

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PEND OREILLE COUNTY COURTHOUSE EMPLOYEES' ASSOCIATION,	}	CASE NO. 5837-U-85-1085
Complainant,	}	DECISION NO. 2267 - PECB
vs.	}	
PEND OREILLE COUNTY,	}	PRELIMINARY RULING
Respondent.	}	

The complaint charging unfair labor practices was filed in the above-entitled matter on May 31, 1985, and is presently before the Executive Director for a preliminary ruling. At this stage of the proceedings, all of the factual allegations of the complaint must be taken to be true and provable. The question at hand is whether the complaint states a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

The complaint form filed with the Commission was accompanied by a copy of an election agreement, with emphasis on the bargaining unit described therein. The docket records of the Commission and the case file in Pend Oreille County, Case No. 5493-E-84-987 indicate that the document provided is a copy of the election agreement filed in that proceeding. A certification issued on December 27, 1984 (Decision 2128 - PECB) established a bargaining relationship between the parties.

Also attached to the complaint is an excerpt from the minutes of a December 3, 1984 meeting of the Board of County Commissioners, with emphasis on an item concerning compensation of the county auditor as personnel officer.

Next is a copy of a December 20, 1984 letter addressed to the Board of Commissioners concerning the compensation of the county auditor for acting as personnel director for the county. The letter is unsigned, and there is no indication of its authorship.

An excerpt from the minutes of the December 24, 1984 meeting of the Board of County Commissioners, with emphasis on an item concerning the additional compensation for the auditor, was also attached to the complaint. One can infer that this item refers back to the unsigned letter described above.

Additional excerpts from Board of Commissioners meeting minutes from January 7, 1985, February 25, 1985, March 18, 1985 and March 25, 1985 indicate further developments, to the end that a resolution was passed creating a position of "Civil Service Examiner/Personnel Clerk".

The next attachment to the complaint is a copy of a letter addressed to the Board of Commissioners by the complainant on April 4, 1985, objecting to the foregoing transactions as a violation of existing county personnel rules. The complainant indicates a willingness to discuss the matter, but does not appear to assert that the earlier resolution would have taken work away from any bargaining unit employee.

Two additional excerpts from minutes show a rescinding of the earlier resolution and then approval of hiring of an individual to perform personnel and civil service functions.

Finally, the complaint is supported by an excerpt from personnel rules, with emphasis on advertising of available positions and application procedures.

The employer has filed a motion to have the complaint made more definite and certain.

The office of county "auditor" is created by RCW 36.16.030. The duties of county auditor are set forth in Chapter 36.22 RCW. Elected officials are excluded from the definition of "public employee" in RCW 41.56.030(2), and thus from the coverage of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. To the extent that this dispute is rooted in the duties or compensation of the elected official holding the office of County Auditor in Pend Oreille County, it is outside the jurisdiction of the Public Employment Relations Commission.

The complaint is not supported by a concise statement of fact, as is required by WAC 391-45-050. There is nothing to indicate that bargaining unit employees ever performed the work at issue. The certification excludes not only elected officials, but also "confidential" employees. There is no reference in the certification to a "civil service examiner", although it can be inferred that such a position pre-existed the bargaining relationship. However, this is fundamentally a bargaining unit of clerical employees of various county departments. Personnel office secretaries are not necessarily excluded from bargaining units. The party claiming exclusion as a confidential employee must make a showing under the "labor nexus" test set forth in IAFF v. City of Yakima, 91 Wn.2d 101 (1978). Only by quantum leaps of logic can one arrive at a conclusion that the complainant and the members of its bargaining unit have a claim of work jurisdiction as to the personnel functions at issue. There is thus only a tortuous path to a conclusion that the employer might have committed a refusal to bargain violation

vis-a-vis the complainant by assigning some non-supervisory, non-confidential clerical work to a person outside of the bargaining unit. The employer's motion is clearly well taken. A more definite and certain complaint is required before any determination can be made that the case should be set for hearing.


NOW, THEREFORE, it is

ORDERED

The complainant shall be allowed a period of fourteen (14) days following the date of this order to file and serve an amended complaint in the above-entitled matter. In the absence of an amended complaint, the complaint charging unfair labor practices shall be dismissed for failure to state a cause of action.

DATED at Olympia, Washington, this 8th day of July, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director