

Yakima County, Decisions 6594 and 6595 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

YAKIMA COUNTY LAW ENFORCEMENT)	
OFFICERS' GUILD,)	CASE 13732-U-98-3361
)	DECISION 6594 - PECB
Complainant,)	
)	CASE 13861-U-98-3398
vs.)	DECISION 6595 - PECB
)	
YAKIMA COUNTY,)	ORDER DENYING MOTION
)	TO REOPEN RECORD AND
Respondent.)	SETTING DATE FOR
)	SUBMISSION OF BRIEFS
)	

The above-captioned cases were consolidated for a hearing which was held on November 18, 1998, before Examiner Vincent M. Helm. At the close of the hearing, both parties stated that their briefs would be filed no later than December 11, 1998. Subsequently, the parties agreed to delay the filing of briefs to December 28, 1998.

On December 15, 1998, Yakima County (employer) filed a motion to reopen the record and to continue the due date for filing of briefs. The employer filed an affidavit of Undersheriff Lane J. Roberts, who had been a witness at the hearing, seeking to change certain aspects of his testimony as set forth in the transcript of the hearing. The affidavit had previously been supplied to counsel for the Yakima County Law Enforcement Officers' Guild (union), and the union had objected to such changes.

By letter dated December 16, 1998, the Examiner requested counsel for the union to furnish a written statement of the union's position on the motion. The same letter directed both parties to submit points and authorities in support of their respective

positions, if the employer's motion was opposed by the union. The union responded with written objections to the motion, and both parties submitted timely memoranda of points and authorities in support of their positions.

DISCUSSION

The Examiner finds no basis to grant the motion under WAC 391-45-270, which both parties acknowledge as the only Commission rule setting forth a basis for reopening the hearing in an unfair labor practice case. That rule provides, in pertinent part:

Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

While the record is not deemed closed until briefs are filed, the hearing was closed on November 18, 1998 with both parties having rested their cases and without reservation of a right to reopen.

The employer contends that Roberts was suffering from a migraine headache at the time he testified, and that his condition caused him to testify inaccurately and incompletely in response to questions propounded by counsel for both parties relative to various exhibits. The employer asserts that counsel for both parties were aware of Roberts' debilitating condition at the time he testified, because of comments Roberts made during the day of the hearing. In support of its motion, the employer cites precedent for the proposition that an Examiner has the discretionary authority to reopen the record upon good cause, where evidence to be presented would be relevant and material. The employer also

argues that its motion was filed in timely fashion, inasmuch as it was filed immediately after Roberts had an opportunity to read the transcript of his testimony and discover the deficiencies therein. The employer would characterize the evidence it proposes to introduce as "new" and as material that "could not have been discovered and produced at hearing", because Roberts was not aware of the content of his testimony until he reviewed the transcript.

The union contends that the circumstances herein do not satisfy the standard for reopening of the hearing. It notes the employer had the opportunity to request a recess, or even a continuance of the hearing, predicated upon Roberts' physical condition, but did not do so. It presumes that counsel for the employer would have reviewed Roberts' testimony with him before Roberts took the witness stand, and thus contends that counsel for the employer had the opportunity to correct any testimony by Roberts which did not correspond to what had been expected, either through additional questioning of Roberts or through questioning of other witnesses. The union urges that if hearings could be reopened each time an attorney wishes to rehabilitate his own witnesses, hearings would never terminate.

In the respondent's questioning of Roberts at the hearing, it was established that he had been undersheriff for about two and one-half years, and that he had served as chief criminal deputy prior to assuming his current position. Additionally, it was brought out that Roberts had been the chief of police in the City of Union Gap for five years. From that lengthy background in highly-responsible law enforcement positions, the Examiner infers that Roberts is no stranger to the witness stand. Indeed, his credentials suggest that he is or should be more aware than the ordinary person of the rigors of testifying in a legal proceeding.

Both Roberts and counsel for the employer were fully aware of Roberts' condition at the time he testified, and they elected to proceed with his testimony. Regardless of whether counsel for the union was made aware of Roberts' condition, there was no occasion for the Examiner to attempt to accommodate the physical condition of the witness where it was not raised as an impediment before the Examiner before or during the testimony of the witness.

Counsel for employer is a highly-experienced advocate, who must be presumed to have prepared for the hearing. Under the circumstances described herein, counsel assumed some risks by proceeding with the examination of Roberts. If there were significant variations between Roberts's testimony and that which counsel for employer expected Roberts to state in testimony, the time to address the matter was at the hearing. No good cause has been shown to reopen the record in this case.

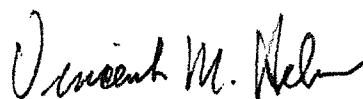
NOW THEREFORE, it is

ORDERED

1. The motion to reopen the hearing is DENIED.
2. The date for the filing of briefs is extended to 21 days following the date of this order.

Issued at Olympia, Washington, this 4th day of February, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Examiner