, 2001 the Union filed a grievance directed to the Port and to Puget Sound NECA alleging that the Port of Seattle had subcontracted electrical work performed by Port electricians at Terminals 18 and 25 . . . . The grievance alleged that by this conduct the Port of Seattle violated Section 2.16(b) of the Puget Sound NECA Agreement.
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> On December 27, 2001 the Port contracted with Pacific Crane Maintenance Corporation (PCMC) to provide electrical crane maintenance at Terminal 30, effective January 14, 2002. On January 25, 2002 in a grievance addressed both to [employer official] Pisano and [NECA official] Washburn, the Union alleged that the Port had subcontracted electrical work performed by Port electricians at

Terminal 30 . . . . and that this action was a violation of Section 2. 16(b).

. . . .

The first matter which must be considered in connection with reaching a determination of the stipulated issue in this case is the question of whether the 1965 Letter is applicable to the grievances here. The Union contends that the fact that the 1965 Letter does not contain any language indicating how it may be terminated means that it is a contract of indeterminate duration and, as such, may be terminated by unilateral action of either party after a reasonable lapse of time. Thus, the Union maintains that it took appropriate action to terminate the 1965 Letter when, on June 13, 1995, it notified both the Port and Puget Sound NECA that effective on the 60th day following their receipt of the letter, the 1965 Letter was terminated.

I find contrary to the Union that the 1965 Letter is not a contract of indeterminate duration, but, instead, when considered in the context of the parties overall negotiations *was a separate agreement or side letter which ran concurrent with the Puget Sound NECA Agreement.* Therefore, it was terminable pursuant to the same terms as those set forth in the Puget Sound NECA Agreement. In this regard, it is clear from reviewing the transcript of the May 9, 1991 meeting that representatives of Puget Sound NECA, the Port and the Union were all in agreement that the 1965 Letter was in effect a side letter to the Puget Sound NECA Agreement, which was separately applicable to covered employees working for the Port.

There is no indication in the record to indicate that any written notification was provided by the Union to either Puget Sound NECA or the Port *indicating an intent by the Union to terminate or modify the 1965 Letter* in connection with the negotiations leading to the conclusion of the 2001 -04 Agreement. Therefore, *the 1965 Letter continued on as a side letter under that Agreement.*

. . . .

It is significant that 17 unit employees lost their jobs here. However, this fact alone *cannot override the clear language of Paragraph 3 of the 1965 Letter which retains for the Employer, at Subparagraph e, the right to subcontract or assign work to other employers.* Here, there is no indication that the Employer acted in bad faith or with the intent to harm the bargaining unit. In fact, there is evidence in the record, unrebutted by the

> Union, that the crane maintenance operation was at the time of the subcontracting and termination of the lease agreements losing substantial amounts of money and was projected to continue to do so unless changes were made in connection with that operation. Furthermore, the Employer did negotiate with the Union in an attempt to reach an agreement which would improve the efficiency of the operation, thereby reducing its costs. Unfortunately, the parties were unable to reach an agreement in this regard. *In view of the foregoing, I find in favor of the Port with respect to the stipulated issue.*
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> . . . .
>
> AWARD OF THE ARBITRATOR
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> For the reasons set forth in the attached Opinion, the instant grievances must be and hereby are dismissed.

The letter further noted that the arbitration award indicated that Arbitrator Beck was aware of the deferral when answering the question posed to him by the parties, and that it provided support for a conclusion that the Arbitrator found the parties' contract permitted the employer to take the actions at issue in the unfair labor practice complaint. The union was given a period of 21 days in which to contest acceptance of the arbitration award as conclusive in the unfair labor practice case.

Nothing further has been heard or received from the union, so the arbitration award is accepted as controlling on the interpretation of the collective bargaining agreement which underlies the complaint filed with the Commission. The unfair labor practice provisions of the statute protect the "process" of collective bargaining (as distinguished from the "substance" of what is negotiated by the parties) and the arbitration award issued in the related proceeding provides basis to conclude that these parties had satisfied their mutual bargaining obligations under the statute as to the contracting out of the crane maintenance work. Thus, no

unfair labor practice violation could be found as a result of further proceedings on this complaint under Chapter 391-45 WAC.

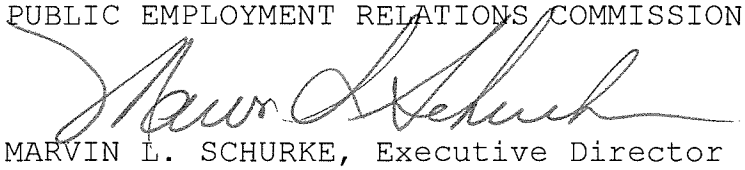
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED for failure to state a cause of action.

Issued at Olympia, Washington, on the 30th day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.