STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Complainant,	CASE 16336-U-02-4180
vs.	DECISION 7961 - PECB
ADAMS COUNTY, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Audrey B. Eide, General Counsel, for the union.

Perkins Coie, by *Mary P. Gaston,* Attorney at Law, for the employer.

On April 10, 2002, the Washington State Council of County and City Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Adams County (employer) as the respondent. A preliminary ruling was issued on April 17, 2002, finding a cause of action to exist on allegations summarized as follows:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its failure to maintain the status quo under WAC 391-25-140(2) in reducing work hours of employees during the pendency of a representation petition, in reprisal for union activities protected by Chapter 41.56 RCW.

A hearing was conducted on July 23, 2002, before Examiner Kenneth J. Latsch. The parties submitted post-hearing briefs on October 7, 2002.

Based on the evidence and the arguments advanced by the parties, the Examiner finds that the employer has committed unfair labor practices under RCW 41.56.140(1) by failing to maintain the *status quo* during the processing of a representation petition.

BACKGROUND

Adams County provides the customary services provided by counties, mostly from the county seat of Ritzville, Washington. The employer's operations are under the general policy direction of a Board of County Commissioners composed of three members elected by popular vote. At all times pertinent to these proceedings, Jeffrey Stevens served as the chairman of that board, while Rudy Plager and Richard Johnson were the other two board members. Among its responsibilities, that board prepares and adopts the employer's annual budget.

None of the employees at issue in this proceeding were represented for the purposes of collective bargaining prior to the onset of this proceeding. The only bargaining unit existing within the employer's workforce is a bargaining unit of law enforcement officers represented by an independent association.

The Budget Process -

While specific amounts vary: personnel costs comprise 70 percent to 80 percent of the employer's total budget; capital outlays average two percent to three percent of the total budget; operations expenses account for the balance of the budget. The initial processes for creation of a budget are typically as follows: In July, the county auditor asks department directors to submit preliminary budget requests; in August, the auditor prepares a

preliminary budget; in September, the commissioners review that preliminary budget; in December, the board adopts a final budget.

As part of their review, the commissioners individually look at proposed expenditures and projected revenues,[1] and they commonly discuss particular requests with individual department directors and other elected officials to form an opinion about what budget items are necessary and which are not. After the commissioners make their individual reviews, they discuss budget options as a board, and attempt to reconcile the services to be provided with the amount of funds available. The board then holds a series of budget "workshops" and public meetings before finalizing the budget, which must be in place by December 31 each year.

The employer's budget situation has been particularly bleak in the years preceding the filing of the petition in this case:

In 1999, the employer's usual revenue difficulties were exacerbated by the passage of Initiative 695 (I-695), which limited the amount of tax revenue available to counties and cities.

By 2000, the full effects of I-695 were being felt, and the employer began a series of cost-cutting measures. The board decided to make reductions in operating expenses, several equipment purchases were delayed, some equipment purchases were cancelled outright, and a hiring freeze was imposed.[2] The record indicates that the board considered an hours reduction for all employees, but decided against that course of action.

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[1] In Stevens' experience, there has always been a shortfall between the amount of money available compared with the proposed level of spending.

[2] The commissioners hoped to avoid staff reductions and layoffs, but one position was eliminated in the juvenile justice department.

By 2001, the employer faced even more revenue reductions. Initial projections indicated that the county would be facing a $490,000 shortfall in revenue. The hiring freeze was continued, and all capital expenditures were frozen. Once again, the board was able to avoid layoffs by making drastic cuts in operating funds. An hours reduction was considered for a second time, but was rejected by the commissioners in their final budget document.

By the time the 2002 budget was to be prepared, the county's revenue forecast worsened again. In late November 2001, the county auditor prepared several alternatives for the board to consider, including an hours reduction. The board met with department heads and elected officials, and issued a letter on December 4, 2001, which asked them to make voluntary cuts in their departmental budgets. After the voluntary cuts were made, the board found the employer still had a revenue shortfall of approximately $180,000. The board then determined that layoffs would be necessary to balance the budget.

On December 6, 2001, the board held a public workshop and hearing concerning the budget situation. Among the various ways to reduce expenditures, the commissioners considered layoffs, a reduction of the workweek, and elimination of annual cost of living adjustments and step increases.

The board continued to meet about the expenditure reductions up to December 24, 2001. The commissioners then agreed on a budget at a board meeting held on December 24, including a reduction of the workweek from 40 hours to 35 hours, with an attendant reduction in employee salaries. The reduction was scheduled to take place on February 1, 2002.

The Representation Proceedings -
Beginning in the early part of December 2001, representatives of the Washington State Council of County and City Employees (union) met with Adams County employees. Union organizer Bill Keenan testified that the employees contacted the union about the possibility of forming a bargaining unit, that the employees were concerned about the possibility of layoffs, and that the employees wanted the union to represent them in collective bargaining with the employer.

On December 27, 2001, Stevens received a telephone call informing him that an organization effort was underway.

On December 31, 2001, the union filed a petition with the Commission, seeking certification as exclusive bargaining representative of a bargaining unit of Adams County employees in the following departments: "District court, auditor, clerk, prosecutor, support staff, county jailers, 'E 911' dispatchers, juvenile probation, and building and planning employees."[3]

Publication of the Budget -
On January 2, 2002, the employer published the "Adopted 2002 Adams County Budget." The following explanation concerning possible personnel action was included in the budget:

> AND BE IT FURTHER RESOLVED that this budget reflects amounts that meet the requirements for a balanced budget and this same budget may require negotiated decisions regarding position impacts in 2002 for current non-union employees; but those labor matters have not been interpreted and/or specified at this time except for decisions

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[3] Case 16163-E-01-2682.

> previously adopted by the board on October 9, 2000, July 9, 2001, and October 22, 2001. . . .

The hours reduction did not, however, take place on February 1, 2002, as discussed when the budget was adopted.

The Alleged Unilateral Changes -
In March 2002, the employer sent letters to affected employees, stating that their work hours would be reduced in April 2002.

On March 27, 2002, Keenan sent a letter to the employer's attorney, Mary Gaston, protesting the proposed hours reduction and asserting that the employer could not change the number of hours worked during the pendency of a representation petition. Keenan never received a reply from the employer.

The employer proceeded to implement the hours reduction, which only affected employees involved in the representation proceedings and did not affect employees in the sheriff's office or in departments not specified in the representation petition. Commissioner Stevens testified that the change in implementation date was intended to give the union representation matter a chance to be resolved. Stevens further testified that the employer did not use the hours reduction to affect the organizing campaign. The union filed the instant unfair labor practice complaint on April 10, 2002, challenging the implementation of the hours reduction.

POSITIONS OF THE PARTIES

The union argues that the employer committed an unfair labor practice by implementing an hours reduction while a representation

petition was pending. It maintains that the employer was aware of the petition, and that the change in the *status quo* was made without prior notification to or concurrence from the union. The union contends the hours change interfered with statutorily protected rights, and had a serious effect on the organizing campaign. As a remedy, the union requests that the *status quo* in effect prior to the hours reduction be restored, and that appropriate notices be posted.

The employer denies that it committed an unfair labor practice. It notes that it was under severe financial stress and had taken a series of actions to avoid layoffs or hours reduction in 1999 and 2000. It further argues that the decision to make an hours reduction was made on December 24, 2001, and that the change made thereafter concerned the implementation date. Given these circumstances, the employer maintains that a "dynamic *status quo*" was in effect at the time of the hours reduction.

DISCUSSION

RCW 41.56.030 defines "collective bargaining" as:

> [T]he performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such employer except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

In the instant case, no collective bargaining relationship had been established when the disputed hours reduction was implemented.[4] As the employer properly noted in its brief, a union cannot demand bargaining until it has been voluntarily recognized by the employer or the union has been certified by the Commission as the exclusive bargaining representative. *Asotin-Anatone School District*, Decision 4394 (PECB, 1993). Thus, the union's complaint only states a cause of action, and must be determined, for employer actions constituting an "interference" while a representation petition was pending before the Commission.

It is well established that an employer may not change the "status quo" during the pendency of a representation petition. *King County*, Decision 6063-A (PECB, 1998); WAC 391-25-140(2). However, the Commission has also recognized that the status quo cannot be fixed to a particular date. An employer's ongoing relationship

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[4] Notice is taken of the Commission's docket records, which disclose that orders were issued in November of 2002, certifying the union as exclusive bargaining representative of two separate units. In *Adams County*, Decision 7902-A (PECB, 2002), the unit was described as:

> All full-time and regular part-time employees of Adams county in the departments of Ritzville district court, Othello district court, auditor, clerk, prosecutors, support staff, support enforcement, superior court, building and planning, treasurer, assessors, and juvenile probation, excluding elected officials, department heads, confidential employees and all other employees.

In *Adams County*, Decision 7903-A (PECB, 2002), the unit was described as:

> All full-time and regular part-time county jailers and E-911 dispatch employees of Adams county, excluding elected officials, department heads, confidential employees and all other employees.

with its employees must be taken into account to determine whether an unlawful change in the status quo has occurred, and a "dynamic status quo" may exist during the pendency of a representation petition. Thus, an employer may follow through on changes of conditions announced prior to the filing of the representation petition. *Bremerton Housing Authority*, Decision 3168 (PECB, 1989). *See also King County*, Decision 6063-A (citing *NLRB v. Katz*, 369 U.S. 736 (1962)). Thus, when wage increases are scheduled, they become a part of the dynamic status quo, and it would be unlawful to withhold them just because a representation petition is filed.

The Commission has also recognized that there are limits to the "dynamic status quo" concept. In *City of Kalama*, Decision 6739 (PECB, 1999), an employer implemented changes in insurance benefits and the employees' work week during the pendency of a representation petition. The employer had anticipated the changes for several months prior to their implementation, but chose to make the changes while the representation matter was unresolved. In that case, the Commission ruled that the employer may well have had legitimate business reasons to make the disputed changes, but this prior knowledge did not relieve the employer of its duty to maintain the status quo.

Turning to the instant case, a dynamic status quo did exist as of the date that the petition was filed. In effect, the employer established a "dynamic status quo" by its action of adopting a budget on December 24, 2001. As of December 31, 2001 (the date the representation petition was filed), the employer had already determined that an hours reduction was necessary and set in motion the change that caused a significant reduction in the compensation of employees in the bargaining unit(s) covered by the representation proceedings.

The union sent a letter expressing concern about the change, but it was in the form of a request for negotiations about the implementation of the proposed change. The union's request for bargaining on the subject was premature, because it did not have legal standing to demand bargaining at the time the letter was sent. The union did, however, clearly place the employer on notice that it would challenge any (further) changes in existing wages, hours and conditions of the employees it was seeking to represent.

Prior to the filing of the representation petition, the employer had announced a specific time for the implementation of the hours reduction. It retained discretion over that decision, however, and it later changed the implementation date. Given the passage of time and the continued worsening of the employer's financial condition, the delay of the implementation date announced in March 2002 could reasonably have been perceived by bargaining unit employees as related to their exercise of collective bargaining rights and/or as putting them at risk for even greater cuts than originally announced in December 2001. Under these circumstances, the Examiner cannot find that the employer maintained the status quo during the pendency of the representation petition. Even though the employer was entitled to follow through on the hours reduction that it announced before the representation petition was filed, the delay of the hours reduction was a separate transaction that constituted an unfair labor practice. Any other result would allow an employer to make any kind of change that it wanted during the course of an organizing campaign, severely hindering the employees' free choice of being represented or not.

In addition to posting and reading the customary notices, the employer must restore the status quo which existed as of the date of its second announcement of a proposed hours reduction, and it

must make affected employees whole for any losses incurred because of its illegal acts.

FINDINGS OF FACT

1. Adams County is a political subdivision of the State of Washington and is a "public employer" within the meaning of RCW 41.56.030(1). The employer is under the general policy direction of elected commissioners. At all times pertinent to these proceedings, Jeffrey Stevens served as the chairman of the employer's board, while Rudy Plager and Richard Johnson were the other two members of that board.

2. The Washington State Council of County and City Employees is a "bargaining representative" within the meaning of RCW 41.56.030(3).

3. During 1999 to 2001, the employer encountered a number of fiscal problems due to revenue losses. For 2000, the employer initiated a series of measures to reduce expenditures and operating expenses: Several equipment purchases were delayed and others cancelled outright; a hiring freeze was imposed; an hours reduction for all employees was considered, but the employer decided against that course of action at that time. For 2001, the employer faced even more revenue reductions and it initiated further cost-cutting measures: The hiring freeze was continued; all capital expenditures were frozen; layoffs were avoided by making deep cuts in the operating funds; an hours reduction was considered for a second time, but was again rejected by the employer.

4. Prior to December 31, 2001, the employer's revenue forecast worsened again for 2002. In November of 2001, the county

auditor prepared several alternatives for the consideration by the board of commissioners, including an hours reduction. The commissioners met with department heads and elected officials and, in a letter dated December 4, 2001, asked them to make voluntary cuts in their departmental budgets. A revenue shortfall of approximately $180,000 continued to exist after the voluntary cuts were made. On December 6, 2001, the commissioners held a public workshop and hearing concerning the employer's budget for 2002. Among various ways to reduce expenditures, the commissioners considered layoffs, a reduction of the workweek, and the elimination of annual cost of living adjustment and step increases. The commissioners eventually decided to order a reduction in the workweek from 40 to 35 hours, with an attendant reduction of employee wages. On December 24, 2001, they adopted a budget for 2002 containing an hours reduction to be effective on February 1, 2002.

5. Beginning in early December of 2001, concurrent with the budget discussions held by and among employer officials, the union commenced organizing activities among historically unrepresented employees of Adams County. The employees were concerned about the possibility of layoffs, and wanted the union to represent them in collective bargaining with the county. The record in this proceeding does not establish employer knowledge of that organizing effort until December 27, 2001, when Commissioner Stevens received a telephone call informing him that an organization effort was underway.

6. On December 31, 2001, the union filed a timely and properly supported petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of certain employees of Adams County.

7. The "Adopted 2002 Adams County Budget" published by the employer on January 2, 2002, contained the terms adopted by the employer prior to the filing of the representation petition described in paragraph 6 of these findings of fact, including the reduction of employee work hours to be implemented in February of 2002.

8. The hours reduction adopted by the employer on December 24, 2001, did not take place as originally announced. In early March of 2002, while the representation petition described in paragraph six of these findings of fact remained pending before the Commission, the employer sent letters to affected employees, stating that their work hours would be reduced in April of 2002.

9. On March 27, 2002, while the representation petition described in paragraph six of these findings of fact remained pending before the Commission, the union sent a letter to the employer protesting the proposed hours reduction, asserting that the employer could not change the work hours of employees during the pendency of a representation petition, and demanding bargaining on the hours reduction. The union never received a reply from the employer.

10. In April 2002, while the representation petition described in paragraph six of these findings of fact remained pending before the Commission, the employer implemented a reduction of work hours for employees involved in that representation proceeding.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By the actions described in paragraphs 3, 4 and 7 of the foregoing findings of fact, Adams County did not commit any unfair labor practice under RCW 41.56.140.

3. By failing or refusing to bargain collectively with the union in response to the premature demand for bargaining made by the union on March 27, 2002, Adams County did not commit any unfair labor practice under RCW 41.56.140.

4. By unilaterally altering the implementation of the previously-announced hours reduction, as described in paragraphs 8 and 10 of the foregoing findings of fact, Adams County changed the status quo during the time period that a representation petition was pending before the Commission, and interfered with the exercise of employee rights protected by RCW 41.56.040, so that Adams County committed an unfair labor practice in violation of RCW 41.56.140(1).

ORDER

Adams County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practice:

1. CEASE AND DESIST from:

   a. Implementing changes of employee wages, hours, or working conditions while a representation petition involving the

affected employees is pending before the Commission under Chapter 391-25 WAC.

b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Restore the *status quo ante* by reinstating the wages, hours and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change found unlawful in this order, and particularly the hours of work that were in existence prior to the hours reduction implemented in April of 2002.

b. Make employees whole for all losses incurred by reason of the unlawful reduction of their work hours on or about April 1, 2002. Such back pay shall be computed, with interest, in accordance with WAC 391-45-410.

c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix." Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Read the notice attached to this order into the record at a regular public meeting of the Adams County Board of Commissioners, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

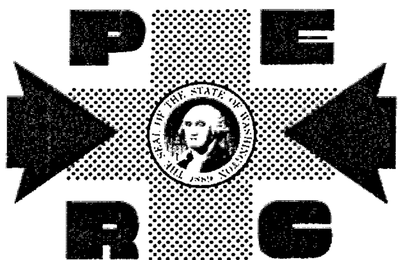
f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

Issued at Olympia Washington this 24th day of January, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, Examiner

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT interfere with the employees' free choice of bargaining representatives.

WE WILL return to the status quo in existence prior to April 1, 2002, with respect to employee wages, hours, and working conditions, and particularly as to the hours of work of employees who, as of April 1, 2002, were affected by a representation petition that was filed by the Washington State Council of County and City Employees and remained pending before the Commission.

DATED: _______________

ADAMS COUNTY

BY: ________________________________
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P.O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.