STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SERVICE EMPLOYEES LOCAL 674, Complainant, vs. KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2 (Evergreen General Hospital) Respondent,	CASE NO. 0-1954 DECISION ON APPEAL DECISION NO. 58A-PECB
ECONOMIC COUNCIL OF ASSOCIATIONS OF HEALTH PROFESSIONALS, (Seattle Chapter No. 4) Complainant, vs. KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2 (Evergreen General Hospital) Respondent.	CASE NO. 0-1969

Examiner Willard G. Olson having, on May 7, 1976, issued his Findings of Fact and Conclusions of Law and Order in the above entitled matter; and the Respondent having timely filed an appeal in the matters; and the Public Employment Relations Commission having reviewed the matters and being satisfied that the decision of the Examiner should be affirmed with certain modifications:

NOW, THEREFORE, it is

ORDERED

1. That Examiner's Finding of Fact "X" is reversed and deleted.
2. That Examiners Conclusion of Law II is revised to state:

Local 674 and Chapter No. 4 have been designated and certified as exclusive bargaining representatives in the bargaining units set forth above and such units are appropriate for collective bargaining. Although obligated to do so, Respondent has failed and refused to engage in collective bargaining as required by the Act. Respondent's acts constitute interference, restraint and coercion of employee rights and in addition, constitute clear and violations of the law.

3. That Examiner's Conclusion of Law III is deleted.

4. That the Commission otherwise adopts the Findings of Fact and Conclusions of Law of the Examiner.

5. On the basis of the foregoing, the Commission makes and enters the following:

ORDER

King County Public Hospital District No. 2 (Evergreen General Hospital), it's officers and agents shall immediately

A. Cease and desist from:

(i) Refusing to bargain collectively with Public Service Employees Local 674 in the bargaining unit covered by the certification of representatives issued by the Department of Labor and Industries in Case No. 0-1774, dated June 10, 1975.

(ii) Refusing to bargain collectively with Seattle Chapter No. 4 in the bargaining unit covered by the certification of representatives issued by the Department of Labor and Industries in Case No. 0-1776 dated June 10, 1975.

(iii) Interfering with, restraining or coercing public employees in the bargaining units indicated above in the exercise of their rights guaranteed by Chapter 41.56. RCW.

B. Take the following affirmative action which the Commission finds will effectuate the policies of Chapter 41.56 RCW.

(i) Upon request, bargain collectively with Public Service Employees Local 674 as the exclusive representative of all of the employees in the bargaining unit indicated above.

(ii) Upon request, bargain collectively with Economic Council of Associations of Health Professionals, Seattle Chapter No. 4 as the exclusive representative of all of the employees in the bargaining unit indicated above.

(iii) Notify the Public Employment Relations Commission, in writing, within ten days following the date of this order as to what steps have been taken to comply herewith.

DATED at Olympia, Washington, this 23rd day of February, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARY ELLEN KRUG, Chairman

PAUL A. ROBERTS, Commissioner

MICHAEL H. BECK, Commissioner

Background to the Present Dispute

The Complainants herein filed petitions with the Washington State Department of Labor & Industries seeking certification as the exclusive representative in two separate units of employees of the Respondent. Following hearings, an agent of the Department issued decisions and certifications of representatives. The Respondent took an appeal to the Director of Labor & Industries, who issued a Memorandum Decision on March 24, 1975. That decision remanded the cases with instructions, and on June 10, 1975 the authorized agent issued amended certifications. Even before the amended certifications were issued, the Respondent filed an appeal in the Superior Court for King County. The Respondent also attempted to appeal to the Director of Labor & Industries from the amended certifications issued on June 10, 1975, but that attempt was rejected by the Director on the grounds that the action of the authorized agent had been taken pursuant to the instructions on remand, as well as on the grounds that the matter was then already in the Court.

The Respondent sought from the Court a stay of the order of the Department. The requested stay was denied on May 9, 1975, and the Complainants herein demanded bargaining under the certifications issued by the Department. On or about October 20, 1975, the Complainants moved for summary dismissal of the judicial review proceedings involving the representation case decisions, basing their argument on the practices of the federal courts under Section 9 (d) of the National Labor Relations Act. The Court indicated its intent to issue an order granting that motion, subject to the presentation of an appropriate order by the Complainants. So far as the Commission is aware, the Complainants never obtained a final order from the Court in the representation matters, and inquiries made through the office of the Attorney General on November 9, 1976 confirmed that as the status of that case. The Commission received notice on January 10, 1977 that the matter had been noted for trial by the attorney for the Respondent.

The Present Dispute

Following the issuance of the Director's decision on appeal and the refusal of the Court to stay the orders of the Department, the Complainants herein demanded that the Respondent engage in collective bargaining. Upon the refusal of the Respondent to engage in collective bargaining, the Complainants filed unfair labor practice charges with the Department of Labor & Industries. The procedures of that agency were followed and the matter was heard before an agent of the Department on November 5, 1975. During the hearing on the instant cases, the parties stipulated that these proceedings should be consolidated and that the entire record in the representation proceedings should be considered as a part of the record herein. Further, the Respondent, while admitting its refusal to bargain, took the position that the reason for its refusal to bargain was to test the validity of the certifications of representatives previously issued by the Department. The Examiner refused to permit re-litigation of any of the issues raised in the representation proceedings or in the judicial review of the representation proceedings, ruling instead that those matters had been decided and were then res adjudicata. The hearing was completed and closed on the same date.

Based on a history which indicated that certifications of representatives issued by the Department were subject to judicial review under the Washington State Administrative Procedure Act (Chapter 34.04 RCW), and had been so reviewed in prior cases, the Examiner declined to follow the type of procedure contemplated in Section 9(d) of the National Labor Relations Act. On November 18, 1975, the Examiner issued a letter of opinion wherein he concluded that the Respondent had engaged in a "flagrant" violation and directed Counsel for the Complainants to prepare and submit appropriate findings, conclusions of law and order. Based on the conclusion that this was a flagrant violation, the Examiner indicated a willingness to grant an unusual remedy, in the form of reimbursement of the

Complainants for their attorney's fees in this case. The Respondent sought to appeal that action to the Director of Labor & Industries, but that appeal was rejected as being premature until the Examiner signed Findings of Fact, Conclusions of Law and Order.

The jurisdiction for the administration of Chapter 41.56 RCW, along with the Examiner and the files and records of the Department of Labor and Industries, were transferred to this Commission on January 1, 1976 pursuant to Chapter 296, Laws of 1975, 1st ex.s. and Chapter 5, Laws of 1975, 2d ex.s. These matters were included in that transfer and there has been no hiatus in either the applicable law or administrative machinery for the enforcement of that law.

On March 4, 1976 the Examiner sent a letter to counsel for the Complainants, noting the substantial period of time which had passed since the issuance of the letter directing preparation and submission of appropriate formal papers for signature. A response was had on March 30, 1976 in the form of proposed formal papers presented to the Examiner and served on Counsel for the Respondent. On April 6, 1976, the Examiner received correspondence from Counsel for the Respondent noting exceptions to the proposed formal papers submitted by the Complainants. On the same date, the Examiner notified Counsel for the Respondent that issuance of the formal decision would be withheld and a period of ten days would be allowed for the submission of written objections to the draft proposed by the Complainants. On April 16, 1976, the Examiner received a letter stating the Respondent's objections to the proposed formal papers submitted by the Complainants and a copy of the Respondent's proposed formal papers. On May 7, 1976, the Examiner issued his own findings of fact, conclusions of law and order, which were accompanied by a cover letter noting some defects in each of the proposals submitted by the parties.

Position of Respondent on Appeal

In its Notice of Appeal, filed on June 7, 1976, the Respondent takes exception to certain of the findings of fact made by the Examiner

with respect to the identification of the Complainants and Respondent, but does not object to the conclusion of law which states that the Commission has jurisdiction in this matter. The Respondent also takes exception to findings of fact relating the history of proceedings in the previous representation cases and the findings of fact relating to the flagrant violation. The Respondent also took exception on appeal to the qualifications and impartiality of the Examiner. In it's brief on appeal, the Respondent reviews the judicial proceedings on the related representation cases and argues that, if it is precluded from direct judicial review of the representation decisions, then it is entitled to refuse to bargain to obtain judicial review through procedures in the mode of proceedings under Section 9(d) of the NLRA.

Discussion

The Commission takes this case as it finds it. We do not have the benefit of a brief on appeal from the Complainants. Substantial delay has already occurred in the processing of these cases; some of which occurred prior to the hearing when the parties entered into settlement discussions; some of which occurred following the issuance of the Examiner's instructions for the preparation of formal papers; and some of which occurred following the transfer of the case to the Commission while the Commission withheld action for a period of time on the understanding that the summary dismissal of the judicial review proceedings in the representation cases was to be appealed to the Court of Appeals.

The Commission concurs with the Examiner that it would be inapprop-iate to re-litigate the issues of the representation cases in this case, regardless of the procedures available for judicial review. That conclusion is reinforced in this case by the fact that there has been an intervening transfer of jurisdiction from the Department of Labor & Industries to the Commission. Accordingly, the Commission expresses no opinion on the merits of the decisions of the Director of Labor &

Industries in Cases 0-1774 and 0-1776. Further, it is the opinion of the Commission that the scope of the jurisdiction of the Superior Court with respect to review of those representation decisions is a matter within the purview of the Courts and the Commission expresses no opinion thereon.

Regardless of whether the "NLRA Section 9(d)" pattern or the previous 1/ procedures permitting direct review are to be followed, an employer will be entitled at some point to obtain judicial review of an agency representation decision. In this case, it is apparent that the Complainant's successful motion for dismissal has forced the Respondent into the "NLRA Section 9(d) pattern." Given this history, the Examiner's findings of a flagrant violation and the related remedy are reversed; but given the denial of the Respondent's request for a stay of the representation case orders, the Commission adopts the Examiner's findings and conclusions that the Respondent has refused to bargain in violation of RCW 41.56.140(4). A violation of RCW 41.56.140(1) inherently derives from the violation of RCW 41.56.140(4)

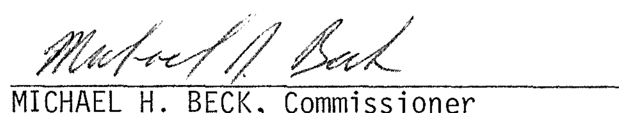
RCW 41.58.800, 801, 802, and 803 provide for the mechanics of transfer of administrative jurisdiction from the Department of Labor and Industries to the Commission. That transfer occurred on January 1, 1976 with no hiatus of any kind, and the Commission finds no merit in the arguments of the Respondent as to the qualifications of the Examiner to act in this matter. The mere fact that the Examiner herein previously rendered a decision adverse to the Respondent in another case is not grounds for reversal of his decision here, particularly where there were no issues of fact to be decided herein and the objection was not raised until after an adverse decision had been rendered herein.

1/ (also current procedures) See The Municipality of Metropolitan Seattle vs. the Department of Labor & Industires et al., Washington Superior Court No. 44441.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARY ELLEN KRUG, Chairman

PAUL A. ROBERTS, Commissioner


MICHAEL H. BECK, Commissioner

BEFORE THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
OF THE STATE OF WASHINGTON

PUBLIC SERVICE EMPLOYEES LOCAL 674 (Charging Party, Case No. 0-1954), and SEATTLE CHAPTER NO. 4, ECONOMIC COUNCIL OF ASSOCIATIONS OF HEALTH PROFESSIONALS (Charging Party, Case No. 0-1969), and EVERGREEN GENERAL HOSPITAL (KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2, Respondent in Case No. 0-1954 and Case No. 0-1969).	CASE NO. 0-1954 CASE NO. 0-1969 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER coming on before Willard G. Olson for the State of Washington Public Employment Relations Commission, the charging parties being represented by their attorney, Mr. Hugh Hafer, the respondent being represented by its attorney, Mr. Philip L. Carter, and the said examiner having heard the witnesses, witnessed the evidence, briefs and exhibits filed herein, and being fully advised in the premises, now makes the following:

FINDINGS OF FACT

I

Local 674 on May 29, 1975 and Chapter No. 4 on June 20, 1975 filed charges against Respondent. Respondent has been charged with committing unfair labor practices by (1) refusing to engage in collective bargaining in violation of RCW 41.56.140 Sec. 4, and (2) by interfering with, restraining, or coercing their employees in the exercise of their rights guaranteed by statute in violation of RCW 41.56.140 Sec. 1. In compliance with WAC 296-132-311 the Department of Labor and Industries did conduct an investigation and a Complaint and Notice of Hearing was issued on August 6, 1975. The Employer's answer to the Complaint was received on August 20, 1975 and denied all allegations contained therein.

The Unfair Labor Practice Hearing set for September 5, 1975 was continued, at the request of all parties, to November 5, 1975.

By agreement of all parties these unfair labor practice proceedings were consolidated for hearing and decision. The entire record in representation cases O-1774 (Local 674 and Respondent) and O-1776 (Seattle Chapter 4 and Respondent) are, by stipulation, incorporated as record evidence in this consolidated proceeding.

II

EVERGREEN GENERAL HOSPITAL (KING COUNTY HOSPITAL DISTRICT NO. 2) is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030 (1).

III

PUBLIC SERVICE EMPLOYEES, LOCAL NO. 674 is a "Labor organization" within the meaning of RCW 41.56.010, and is a "bargaining representative" within the meaning of RCW 41.56.030 (3).

IV

SEATTLE CHAPTER NO. 4, ECONOMIC COUNCIL OF HEALTH PROFESSIONALS is a "labor organization" within the meaning of RCW 41.56.010, and is a "bargaining representative" within the meaning of RCW 41.56.030 (3).

V

Separate election petitions, seeking bargaining agent certifications in separate bargaining units were filed on September 24 and 25 by the Charging Parties. On December 2, 1974, a separate Certification of Representative was issued to each of the Charging Parties. The Certifications were based upon the fact that a majority of the employees had signed bargaining authorization cards which had been cross-checked for authenticity by the Department of Labor and Industries. Respondent did not at any stage of the proceedings offer any evidence challenging the validity of the authorization cards. During the course of the unfair labor practice hearing, Respondent affirmatively objected to efforts by counsel for the Charging Parties to obtain from Respondent specimen signatures of the unit employees and to offer the authorization cards into evidence. Respondent's position was sustained.

VI

Respondent appealed the decisions certifying the bargaining units. The Director of the Department of Labor and Industries sustained the certifications, except for one employee classification. This matter was reviewed and an amended certification was issued on June 10, 1975. Respondent thereafter sought review of the amended certification and such appeal was denied on July 17, 1975.

VII

The Charging Parties were certified as exclusive bargaining agents in the following bargaining units:

a. Local 674:

UNIT: INCLUDED: All employees in the specific job classifications of the following departments: Food Service: Cafeteria Aide, Diet Aide, Cook I & II, Dishwasher, Diet Aide/Relief Cook. Housekeeping: Housekeeper, Lead Housekeeper, Groundskeeper. Central Services: Central Services Tech, Central Services Aide. Business Office: L & I Welfare Billing, Credit Assistant, Medicare Biller, Billings/ Collections Clerk, Payroll/Keypunch. Keypunch: Keypunch/Data Control. Switchboard: Lead PBX, PBX. Materials Management: Senior Storekeeper, Storekeeper, Clerk/Printer, Linen Aide. Unit Secretaries: Unit Secretaries. Medical Records: Medical Records Clerk. X-Ray: Radiology Secretary, Radiology Aide. Nursing Service-Non-R.N.: Nursing Service Secretary, Patient Call Dispatcher, Sterile Corridor Aide. Administration: Admitting Clerk, Admitting Clerk/Outpatient Department, Admitting Clerk/Unit Secretary, Medical Records Transcriptionist.

EXCLUDED: Registered Nurses, employees represented by the Operating Engineers Loc. No. 286, the Accountant, the Internal Controls Assistant, the Medical Records Secretary (Accredited Medical Records Technician), and the Administrative Secretary. Also excluded shall be students who work less than twenty-four (24) hours per week.

b. Chapter No. 4:

UNIT: INCLUDED: All full-time and regularly scheduled part-time employees in the following classifications; Medical Technologist, Radiologic Technologist, Operating Room Technician, Respiratory Therapist, Respiratory Therapy Technician, Medical Records Secretary (Accredited Medical Records Technician).

EXCLUDED: Supervisors, temporary or non-scheduled employees, students, and all other employees of the employer.

VIII

The Charging Parties made numerous requests for commencement of bargaining. The first such request was made on or about December 4, 1974. On or about May 13, 1975 the Unions again requested negotiations meetings. The Respondent, in a letter of May 22, 1975, stated they felt they had no duty to bargain.

On July 22, 1975 the Department of Labor and Industries sent a letter to the Respondent offering them the opportunity to begin negotiating. That letter stated that "If we have not received notification of meetings, or if we have received no reply by August 4, 1975, the Department will presume that the Hospital does not intend to engage in collective bargaining and will be required to proceed under authority of RCW 41.56.160." No reply was received from this communication.

IX

Respondent, in April, 1975, attempted unsuccessfully to obtain direct Court review and a "stay" of the proceedings then pending before the Department of Labor and Industries. Denying the stay the Court stated in part that "the possibility of Petitioner (Respondent-Employer) becoming involved in some negotiating meetings does not constitute a showing of injury which would warrant a 'stay' or other injunctive relief."

X

Before Court proceedings were initiated, Respondent's Commissioners met to determine the course of action which should be followed. During this meeting, Dr. Matthew Evoy, a Commissioner of Respondent, said: "the longer we stall the more change might happen in numbers of employees on the payroll." There is no mention of dissent by other Commissioners nor is there any evidence that Dr. Evoy's statement was ever disavowed by the other Commissioners even though Counsel for Respondent advised the Commissioners "that stalling might constitute an unfair labor practice and be illegal."

From the foregoing Findings of Fact the Public Employment Relations Commission makes the following

CONCLUSIONS OF LAW

I

The Public Employment Relations Commission has jurisdiction of the parties hereto pursuant to Chapter 41.56 RCW.

II

Local 674 and Chapter No. 4 have been properly designated and certified as exclusive bargaining representatives in the bargaining units set forth above and such units are appropriate for collective bargaining. Although obligated

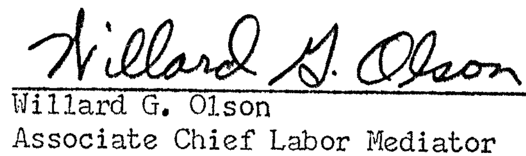
to do so, Respondent has failed and refused to engage in collective bargaining as required by the Act. Respondent's failure to engage in collective bargaining was part of an intentional effort to deny its employees rights which are guaranteed by the Act. Respondent's acts constitute interference, restraint and coercion of employee rights and in addition, constitute clear and flagrant violations of the law.

III

Respondent is estopped from challenging the status of Charging Parties as majority representatives in the bargaining units set forth above.

DATED this 7th day of May, 1976.

State of Washington Public
Employment Relations Commission



Willard G. Olson
Associate Chief Labor Mediator

BEFORE THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
OF THE STATE OF WASHINGTON

PUBLIC SERVICE EMPLOYEES LOCAL 674 (Charging Party, Case No. O-1954), and SEATTLE CHAPTER NO. 4, ECONOMIC COUNCIL OF ASSOCIATIONS OF HEALTH PROFESSIONALS (Charging Party, Case No. O-1969), and EVERGREEN GENERAL HOSPITAL (KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2, Respondent in Case No. O-1954 and Case No. O-1969).	CASE NO. O-1954 CASE NO. O-1969 DECISION AND ORDER

THIS MATTER coming on before Willard G. Olson for the State of Washington public Employment Relations Commission, the Charging Parties being represented by their attorney, Mr. Hugh Hafer, the Respondent being represented by its attorney, Mr. Philip L. Carter, and the said examiner having heard the witnesses, read the evidence, briefs and exhibits filed herein, and having heretofore entered its Findings of Fact and Conclusions of Law and being fully advised in the premises, now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I

That Evergreen General Hospital (King County Hospital District No. 2) shall enter into good faith collective bargaining as defined by RCW 41.56.030, Sec. 3 regarding wages, hours and working conditions with Local No. 674 and Seattle Chapter No. 4. The bargaining sessions must be held at a neutral place away from Hospital facilities. If needed, this Commission will make the conference room in the Department of Labor and Industries in Seattle, Washington, available to the parties.

II

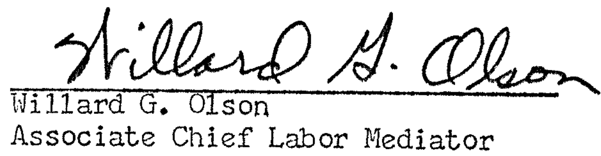
That the Employer shall reimburse the Charging Parties for attorney's fees in the amount of $150.00 each as a result of clear and flagrant violations of the Public Employees Collective Bargaining Laws of the State of Washington.

III

Respondent is further ordered to post in places reasonably calculated to come to the attention of its employees a notice in the form attached hereto and incorporated here by reference.

DATED this 7th day of May, 1976.

State of Washington Public
Employment Relations Commission



Willard G. Olson
Associate Chief Labor Mediator

EVERGREEN GENERAL HOSPITAL

Kirkland, Washington

NOTICE TO ALL EMPLOYEES

Pursuant To
The Decision and Order of the

WASHINGTON STATE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

Washington State
Public Employees' Collective Bargaining Act

We hereby notify our employees that:

WE WILL NOT refuse to enter into good faith collective bargaining with Public Service Employees Local 674, or Seattle Chapter No. 4 of the National Economic Council of Health Professions.

WE WILL NOT interfere with, restrain, or coerce the employees in the certified bargaining units represented by the above labor organizations in the exercise of their rights guaranteed by the Public Employees' Collective Bargaining Act.

Evergreen General Hospital
(King County Public Hospital
District No. 2)

Employer,

Dated ____________________ By ____________________
Representative (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Washington State Public Employment Relations Commission, 300 West Harrison, Seattle, Washington, telephone 464-6870