STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	)	
	)	
MEDIC 7 PARAMEDICS ASSOCIATION	)	CASE 7966-E-89-1346
	)	
Involving certain employees of:	)	DECISION 3309 - PECB
	)	
SOUTHWEST SNOHOMISH COUNTY PUBLIC SAFETY COMMUNICATIONS AGENCY	)	DECISION OF COMMISSION
	)	

Webster, Mrak & Blumberg, by James H. Webster, Attorney at Law, appeared on behalf of the petitioner.

Davies, Roberts & Reid, by Bruce E. Heller, Attorney at Law, appeared on behalf of the intervenor, Teamsters Local 763.

On May 11, 1989, the Medic 7 Paramedics Association (the "association") filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission. The association seeks certification as exclusive bargaining representative of a bargaining unit of eight uniformed personnel employed by the Southwest Snohomish County Public Safety Communications Agency. Public, Professional & Office-Clerical Employees and Drivers Union, Local 763, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, ("Local 763") was granted intervention in the proceedings based upon its status as the incumbent exclusive bargaining representative of the petitioned-for employees.

On June 20, 1989, Local 763 filed a complaint charging unfair labor practices with the Commission,[1] alleging that the employer had

[1] Case 8045-U-89-1741.

interfered with, restrained and coerced employees, by unspecified representatives of the employer telling unspecified members of the bargaining unit "that the employees would be 'more respected' by the employer if they were not represented" by Local 763.

Shortly after the unfair labor practice charges were filed, the association asked that representation proceedings not be suspended (i.e., "blocked") pursuant to WAC 391-25-370. That request was supported by declarations signed by seven employees on June 22, 23, 24, 25 and 26, 1989, reciting their version of the facts.

Local 763 disagreed in a response filed on August 2, 1989. Local 763 supported its complaint with a declaration signed by its business representative, reciting his version of the facts.

The Executive Director issued a preliminary ruling on the unfair labor practice complaint on August 7, 1989, pursuant to WAC 391-45-110. The Executive Director characterized the allegations as:

> Interference with the rights protected by Chapter 41.56 RCW, by the employer's statements to employees disparaging the incumbent exclusive bargaining representative.

Based upon the usual assumption that "all of the facts alleged in the complaint are true and provable", a cause of action was found to exist. In the same letter, the Executive Director notified the parties that the processing of the above-captioned representation case would be suspended, saying:

> The "Blocking Charge" procedure of WAC 391-25-370 must be invoked with respect to Case 7966-E-89-1346, which is a representation case seeking to replace the incumbent exclusive bargaining representative, in the absence of a request to proceed filed by Teamsters Union, Local 763.

On August 18, 1989, the unfair labor practice case was assigned to Examiner Walter M. Stuteville for further proceedings pursuant to Chapter 391-45 WAC.

While the unfair labor practice case was awaiting assignment to an Examiner, the association filed a "reply", on August 7, 1989, to the position and declaration submitted by Local 763.

On August 18, 1989, the association "appealed" the Executive Director's action to block this representation case, and at the same time moved for intervention and summary judgment in the unfair labor practice case, relying on the same "declaration" documents filed in this proceeding. Examiner Stuteville set September 19, 1989 as the deadline for the filing of a response to those motions.

On September 18, 1989, Local 763 filed a written statement in opposition to the motions for intervention and summary judgment, relying on the "declaration" it previously filed in this case.

On September 25, 1989, Examiner Stuteville denied both the motion for intervention and the motion for summary judgment.[2]

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[2] The association filed an appeal of that order with the Commission on October 4, 1989. The 14-day time period specified by WAC 391-45-350 for the filing of a response has not expired, and the case is not directly before us at this time. We observe, however, in light of the conclusion reached herein, that the association would appear to have a substantial interest, as petitioner in the "blocked" representation case, in the outcome of the unfair labor practice case. While not suggesting that any mischief has actually occurred, or is even contemplated by the parties in this situation, it is not difficult to envision that the Commission's representation case processes and the rights of employees could be subject to abuse by an employer who, in the absence of participation by a representation petitioner, fails to assert available defenses or defaults in response to "blocking" unfair labor practice charges filed by a favored incumbent. If an unfair labor practice violation were to result in dismissal of a representation petition

Separately, the association submitted a letter on September 25, 1989, urging that its appeal be considered an "emergency" situation, and be given immediate processing.

DISCUSSION

Discretionary Review

Preliminarily, it should be noted that the appeal taken by the association is interlocutory in nature. Normally, objections to rulings made by the Executive Director must wait until the tally of an election or cross-check has been issued. WAC 391-25-590(2). Thus, whether or not we will consider such an appeal is entirely a matter committed to our discretion.

This dispute affects representation proceedings, which are normally given priority consideration by the Commission and its staff. City of Redmond, Decision 1367-A (PECB, 1982). Important procedural and substantive issues have been placed before the Commission, relating to the implementation of our rule, WAC 391-25-370, which may prevent priority consideration of a representation case under certain circumstances. It is a matter of some urgency with the parties. Therefore, we conclude that the consideration of an interlocutory appeal in this case is appropriate.

Factual Nature of the Dispute

No hearing has been held, and the "facts" before us are limited to those alleged in the unfair labor practice complaint and those alleged in the "declaration" documents filed by both parties.

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under the precedent of Lewis County, Decision 645 (PECB, 1979), the representation petitioner's rights would be adversely affected by the employer's failure to defend. We thus remand the unfair labor practice case to the Examiner for reconsideration in light of this order.

The statement of facts filed in support of the unfair labor practice complaint lacked specification as to the times, dates, places and participants in occurrences, as required by WAC 391-45-050(3). The later-submitted "declaration" of Local 763 Business Representative Thomas J. Krett states, however, bargaining unit member Gregory A. Macke informed him, in the presence of other bargaining unit members, that "members of the Board of Directors of SNOCOM [the employer]" had advised Macke that "the paramedics would be 'more respected' by the Board if they were not represented by Teamsters Local 763." This conversation is alleged to have taken place during a May 12, 1989 union membership meeting, when Macke and fellow bargaining unit employee Daniel E. Schulz told Krett that they were trying to decertify Local 763, and that "this was their primary reason for their desire to decertify".

The association submitted declarations from each of the eight members of the bargaining unit, including Macke, denying that they had heard any representative of the employer make the kind of statement described by Local 763. Each declarant stated his belief that the unit would be better represented by the association, but that such belief was formed without interference or coercion from the employer.

Suspension of Representation Proceedings

The requirements for "blocking" are set forth in WAC 391-25-370, which states:

> (1) Where representation proceedings have been commenced under this chapter and:
> (a) A complaint charging unfair labor practices is filed . . . ; and
> (b) It appears that the facts as alleged may constitute an unfair labor practice; and
> (c) Such unfair labor practice could improperly affect the outcome of a representation election; the executive director <u>may</u> suspend the representation proceedings under

> this chapter pending the resolution of the unfair labor practice case. (emphasis supplied)

The rule sets forth three criteria for "blocking." The use of the word "may" in subsection (1)(b) indicates that there is still an element of discretion vested in the Executive Director, even after the other criteria are satisfied.

The Commission has not been called upon previously to provide guidance for the exercise of that discretionary decision-making authority. We find it useful to examine the reasons for the "blocking charge" rule, which is patterned after procedures utilized by the National Labor Relations Board (NLRB).[3] The procedure exists in order to preserve an election setting that is free from the improper influences of unfair labor practices committed by the employer or a rival union. The NLRB has developed various exceptions to its policy. Without going into detail, these exceptions are indicated because: (1) the unfair labor practice would not affect the outcome or the election; or (2) the unfair labor practice charges themselves are suspect - i.e., motivated primarily by a desire to thwart representation proceedings. The latter situation may be evidenced, for example, by the filing of "eleventh hour" charges, or by a history of filing charges in the face of a representation petition. See 1 Morris, The Developing Labor Law, 357-359 (2nd ed., 1983).

Application of "Blocking" Principles to Facts of this Case

The striking feature of the "evidence" before us pertains to its weight. On Local 763's side is a declaration which contains a

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[3] 1 Morris, The Developing Labor Law, 357-59 (2nd ed. 1983) explains that the NLRB's practice is not governed by statute or regulation, but rather is a matter of Board discretion exercised as part of its election responsibilities.

hearsay statement implicating the employer. On the association's side is the declaration of Macke, saying that the employer never said such a thing. In addition, all eight members of the bargaining unit submitted declarations stating that the employer had not said what was charged, and that the decision was made of their free will and without the influence or coercion of the employer.

We agree with the Executive Director that Local 763's complaint states a cause of action. It also appears that Local 763's submission frames issues of fact which will cause its complaint to survive the summary judgment process. However, the plain fact remains that, barring a recanting of testimony by bargaining unit members, or an admission from the employer, Local 763 will have difficulty proving its charges. The submission of Local 763 contains a fundamental weakness: It is based on a hearsay allegation of improper conduct by the employer. The employee, Gregory Macke, who allegedly repeated the employer's statement to the union, denies that the employer actually made the statement.[4] The other bargaining unit employees have declared that the employer did not engage in the charged misconduct, and that their choice of the association as representative was not influenced or coerced by the employer. Moreover, we observe that Krett's declaration still does not state when the employer's alleged remark disparaging the union was made, nor does it name the employer's agents.[5]

In the usual case, the suspension of representation proceedings will effectuate the policies and purposes of Chapter 41.56 RCW. However, we also are sensitive to the possibilities for abuse of

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[4] We note that, whether through inadvertence or otherwise, Macke does not, in his declaration, deny making the statement at issue in this case to Business Representative Krett. Macke simply denies that an agent of the employer made such a statement to him.

[5] The declaration only recites that it was "Board members" who allegedly made this remark.

the process. To prevent such abuse, the Executive Director should hold the parties to higher standards of pleading in "blocking charge" situations -- both in their initial unfair labor practice filing and in their documentation relative to the "blocking" issue -- than is done in the ordinary processing of unfair labor practice cases. Pleadings and affidavits that only narrowly pass muster under the preliminary ruling and summary judgment procedures are not sufficient. It is important for the Executive Director to make an informed judgment, at an early stage, as to: (1) Whether there is a reasonable possibility that the underlying unfair labor practice charges can be proven; and (2) if an unfair labor practice is proven, it would have an effect on the outcome of the representation proceedings. He must have the best tools available for making this determination.

In the instant case, after carefully weighing and evaluating the submission of Local 763 against those filed by the association, we conclude that the suspension of representation proceedings in this case would not further the policies and the purposes of Chapter 41.56 RCW or the ends of justice.

ORDER

The order of the Executive Director suspending the above-captioned representation proceeding is reversed, and the matter is remanded for further proceedings consistent with this decision.

DATED at Olympia, Washington, this 12th day of October, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner

Commissioner Mark C. Endresen did not take part in the consideration or decision of this case.