

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 286,)	
)	
Complainant,)	
)	
vs.)	
)	
SEATTLE HOUSING AUTHORITY,)	CASE 20683-U-06-5270
)	
Respondent.)	DECISION 9485 - PECB
)	
INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 286,)	
)	
Complainant,)	ORDER DENYING MOTION
)	FOR TEMPORARY RELIEF
vs.)	
)	
SEATTLE/KING COUNTY BUILDING AND)	
CONSTRUCTION TRADES COUNCIL,)	
)	
Respondent.)	
)	

Terry A. Roberts, Business Representative/Staff Attorney,
for the International Union of Operating Engineers, Local
286.

Donald S. Means, Deputy General Counsel, for the Seattle
Housing Authority.

Brownstein, Rask, Sweeney, Kerr, Grim, DeSylvia & Hay, by
Stephen H. Buckley, Attorney at Law, for the Seattle/King
County Building and Construction Trades Council.

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 14, 2006, the
motion is DENIED.

PROCEDURAL HISTORY

The International Union of Operating Engineers, Local 286 (Local 286) is the exclusive bargaining representative of the regular and part-time property managers employed by Seattle Housing Authority (employer). 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.

On August 2, 2006, Local 286 filed an unfair labor practice complaint alleging that the employer refuses to bargain in good faith with Local 286 and claiming that the employer has informed Local 286 that it will only bargain with the Council regarding the successor agreement. Additionally, Local 286 claims that the Council is interfering with Local 286's right as the exclusive bargaining representative of the property managers in question by continuing to negotiate a successor agreement with the employer on behalf of the property managers.

On October 4, 2006, Local 286 filed a motion and affidavits seeking temporary relief under WAC 391-45-430, requesting that the Commission direct the employer to bargain with Local 286. Consistent with agency practice, the agency assigned a new case number, Case 20683-U-06-5270, to the temporary relief proceeding.¹ Consideration of the matter was scheduled for the next Commission meeting, November 14, 2006.

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

Counsel for all parties presented oral arguments and responded to questions asked by the Commission.² After a short caucus, the Commission orally stated that Local 286 failed to show that it would suffer irreparable harm and in large part denied the motion for temporary relief on that basis.

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. RCW 41.56.160 states:

RCW 41.56.160 Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. . . .

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

The Commission adopted WAC 391-45-430 to govern motions for temporary relief. The Commission's rule states, in part:

² Counsel for Local 286 and the employer appeared in person. The Commission permitted counsel for the Council to present its arguments telephonically.

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 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.

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(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.

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(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 Local 286's behalf. Local 286 failed to persuade the Commission that it would suffer irreparable harm or that it did not have adequate administrative remedies available to it if temporary relief were not granted.

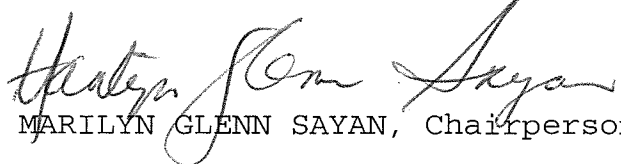
NOW, THEREFORE, it is


ORDERED

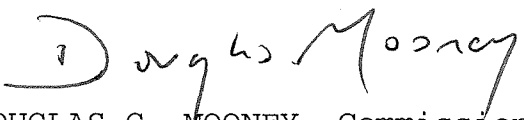
The motion for temporary relief made in the above-captioned matter is DENIED.

Issued at Olympia, Washington, this 5th day of December, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner