STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, Complainant, vs. SEATTLE HOUSING AUTHORITY, Respondent.	)	CASE 20556-U-06-5235 DECISION 9546 - PECB
INTERNATIONAL UNION OF OPERATING ENGINEERS, Complainant, vs. SEATTLE/KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO, Respondent.	)	CASE 20557-U-06-5236 DECISION 9547 - PECB CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On August 3, 2006, the International Union of Operating Engineers (Local 286) filed two complaints charging unfair labor practices

with the Public Employment Relations Commission, naming the Seattle Housing Authority (employer) and the Seattle/King County Building and Construction Trades Council, AFL-CIO (Council) as respondents. The employer operates city-owned housing complexes; Local 286 is the exclusive bargaining representative of a bargaining unit which comprises property managers and senior property managers of the employer; and the Council is an entity composed of several unions that have joined together for purposes of consolidated collective bargaining. To facilitate the collective bargaining process with the employer, Local 286 entered into a multi-union arrangement with the Seattle/King County Building and Construction Trades Council (Council) to have the Council negotiate with the employer on Local 286's behalf. The Council and the employer were parties to a collective bargaining agreement that expired on September 30, 2006.

Local 286 filed amended complaints on August 25, 2006. In one complaint, Local 286 alleges that the employer refused to bargain with it concerning the wages, hours and working conditions of the property managers and senior property managers. In the second complaint, Local 286 alleges that the Council induced the employer to commit the same violation. Agency staff issued preliminary rulings under WAC 391-45-110, finding that causes of action existed under the Public Employee Collective Bargaining Act (PECBA), RCW 41.56.140(1), (2) and (4). Agency staff also consolidated the two complaints for a single hearing. Examiner Carlos R. Carrión-Crespo held a hearing on the case on November 1, 2006. The parties filed post-hearing briefs.

ISSUES PRESENTED

1. Did the employer unlawfully refuse to bargain with Local 286 concerning the wages, hours and working conditions of the property managers and senior property managers?

2. Did the Council unlawfully induce the employer to refuse to bargain with Local 286 concerning the wages, hours and working conditions of the property managers and senior property managers?

On the basis of the record presented as a whole, the Examiner rules that the employer did not unlawfully refuse to bargain with Local 286, and that the Council did not unlawfully induce the employer to refuse to bargain with Local 286.

Issue 1: Did the employer unlawfully refuse to bargain with Local 286?

Applicable Legal Principles

RCW 41.56.030(4) and Commission precedents clearly establish that parties have a duty to bargain in good faith. *See City of Redmond*, Decision 8863-A (PECB, April 24, 2006). The "refusal to bargain" prohibition found in RCW 41.56.140(4) enforces the concept of "exclusive" representation, whereby an employer may not negotiate wages, hours or working conditions with an entity not entitled to do so. "[L]abor organizations derive their authority as exclusive bargaining representatives upon certification, and lose that authority when they are decertified or replaced by another union as certified exclusive bargaining representative." *Clark County*, Decision 5373 (PECB, 1995).

The Commission will look to persuasive decisions of the National Labor Relations Board for guidance in applying the law, where that federal precedent is consistent with Chapter 41.56 RCW. *See Chelan County Public Utility District*, Decision 8496-B (PECB, March 15, 2006).

Such precedent uniformly holds that where there is a practice of multi-unit bargaining, "a party which has once agreed to participate in a multi-unit or multi-employer bargaining process must give notice prior to the outset of negotiations on a successor contract, if it desires to extricate itself from that arrangement." *Spokane County*, Decision 6708 (PECB, 1999). In noting the above, the Executive Director looked to *Retail Associates, Inc.*, 120 NLRB 388 (1958), a decision by the National Labor Relations Board which held that the Examiner must find when negotiations actually began, not when the joint bargaining agent demanded to bargain. The National Labor Relations Board later extended these rules to union withdrawals from multi-union bargaining entities. *Evening News Assn.*, 154 NLRB 1494 (1965). A union commits an unfair labor practice if it refuses to abide by a collective bargaining agreement negotiated by the multi-union agent where it has not withdrawn in a timely manner. *Painters Dist. 8 (Anderholt Specialties, Inc.)*, 326 NLRB 9 (1998).

There may be exceptions to the foregoing in unusual circumstances, but the National Labor Relations Board has only recognized two specific situations:

- where the withdrawing employer can establish that is faced with dire economic circumstances, or
- when the unit "has dissipated to the point that it is no longer a viable bargaining entity."

Callier's Custom Kitchens, 243 NLRB 143 (1978).

The National Labor Relations Board recognized the first of these exceptions in situations where the employer:

- was already protected by the bankruptcy laws, *U.S. Lingerie Corp.*, 170 NLRB 750 (1978);

- would imminently close operations for economic reasons, *Spun-Jee Corp*, 171 NLRB 557 (1968); or
- would have to cease production because the union would not provide skilled employees. *Atlas Elec. Serv. Co.*, 176 NLRB 827 (1969).

Furthermore, the National Labor Relations Board has ruled that there is no exception even if all of the employer's employees have been discharged or when the joint bargaining agent fails to provide notice to one of its members. *John J. Corbett Press, Inc.*, 163 NLRB 154 (1967); *Chel LaCort*, 315 NLRB 1036 (1994).

ANALYSIS

Local 286 was certified as the exclusive bargaining representative of the property managers and assistant property managers on July 10, 2001. *Seattle Housing Authority*, Decision 7445-A (PECB, 2001). Local 286 subsequently agreed with the employer and the Council, of which Local 286 was already a member, that the collective bargaining agreement that was effective until September 2003 between the employer and the Council would apply to the newly represented employees. The Council and the employer later signed an agreement effective October 1, 2003 through September 30, 2006, which covered all employees represented by the Council and its member unions, including Local 286. The contract included a provision which required that the parties give 90 days notice of a desire to negotiate amendments it after such date. The parties also established a Labor-Management Committee, which would meet to resolve issues of mutual interest, but would not be a substitute for a "mechanism structured for the purposes of contract negotiations."

At the beginning of 2006, some employees who belong to the bargaining unit of property managers and senior property managers met with Local 286 officials and notified them that the employees were concerned with their perceived lack of adequate union representation and were considering filing a petition with the Commission to decertify Local 286 as their bargaining representative. However, the group decided to wait for the results of the collective bargaining before deciding whether to file the aforementioned petition.

On March 16, 2006, the Council and the employer agreed to discuss dates for contract amendment negotiations on April 20, 2006. On such date, the Council and the employer agreed to begin negotiating a successor agreement on June 5, 2006. The parties also scheduled additional dates to continue bargaining. A union official from Local 286 participated in a meeting of Council member union business representatives held on June 2, 2006, and at the June 5, 2006, collective bargaining session.

On June 7, 2006, Local 286 told the employer that it was concerned about the propriety of combining the property managers with skilled and unskilled units for purposes of collective bargaining. The employer responded on June 13, 2006, that the employer could not separate the bargaining unit from the ongoing negotiations without discussing it with the Council.

On June 13, 2006, the Council formally requested the employer to begin negotiations for a new collective bargaining agreement, and responded to the employer's pending proposals. A Local 286 official and Sarah van Cleve, an employee in the property managers and senior property managers bargaining unit, attended a collective bargaining session held on June 15, 2006. Van Cleve withdrew from

the meeting after she learned that the parties would discuss performance evaluation plans for her bargaining unit but before the topic was discussed, because she did not understand her role in the negotiations. At this meeting, a Local 286 official announced that Local 286 did not waive its claimed right to withdraw the bargaining unit from the Council and bargain independently with the employer.

The parties held another bargaining session on July 6, 2006, in which Local 286 also participated. On that day, Local 286 notified the Council and the employer that it terminated the Council's authority to bargain on behalf of the property managers and senior property managers bargaining unit. Local 286 stated that the bargaining unit did not share a community of interest with the other employees represented by the Council.

On July 6, 2006, Local 286 also notified the employer that it desired to negotiate a separate collective bargaining agreement for the property managers and senior property managers. The employer asked the Council for its position regarding Local 286's request. The Council advised the employer that the Council would not take a position until a question concerning representation was resolved. The employer filed a petition for investigation on a question concerning representation before the Public Employment Relations Commission on August 2, 2006.[1] The parties have not negotiated regarding the terms of a successor collective bargaining agreement directly applicable to the property managers and senior property managers with either the Council or with Local 286.

On October 25, 2006, bargaining unit member van Cleve filed a separate petition seeking to decertify Local 286 as the exclusive

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[1] Case number 20559-E-06-3171.

bargaining representative of the bargaining unit of property managers and senior property managers.[2]

On November 2, 2006, Commission staff advised the parties in both representation petitions that the Commission will not process them until the present unfair labor practice complaints are resolved.

Application of Legal Principles to Facts

Local 286 argues that this case presents an unusual circumstance, because the bargaining unit employees have filed a petition raising a question concerning representation and seeking to decertify Local 286 as their exclusive bargaining representative. Local 286 alleges that it may lose the resulting election, which would result in decertification. This, according to Local 286, would equate to "extreme financial pressure which affects the viability" of Local 286. This would represent a basis to release Local 286 from its duty to bargain the wages, hours and working conditions of the property managers and senior property managers as part of the Council, even if its request to bargain independently with the employer was not timely.

It is undisputed that the Council was the bargaining agent for the unit before Local 286 withdrew its authorization to negotiate on its behalf. Local 286 announced its intention to discontinue the Council's authority to bargain on behalf of said unit on July 6, well after the Council had requested to bargain and after bargaining had effectively begun. Previous communications between Local 286, the employer and the Council regarding the bargaining unit were merely exploratory and could have only led to a timely withdrawal from the multi-unit bargaining if the union had actually announced it before bargaining had effectively begun. Furthermore,

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[2] Case number 20725-E-06-3194.

Local 286's June 15 announcement that it reserved the right to withdraw after bargaining had begun was an attempt to preserve an option to participate in the negotiations without committing to them. Such announcement does not constitute notice of a decision to withdraw and is not conducive to good faith bargaining.

Local 286 participated in collective bargaining sessions before it announced that it would withdraw from the Council. The members of the bargaining unit also participated with the intent of deciding later whether to file a petition to decertify Local 286 as their representative. Furthermore, Local 286 announced that it would withdraw from the Council only after the members of the bargaining unit advised Local 286 that they believed that the bargaining would not be favorable to their interests. Therefore, the employer could only honor Local 286's request to withdraw as an exception to the rule.

National Labor Relations Board decisions are not binding, and interpret relationships within multi-employer associations. While they are of value, the Examiner may consider novel exceptions to the timeliness requirement. The Examiner declines to speculate on the outcome of pending representation petitions and to base a decision on Local 286's concern. Also, public policy bars the Examiner from considering evidence of employee preference of bargaining representatives in a hearing, because it can be coerced. *See City of Seattle*, Decision 1229-A (PECB, 1982). Last but not least, Local 286 did not communicate to the Council or the employer that it feared being decertified before it filed the present complaints, even though Local 286 showed in the hearing that it knew of such a possibility at that time.

More relevant to this proceeding is the alleged lack of a community of interest with the other employees represented by the Council,

which was Local 286's stated reason to request to bargain separately. Multi-union associations are by definition composed of a variety of several bargaining units which do not necessarily share a single community of interests. The lack of such community is not an unusual circumstance and does not justify adding exceptions to those that the National Labor Relations Board has adopted in the aforementioned cases. Allowing untimely withdrawals on that basis would discourage multi-union bargaining.

Conclusion

For the foregoing reasons, the Examiner finds that Local 286's request to withdraw the bargaining unit of property managers and assistant property managers from the joint bargaining process was untimely. Local 286's request to bargain independently regarding the wages, hours and working conditions of the employees in this bargaining unit was also untimely. As a result, the employer did not unlawfully refuse to bargain with Local 286.

Issue 2: Did the Council unlawfully induce the employer to refuse to bargain with Local 286?

Applicable Legal Principles

Under RCW 41.56.150(2), a union commits an unfair labor practice if it induces an employer to commit an unfair labor practice. The complainant in an unfair labor practice charge which alleges that a union induced an employer to commit an unfair labor practice violation must show that the respondent union requested that the employer take some action that is unlawful. *Municipality of Metropolitan Seattle*, Decision 2746-A (PECB, 1989). Conversely, a union does not commit an unfair labor practice if the employer ultimately could have legally agreed to what the union was seeking.

ANALYSIS

The analysis contained in the discussion of issue 1 concludes that the Council was the sole bargaining agent for the bargaining unit of property managers and senior property managers. The Examiner also found that the employer did not commit an unfair labor practice when it declined Local 286's request to bargain on behalf of said bargaining unit. Therefore, the Council did not act unlawfully when it advised the employer that the Council would bargain on behalf of said bargaining unit.

Conclusion

The Council did not induce the employer to commit an unfair labor practice.

FINDINGS OF FACT

1. The Seattle Housing Authority is a "public employer" within the meaning of RCW 41.56.030(1).

2. The Seattle/King County Building and Construction Trades Council is an organization made up of a number of different labor organizations that have joined together for the purpose of negotiating a single labor agreement with the Seattle Housing Authority regarding matters of common interest.

3. The International Union of Operating Engineers, Local 286, is a "bargaining representative" within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative of a bargaining unit of property managers and senior property managers of the Seattle Housing Authority, which it has delegated to the association described in paragraph 2 of these findings of fact.

4. The parties described in paragraphs 1, 2, and 3 of these findings of fact agreed that the contract that was effective at the time between the Seattle Housing Authority and the Seattle/King County Building and Construction Trades Council would cover the bargaining unit described in paragraph 3 of these findings of fact.

5. On June 5, 2006, the parties attended a meeting in which they began negotiations for a successor collective bargaining agreement.

6. On June 7, 2006, Local 286 told the Seattle Housing Authority that it was concerned with the propriety of combining the property managers with skilled and unskilled units for purposes of collective bargaining. The Seattle Housing Authority responded on June 13, 2006, that it was not its decision to make.

7. On June 13, 2006, the Seattle/King County Building and Construction Trades Council formally requested the Seattle Housing Authority to begin negotiations for a successor collective bargaining agreement, and responded to the Seattle Housing Authority's previous proposals.

8. The parties met on June 15, 2006, to continue negotiating a successor agreement. Sarah van Cleve, an employee in the property managers and senior property managers bargaining unit, withdrew from the meeting after she saw that the parties would discuss evaluation plans for her bargaining unit but before the topic was discussed, because she did not understand her groups' role in the negotiations. In this meeting, a Local 286 representative announced that Local 286 did not

waive its right to withdraw the bargaining unit from the Seattle/King County Building and Construction Trades Council.

9. On July 6, 2006, Local 286 notified the Seattle/King County Building and Construction Trades Council and the Seattle Housing Authority that it would withdraw from the Seattle/King County Building and Construction Trades Council all authority to bargain on behalf of the property managers and senior property managers bargaining unit, because the employees in this bargaining unit did not share a community of interest with the other employees represented by the Seattle/King County Building and Construction Trades Council. Local 286 also asked the Seattle Housing Authority to set dates to bargain a separate bargaining agreement for the property managers and senior property managers.

10. The Seattle/King County Building and Construction Trades Council advised the Seattle Housing Authority to allow the legal proceedings to determine which entity will represent the employees in the bargaining unit.

11. The Seattle Housing Authority has not negotiated with Local 286 regarding the wages, hours or working conditions of the property managers and senior property managers.

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. The Seattle Housing Authority did not commit unfair labor practices in violation of 41.56.140(4).

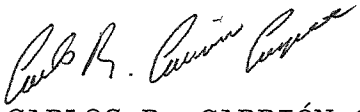
3. The Seattle/King County Building and Construction Trades Council did not commit unfair labor practices in violation of 41.56.150(2).

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are dismissed.

ISSUED at Olympia, Washington, this 12th day of January, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CARLOS R. CARRIÓN-CRESPO, 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.