

Skagit County, Decision 8684 (2004, PECB)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INLANDBOATMAN'S UNION OF)	
THE PACIFIC,)	
)	CASE 18224-M-04-6055
Complainant,)	
)	DECISION 8684 - PECB
vs.)	
)	
SKAGIT COUNTY,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	

Schwerin Campbell Barnard, by *Robert H. Lavitt*, Attorney at Law, for the union.

Halvorson & Saunders, by *Larry Halvorson*, Attorney at Law, for the employer.

This case comes before the Commission on a purported petition for review filed by the Inlandboatman's Union of the Pacific (union) seeking to have the Commission address a ruling by Mediator Martha Nicoloff. We dismiss the appeal for lack of jurisdiction.

BACKGROUND

On February 10, 2004, the employer sent a letter to the Commission requesting mediation for its negotiations with the union concerning the terms of its successor collective bargaining agreement. Mediator Martha Nicoloff was assigned to assist the parties, and held mediation sessions.

On May 12, 2004, the union requested that the mediator certify the negotiations to interest arbitration under WAC 391-55-200. On June 4, 2004, the employer filed a letter objecting to the union's request. The employer argued that the parties' bargaining relationship is not eligible for interest arbitration within the meaning of RCW 41.56.492. On June 9, the mediator requested both parties submit their positions regarding the application of RCW 41.56.492.

In a letter issued on July 7, 2004, the mediator informed the parties that she concluded that RCW 41.56.492 and WAC 391-55-200 did not apply to this situation, and she therefore refused to certify the dispute to interest arbitration.

On July 19, 2004, the union requested the mediator reconsider her position, which was denied.

On August 12, 2004, the union requested this Commission address the applicability of RCW 41.56.492 to the bargaining unit at issue.

DISCUSSION

The "interest arbitration" process which is at the core of this dispute was originated for a very limited class of fire fighters and law enforcement employees in 1973, and continues to be available only to limited classes of public employees.

In *Chelan County*, Decision 5430 (PECB, 1996), the Commission declined to process an appeal similar to the one now before us. The Commission noted that it was created by Chapter 41.58 RCW, enacted in 1975, that the Executive Director position was explic-

itly created by RCW 41.58.015, and that other staff positions are merely authorized in that statute, as follows:

(2) The commission shall appoint an executive director whose annual salary shall be determined under the provisions of RCW 43.03.028. The executive director shall perform such duties and have such powers as the commission shall prescribe in order to implement and enforce the provisions of this chapter. In addition to the performance of administrative duties, the commission may delegate to the executive director authority with respect to, but not limited to, representation proceedings, unfair labor practice proceedings, mediation of labor disputes, arbitration of disputes concerning the interpretation or application of a collective bargaining agreement, and, in certain cases, fact-finding or arbitration of disputes concerning the terms of a collective bargaining agreement. Such delegation shall not eliminate a party's right of appeal to the commission. The executive director, with such assistance as may be provided by the attorney general and such additional legal assistance consistent with chapter 43.10 RCW, shall have authority on behalf of the commission, when necessary to carry out or enforce any action or decision of the commission, to petition any court of competent jurisdiction for an order requiring compliance with the action or decision.

(3) The commission shall employ such employees as it may from time to time find necessary for the proper performance of its duties, consistent with the provisions of this chapter.

While most actions taken by the Executive Director are pursuant to authority delegated by the Commission in Chapters 391-08, 391-25, 391-35, 391-45, 391-55, 391-65, and 391-95 WAC, the Commission noted two instances where the Legislature has chosen to assign a duty to the director, without reference to the Commission:

1. The providing of mediation services under RCW 41.58.020.

2. The direct delegation of authority to the Executive Director in connection with the certification of issues for interest arbitration, as follows:

RCW 41.56.450 UNIFORMED PERSONNEL -- INTEREST ARBITRATION PANEL -- POWERS AND DUTIES -- HEARINGS -- FINDINGS AND DETERMINATION. If an agreement has not been reached following a reasonable period of negotiations and mediation, *and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse,* then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to *the issues certified by the executive director.* Within seven days following the issuance of *the determination of the executive director,* each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. . . .

(emphasis added). The direct delegation of authority to the Executive Director in RCW 41.56.450 originated in 1979 ex.s. c 184 § 2, and was reiterated in 1983 c 287 §2. Both of those enactments occurred long after RCW 41.58.015 was enacted in 1975.

In 1993, the legislature enacted RCW 41.56.492 to grant interest arbitration rights to employees of public passenger transportation systems. The authority to certify for interest arbitration was directly vested in the mediator under that section. We thus have no authority in this matter.

We note that RCW 41.56.480 calls for appeals to the superior courts, without any reference to intervening involvement by the

Commission, where disputes arise in connection with the interest arbitration process.

NOW, THEREFORE, it is

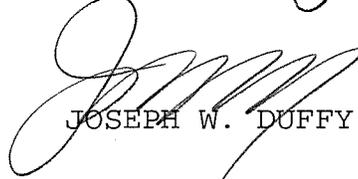
ORDERED

The petition for Commission review filed in the above-captioned matter is DISMISSED for lack of jurisdiction.

Issued at Olympia, Washington, the 1st day of September, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


JOSEPH W. DUFFY, Commissioner


PAMELA G. BRADBURN, Commissioner