

University of Washington, Decision 6046-B (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, DISTRICT 925)	CASE 13356-D-97-119
)	
for a declaratory order concerning)	DECISION 6046-B - PECB
application of Chapter 41.56 RCW)	
to:)	
)	ORDER DENYING
UNIVERSITY OF WASHINGTON)	DECLARATORY ORDER
)	
)	

Theiler, Douglas, Drachler & McKee, by Martha Barron, Attorney at Law, appeared on behalf of the union.

Christine O. Gregoire, Attorney General, by Diana E. Moller, Assistant Attorney General, appeared on behalf of the employer.

This matter came before the Commission on a petition for declaratory order filed by Service Employees International Union, District 925 (union) arising out of its collective bargaining relationship with the University of Washington (employer) under Chapter 41.56 RCW and requesting an interpretation of that statute. A declaratory order issued by the Commission on September 16, 1997,¹ was vacated by an interlocutory order issued on October 27, 1997,² and the parties were directed to state their positions on certain issues. The responses submitted by both parties on November 17, 1997, have been considered by the Commission. This order is issued as a final order of the agency pursuant to RCW 34.05.240(5)(d).

¹ University of Washington, Decision 6046 (PECB, 1997).

² University of Washington, Decision 6046-A (PECB, 1997).

BACKGROUND

In 1993, the Legislature provided an "option" for state institutions of higher education and unions representing their classified employees to transfer their relationship from the state civil service law(s) to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, administered by the Public Employment Relations Commission. RCW 41.56.201.³ In 1993 and 1994, this union and employer invoked the RCW 41.56.201 option as to several bargaining units for which they signed collective bargaining agreements under Chapter 41.56 RCW. In all, it appears that more than 3000 employees were originally included in bargaining units transferred from civil service to the Commission's jurisdiction under Chapter 41.56 RCW.

On October 14, 1996, the union filed three inter-related cases with the Commission:

- Case 12760-U-96-3065 was an unfair labor practice case filed under Chapter 391-45 WAC, alleging the employer had refused to bargain in good faith, by unilaterally removing positions and work from the bargaining unit.
- Case 12761-U-96-3066 concerned a "supervisors" bargaining unit, but otherwise advanced unfair labor practice claims similar to those advanced in Case 12760-U-96-3065.
- Case 12762-C-96-797 was initiated by a petition for clarification of an existing bargaining unit filed under Chapter 391-35 WAC. The union sought rulings on the bargaining unit status

³ The procedures for implementing that option were set forth initially in University of Washington, Decisions 4668 and 4668-A (PECB, 1994), in response to a petition for declaratory order filed under RCW 34.05.240 by an affected employee. The option procedure was later codified by the Commission in WAC 391-25-011, effective April 20, 1996.

of approximately 23 positions the employer had sought to remove from the clerical and supervisory bargaining units.

The Executive Director initially commenced the processing of the unit clarification case while holding the unfair labor practice cases in abeyance, but later revisited the sequence-of-processing issue in March of 1997. An Examiner was then assigned in the unfair labor practice cases, and the employer filed an answer which asserted that Chapter 41.06 RCW authorizes it to remove employees and positions from the coverage of Chapter 41.56 RCW. On August 25, 1997, the union filed the petition to initiate this declaratory order proceeding under RCW 34.05.240, and simultaneously withdrew its unfair labor practice charges.

DISCUSSION

Withholding of Employer Consent

The declaratory order procedure is found within Part II of the Administrative Procedure Act (APA), Chapter 34.04 RCW, relating to public access to agency rules. That statute provides:

34.05.240 DECLARATORY ORDER BY AGENCY – PETITION – COURT REVIEW. (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforced by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

[detailed requirements for contents of declaratory order petitions and agency-specific procedures omitted]

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5)(b) and (c) of this section may be extended by the agency for good cause.

(7) **An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding. ...**

[Emphasis by **bold** supplied.]

Importantly, the declaratory order procedure is not among the "Adjudicative Proceedings" regulated by Part IV of the APA and RCW 34.05.410 through 34.04.494.

In response to the inquiry posed to it in Decision 6046-A, supra, the employer has now clearly and unequivocally stated that it does not consent to the determination of the issues raised by the union by means of a declaratory order proceeding. Under RCW 34.05-.240(7), the union's petition must be dismissed.

Remand for Further Proceedings

The conclusion that the questions posed by the union in this case cannot be resolved through the mechanism of a declaratory order clearly does not constitute a ruling (or concession) that this Commission lacks jurisdiction to address some or all of the same questions in adjudicative proceedings under Part IV of the APA and

Chapter 391-35 or Chapter 391-45 WAC. In response to the inquiry posed to it in Decision 6046-A, supra, the union has now clearly and unequivocally stated that it does not desire to re-activate its unfair labor practice complaints, and that it desires to proceed with the processing of its unit clarification petition.⁴ The Executive Director will now re-activate the processing of the union's unit clarification petition, which has been suspended pending the outcome of the other cases initiated by the union.

NOW, THEREFORE, it is

ORDERED

1. The petition for declaratory order filed in this proceeding is DISMISSED, based on the refusal of the University of Washington to provide its consent under RCW 34.05.240(7).
2. The Executive Director is directed to resume the processing of Case 12762-C-96-797.

Issued at Olympia, Washington, on the 16th day of December, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner

Commissioner Joseph W. Duffy did not take part in the consideration or decision of this case.

⁴ It is thus not necessary to consider or act upon the employer's response to an inquiry posed to it about the further processing of the unfair labor practice cases.