

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES,

Complainant,

vs.

LEWIS COUNTY,

Respondent.

CASE NO. 1569-U-78-203

DECISION NO. 556 PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

APPEARANCES:

LARRY MCKIBBEN, appearing on behalf of complainant.

CHARLES R. BYRD, Attorney at Law, appearing on behalf of employer.

The Washington State Council of County and City Employees (hereinafter referred to as the "complainant" or "union") filed a complaint with the Public Employment Relations Commission which alleged that Lewis County (hereinafter referred to as the "respondent" or "county") had committed an unfair labor practice by refusing to negotiate in good faith. The case was assigned to Examiner Jack Cowan of the PERC staff and a hearing was held on October 10, 1978.

BACKGROUND

The complainant was certified by the Commission on March 7, 1978 as the exclusive bargaining representative for employees in the Lewis County Treasurer's, Assessor's, Auditor's and Clerk's offices, Maintenance, Car pool, and District Court.

Following a labor organization meeting on May 2, 1978, the county filed charges alleging the union had committed an unfair labor practice by refusing to allow persons who were not members of the labor organization to attend that meeting. The complaint was dismissed by the Executive Director of PERC on June 27, 1978 for failure to state a cause of action. The county subsequently petitioned for Commission review of that dismissal, and on September 6, 1978 the Commission affirmed the Executive Director's order of dismissal. The respondent has since sought judicial review in that case, and the matter is now pending in the courts.

POSITION OF THE COMPLAINANT

The complainant alleges the respondent is committing an unfair labor practice by its continued refusal to commence negotiations.

POSITION OF THE RESPONDENT

The county admits that it has refused and still refuses to negotiate with the union. It asserts that it is excused from bargaining pending disposition of its court appeal from the dismissal of its own unfair labor practice charges. The county further contends that to begin negotiation prior to the completion of the appeal process would necessarily prejudice the outcome of the appeal.

DISCUSSION

The arguments developed by the parties focus on the duty to bargain collectively under RCW 41.56. RCW 41.56.030(4) states:

"(4) 'Collective bargaining' means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter." (Emphasis added).

RCW 41.56.140(4) states:

"It shall be an unfair labor practice for a public employer: ...
(4) To refuse to engage in collective bargaining."

No factual dispute exists as to the refusal to bargain in the instant case. The respondent readily and openly admits a refusal to negotiate. An employer's obligation to negotiate is clearly defined in the statute and a refusal to meet at all with the union does not satisfy the positive duty imposed on the employer. NLRB vs. Little Rock Downtowner, 341 F 2d 1020 (CA8, 1965).

A duty to bargain in good faith is incumbent on both parties but is not here evident on the part of the employer. If an employer declines to meet for bargaining in the face of an outstanding certification, counsel need not show bad faith in a refusal to bargain allegation. Allstate Insurance Company, 234 NLRB No. 021 (1978). It is well established that an employer refuses to recognize a certified labor organization at its peril. E. V. Williams Co., Inc. 175 NLRB 792 (1969); Williamsburg Steel Products Co., 369 US 736 (1962).

The Examiner finds no merit in the respondent's contention that all action in this proceeding should be suspended and held in abeyance until the court issues a decision in the previous unfair labor practice proceeding filed by the county. It is well settled that collateral litigation does not suspend the duty to bargain under Section 8 (a)(5) of the National Labor Relations Act, which is the federal law parallel to RCW 41.56.140(4), Metropolitan Petroleum Co., 216 NLRB 404 (1975), Great Dane Trailers, Inc., 191 NLRB 6 (1971), Porta-Kamp Manufacturing Company, Inc., 189 NLRB 899 (1971).

FINDINGS OF FACT

1. Lewis County is a county of the State of Washington and is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

2. Washington State Council of County and City Employees is a labor organization within the meaning of RCW 41.56.010 and is the exclusive bargaining representative under a certification issued by the Commission on March 7, 1978 of certain employees of the county employed in the appropriate unit composed of Courthouse employees: Treasurer, Assessors, Auditors, Maintenance, Clerks, District Court and Car Pool.

3. Despite repeated requests by the complainant, the county has and is refusing to negotiate with the complainant concerning the wages, hours or working conditions of the employees in the appropriate bargaining unit described in paragraph 2, above.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to RCW 41.56.160.

2. By a continued refusal to negotiate under the circumstances set forth above, the county has committed and is committing an unfair labor practice within the meaning of RCW 41.56.140(4).

ORDER

It is ordered that Lewis County, its offices and agents shall immediately:

1. Cease and desist from refusing to bargain with Washington State Council of County and City Employees as the exclusive representative of all employees in the bargaining unit described in paragraph 2 of the foregoing findings of fact.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of RCW 41.56:

a. Upon request, commence good faith negotiation with Washington State Council of County and City Employees concerning the wages, hours and working conditions of the employees in the aforesaid bargaining unit.

b. Post the accompanying notice for a period of sixty (60) days on bulletin boards where notices to employees of the respondent are usually posted.

c. Notify the Executive Director of the Commission, in writing within twenty (20) days following the date of this Order, what steps have been taken to comply herewith.

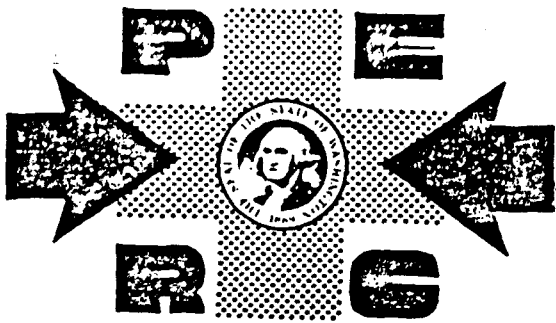
DATED at Olympia, Washington, this 11th day of December, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By:

A handwritten signature in black ink, appearing to read "J. T. Cowan", written over a horizontal line.

JACK T. COWAN, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No. 1569-U-78-203

Date Issued December 11, 1978

NOTICE

NOTICE TO ALL EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56., WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively with Washington State Council of County and City Employees (W.S.C.C.C.E.) with respect to wages, hours and working conditions of employees in the certified appropriate bargaining unit consisting of: Treasurer, Assessors, Auditors, Maintenance, Clerks, District Court and Car Pool.

DATED: December 11, 1978

LEWIS COUNTY

BY: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.