

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL NO. 17,	}	CASE NO. 3447-U-81-496
Complainant,	}	DECISION NO. 1403 - PECB
vs.	}	
KING COUNTY,	}	ORDER DISMISSING NAMED RESPONDENTS
Respondent.	}	

On May 18, 1981, the above-named complainant filed a complaint with the Public Employment Relations Commission wherein it alleged that Albert Ross, Personnel Manager, King County, and the Honorable Jack Scholfield, Presiding Judge, King County Superior Court had committed unfair labor practices within the meaning of RCW 41.56, RCW 41.56.040 and RCW 41.56.140(1), (2), (3) and (4). On July 27, 1981 the Executive Director made a preliminary ruling pursuant to WAC 391-45-110 that the allegations, if proven to be true, could constitute an unfair labor practice violation within the meaning of the Act, and at the same time designated Rex L. Lacy as Examiner in the matter. On August 13, 1981, the Examiner established October 5, 1981 as the date for hearing of the issues in the complaint. On September 24, 1981, King County filed a motion to dismiss Judge Scholfield as a respondent and supplied a memorandum of authorities to support its motion. The complainant was permitted to answer the motion to dismiss respondent Scholfield, and it did so on October 12, 1981.

POSITION OF THE PARTIES:

King County contends that the Public Employment Relations Commission does not have jurisdiction over Judge Scholfield and the Superior Court for King County in this matter. Citing Zylstra v. Piva, 85 Wn.2d 743 (1975), the County contends that the King County Superior Court is not a "public employer" within the meaning of RCW 41.56.030(1); that the Public Employees Collective Bargaining Act (Chapter 41.56 RCW) is not applicable to respondent Scholfield since he is a state employee and RCW 41.56.020 excludes state employees from coverage of the Act. Further, the County argues that the doctrine of "separation of powers" precludes assertion of jurisdiction by the Commission, an executive branch agency of government, over the judicial branch of government.

International Federation of Professional & Technical Engineers, Local 17, AFL-CIO, opposed the motion to dismiss and supplied a memorandum of authorities to support its contention that respondent Scholfield was acting in the capacity of an agent of King County when the alleged violations of the Act occurred. The union contends that the issues of the complaint involve wage and wage-related matters which are within the County's scope of authority in accordance with Zylstra, supra; that naming the Court as a co-respondent will not disrupt the dual status employment relationship created by Zylstra, supra; and that the doctrine of separation of powers (as applied to the Superior Court) is not at issue in this case.

DISCUSSION:

The employees involved are court reporters who occupy dual status as public employees of King County, subject to RCW 41.56, and as state employees excluded from coverage of RCW 41.56. They are "public employees" within the meaning of RCW 41.56.030(2) for that portion of their employment relationship that is subject to control by the county. They are state employees for that portion of their employment relationship which is subject to control by the judges of the Superior Court. The Public Employment Relations Commission has jurisdiction to remedy unfair labor practices under Chapter 41.56 RCW only with respect to that portion of the employment relationship controlled by the County. Zylstra v. Piva, 85 Wn.2d 743 (1975). See: Snohomish County, Decision 587 (PECB, 1979). There is no circumstance under which Scholfield or any other judge of the King County Superior Court could be found guilty of an unfair labor practice for actions they have taken as a judge with respect to the portion of the employment relationship controlled by the Court.

The allegations of the complaint charging unfair labor practices involve paid leave benefits, and therefore arguably fall within the "wages and wage-related benefits" scope of authority of the County. The County appears to recognize the potential for that cause of action, and does not seek summary dismissal of the complaint against the County itself. Contrary to the union's argument, however, there are no factual allegations indicating a basis on which either Ross or Scholfield could be found personally liable for unfair labor practices violations. Both Ross and Scholfield are named as respondents in their official capacity with the County. King County is a corporate entity which necessarily acts through, and is liable for, the acts of its agents. If unfair labor practice violations are found in this matter, all liabilities and remedies would accrue against the public employer, King County. The County's responsibility for the actions of Ross and/or Scholfield as its agent continues to be a proper subject for hearing, and the Examiner will permit the parties to pursue the "agency" issue if they so desire. The names of Ross and Scholfield will, however, be stricken as individual respondents.

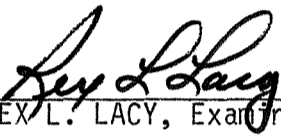
NOW, THEREFORE, it is

ORDERED

Albert Ross and Jack Scholfield are dismissed as individual respondents in the above entitled matter.

DATED at Olympia, Washington this 12th day of March, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Examiner