

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PAPER ALLIED-INDUSTRIAL, CHEMICAL)	
AND ENERGY WORKERS INTERNATIONAL)	
UNION, LOCAL 8-0369,)	
)	
Complainant,)	CASE 18950-U-04-4820
)	
vs.)	DECISION 8797 - PECB
)	
ENERGY NORTHWEST,)	ORDER DENYING MOTION
)	FOR TEMPORARY RELIEF
)	
Respondent.)	
)	
)	

Reid, Pedersen, McCarthy & Ballew, by *Thomas A. Leahy*,
Attorney at Law, for the union.

Summit Law Group, by *Otto G. Klein III*, Attorney at Law,
for the employer.

This case came before the Commission on a motion for temporary relief filed under WAC 391-45-430. Confirming the action taken by the Commission at a public meeting held on November 9, 2004, the motion is DENIED.

BACKGROUND

Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 8-0369 (union) filed a complaint on October 4, 2004, alleging Energy Northwest violated RCW 41.56.140(1) and (4) when the employer unilaterally changed the physical fitness standards required of all bargaining unit employees without bargaining to impasse or seeking interest arbitration. Case 18875-U-04-4796. On

October 7, 2004, Unfair Labor Practice Manager Mark S. Downing issued a preliminary ruling and deferral inquiry, finding the complaint to state a cause of action.

On October 29, 2004, the union filed a motion and affidavits seeking temporary relief under WAC 391-45-430, to prevent the employer implementing and enforcing the changed standards. Consistent with agency practice, the agency assigned a new case number, Case 18950-U-04-4820, to the temporary relief proceeding.¹ Case 18950-U-04-4820. Consideration of the matter was scheduled for the next Commission meeting, November 9, 2004.

Counsel for both parties were present at the Commission's November 9 public meeting. Both parties presented oral arguments and responded to questions asked by the Commission. After a short caucus, the Commission orally stated that the union had not met its burden under WAC 391-45-430 and denied the motion for temporary relief.

DISCUSSION

Under limited circumstances, the Commission invokes its authority under RCW 41.56.160 to seek temporary relief by authorizing the Attorney General of Washington to file suit in the courts to preserve the status quo pending the outcome of unfair labor practice proceedings. The Commission's rules include:

WAC 391-45-430 MOTION FOR TEMPORARY RELIEF. In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may

¹ This procedure avoids commingling of declarations and other temporary relief materials with the evidentiary record on which the underlying case must be decided.

make a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

. . . .
(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making its determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

. . . .
(c) A determination by the commission that temporary relief should not be sought at a particular time shall not bar renewal of the motion for temporary relief following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

(emphasis added).

In this case, the Commission declined to use its authority to seek temporary relief on the union's behalf. The union failed to

persuade the Commission that any deviation from the status quo would cause bargaining unit members to suffer irreparable harm if the motion was not granted.

NOW, THEREFORE, it is

ORDERED

The motion for temporary relief made in the above-captioned matter is DENIED.

Issued at Olympia, Washington, the 14th day of December, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson

Mr. Duffy did not take part in the consideration or decision in this case.

JOSEPH W. DUFFY, Commissioner



PAMELA G. BRADBURN, Commissioner