STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL NUMBER 148, Complainant, vs. GRANT COUNTY, Respondent.	CASE NO. 3768-U-81-578 DECISION NO. 1638 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Herman L. Wacker, Attorney at Law, appeared on behalf of the complainant.

Paul Klasen, Prosecuting Attorney, appeared on behalf of the respondent.

On October 20, 1981, Teamsters Union Local No. 148 (complainant) filed a complaint charging unfair labor practices against Grant County (respondent) wherein it alleged that the respondent had committed unfair labor practices within the meaning of RCW 41.56.140. James N. Leibold was designated as Examiner to make and issue Findings of Fact, Conclusions of Law, and Order. Pursuant to notice issued by the examiner, hearing on the complaint was held on April 21, 1982 at Ephrata, Washington. The parties filed post-hearing briefs.

THE UNFAIR LABOR PRACTICE ALLEGATIONS

A. During the course of collective bargaining negotiations for a collective bargaining agreement effective January 1, 1980 the parties reached an oral agreement regarding the effect of a new wage classification system on existing employees.

B. The oral agreement is accurately reflected in the "letter of understanding" attached hereto and expressly incorporated herein as Exhibit A.

C. The Union, by letter dated September 3, 1981, attached hereto and expressly incorporated herein as Exhibit B, requested that Grant County execute a written agreement reflecting the agreements reached during the collective bargaining negotiations.

D. The County has refused, by its letter dated September 28, 1981 attached hereto and expressly incorporated herein as Exhibit C, to execute said letter of understanding (Exhibit A).

E. By these acts Grant County has interfered with, restrained or coerced public employees in the exercise of their rights guaranteed by RCW 41.56.140 and has refused to engage in collective bargaining in violation of RCW 41.56.140.

BACKGROUND

Teamsters Union Local No. 148 is the exclusive bargaining representative of a bargaining unit of employees of Grant County described as:

> All employees of the Sheriff's Department except Sheriff, Undersheriff, and Chief Deputies.

After several months of bargaining, the union and the county entered into a successor collective bargaining agreement for the 1980 calendar year. The new agreement provided for a general wage increase but also changed the pay structure for unit members, establishing a more complex system which included longevity steps. That change resulted in different gross salaries among the unit members. Previously, all employees in a classification had the same wage rate except for a ten percent reduction made during the initial period of employment.

Bob Rowland had started work as a dispatcher with the county in June, 1979. His salary was computed as $963.90, representing a 10% reduction from the base salary of $1,071.00. Based on the completion of his probationary period, Rowland received an increase in February, 1980, to $1071.00 per month. He received no increase when the general increases were implemented for other employees in May, 1980. In January, 1981, when other employees received a $125.00 per month general increase specified by the new contract settlement, he received an increase to $1,110.00, placing him in Step 4 of the new salary schedule system adopted in 1980. The contract requires three years of service for advancement to this step, but Rowland received it in half of that time.

Les Patton started work as a jailer-dispatcher with the county on January 13, 1980 at a monthly salary of $963.90. While other bargaining unit employees received a substantial general wage increase in May, 1980, his salary was raised only to $965.00. Patton was placed at that time on Step 3 of the new salary schedule, although he then had far less than the two-year service time required by the contract for that step. He did not receive any wage adjustment upon completion of six months of service. In January, 1981, he received the $125.00 per month general wage increase. In March or April of 1981, he was advanced to Step 4 at a monthly rate of $1,110.00, although he then had somewhat less than half of the three years of experience required by the contract for that step.

On September 3, 1981, the union sent the following letter to the county negotiator:

Re: Grant County Sheriff's Office

Dear Mr. Fogelquist:

This is to follow up on previous discussions highlighted in my letter dated April 15, 1981 regarding the above-referenced matter. I have enclosed for execution by Grant County a letter of understanding which reflects the agreement reached during the negotiations for the 1980 collective bargaining agreement. We are requesting that this agreement be reduced to writing at this time because without our knowledge, until the spring of 1981 the Sheriff's Office has not been administering the collective bargaining agreement in accordance with the express understanding reached during the 1980 negotiations. In order to avoid any future misunderstanding, and to serve as a basis for correcting the pay discrepancies for the three employees which have occurred retroactively, the Union requests that this letter of understanding be executed and returned to the Union for execution, at which time it will become a part of the written collective bargaining agreement. In addition, we request that the agreement be implemented retroactive to January 1, 1980 with the three affected employees made whole for the miscalculation in their wage rates.

If you do not comply with these requests by September 30, 1981 we will take appropriate action, which will probably be through filing a complaint with the Public Employment Relations Commission alleging bad faith bargaining by Grant County.

The attachment to that letter, which was also filed as Exhibit A to the complaint in this proceeding, is a proposed "Letter of Agreement" in the following terms:

WHEREFORE, Grant County Sheriff's Office and Teamsters Local No. 148 entered into negotiations for a collective bargaining agreement whereby effective January 1, 1980 a substantially reorganized wage classification system was to be put into effect, and

WHEREFORE, the implementation of the wage classification system would result in three present employees suffering a reduction in their salaries, and insofar as it is the desire of the parties to implement the wage classification scheme for all future employees without adversely affecting present employees,

IT IS HEREBY AGREED that employees Bob Rowland, Marsha Crawford, and Les Patton shall be compensated at the rate of salary calculated by implementing all contractual increases on the basis of a base salary for jailer/dispatcher/secretary/clerk/matron effective January 1, 1980 of $1,071 and all negotiated increases for this classification to be added to those employees' base rate.

This rate of compensation shall remain in effect until such time as the named employees' employment terminates or until modified by subsequent collective bargaining negotiations.

The Chairman of the Grant County Board of Commissioners, Mr. Don Goodwin, replied on September 28, 1981:

> Dear Mr. Hobart:
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> We are writing this letter with reference to our meeting on September 23, 1981 regarding the response to your letter to Mr. Fogelquist dated September 3, 1981.
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> As you know we are not in agreement to fulfill your request as stated in your letter. Without repeating all that has been discussed with you in this matter we would like, in this letter, to state our position as to the equitable adjustments we have made.
>
> First and foremost, during all of our discussions in the past relating to "grandfathering", our interpretation has been that the employees would be placed into their proper longevity step with a waiver of the training requirements for their step. However, in the case of the three subject employees we went beyond that provision and have placed them into Step V which has a five years service with the County requirement. None of which have met that requirement. When this step plan was initiated in the 1980 Agreement no employee in the department took a reduction in their rate of pay.
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> Therefore, your requested letter of understanding does not reflect our position as stated above.

The union's negotiator, Al Hobart, testified that an oral side agreement had been reached with the sheriff, to the effect that Les Patton and Bob Rowland, would be "grandfathered" at their present salaries and that future increases would go on top of that. Hobart testified that the letter of agreement proposed with his September 3, 1981 letter properly reflects the terms of that oral side agreement.

The sheriff was not called as a witness by either party.

William Fogelquist, the county's negotiator, testified that he represented the sheriff only on non-fiscal matters, and that the county commissioners were responsible for monetary items. He further testified that he could not recall any agreement for grandfathering any personnel under the new contract pay structure. He stated that what happened to Patton and Rowland was that they were red circled and had to work their way out with either a promotion or longevity.

Commissioner Francis O'Donnell, testified that Mr. Fogelquist was present at all salary negotiations and that the sheriff had no authority to bargain wages. He further testified that there was no agreement, oral or otherwise, between Grant County and any of the sheriff's department employees that they would be paid other than what they actually received. O'Donnell stated that it had been discussed with the union representative and with the sheriff that all people would not get the same raise and that the whole agreement is in the written contract.

DISCUSSION

The parties have a difference of opinion as to which should be implemented in the case of PAtton and Rowland: General increases or incremental increases? As the Examiner understands the position of the union and the terms of the letter of agreement proposed by the union, it is claimed that Patton was short-changed to the extent of all but $1.10 per month of the general wage increase made effective in May, 1980, but was given an incremental increase in February, 1981 for which he was not qualified under the length of service requirements of the contract. Similarly, it appears to be the union's view that Rowland was short-changed to the extent of all of the May, 1980 and January, 1981 general increases except the $39.00 per month raise implemented in January, 1981. The county, on the other hand, felt obliged to fit both Patton and Rowland onto the newly negotiated salary schedule in 1980 (albeit on steps higher than those for which they were qualified) and to thereafter implement periodic incremental increases while withholding general increases. However, issues of contract interpretation, fairness and equity are not before the Examiner in this unfair labor practice case. The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). The issue which is before the Examiner in this case is whether the parties have reached an oral agreement as to which the employer now has an obligation to sign a written collective bargaining agreement.

RCW 41.56.030(4) provides:

> "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 supplied.)

In Island County, Decision 857 (PECB, 1980), an unfair labor practice violation was found where the employer refused to execute a written collective bargaining agreement after the employer's own offer at the bargaining table had been accepted intact by the union. In Olympic Memorial Hospital, Decision 1587 (PECB, 1983), an unfair labor practice violation was found where the employer refused to reform a written contract which contained, as the result of a mutual mistake, an incorrect version of what

had been agreed upon at the bargaining table and ratified by both parties. See, also: South Columbia Irrigation District/East Columbia Irrigation District, Decisions 1404, 1404-A (PECB, 1982).

The first line of defense asserted by the employer is that the sheriff was without authority to reach the agreement claimed by the union. The testimony of employer witnesses indicates that the union knew or should have known that the sheriff did not have authority to bind the county on financial matters without ratification of the agreement by the county commissioners. Even without any expressed understandings of the division of authority between the sheriff and the commissioners, several provisions of statute lend support to the county's position:

> RCW 36.40.050 Revision by county commissioners. The budget shall be submitted by the auditor to the board of county commissioners on or before the first Tuesday in September of each year. The board shall thereupon consider the same in detail, making any revisions or additions it deems advisable.
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> RCW 36.40.080 Final budget to be fixed. Upon the conclusion of the budget hearing the board of county commissioners shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the division of municipal corporations.
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> RCW 36.40.100 Budget constitutes appropriations--Transfers--Supplemental appropriations. The estimates of expenditures itemized and classified as required in RCW 36.40.040 and as finally fixed and adopted in detail by the board of county commissioners shall constitute the approrpiations for the county for the ensuing fiscal year; and every county official shall be limited in the making of expenditures or the incurring of liabilities to the amount of such detailed appropriation items or classes respectively: Provided, That upon a resolution formally adopted by the board at a regular or special meeting and entered upon the minutes, transfers or revisions within departments, or supplemental appropriations to the budget from unanticipated federal or state funds may be made: Provided further, That the board shall publish notice of the time and date of the meeting at which the supplemental appropriations resolution will be adopted, and the amount of the appropriation, once each week, for two consecutive weeks prior to such meeting in the official newspaper of the county or if there is none, in a legal newspaper in the county.
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> 36.32.120 Powers of legislative authority. The legislative authorities of the several counties shall:
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> * * *
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> (5) Allow all accounts legally chargeable against the county not otherwise provided for, and audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated to its benefit;

> (6) Have the care of the county property and the management of the county funds and business and in the name of the county prosecute and defend all actions for and against the county, and such other powers as are or may be conferrred by law;

The complainant's case thus pivots on a commitment alleged to have been made by an official who was without statutory authority to commit county funds absent approval of the board of county commissioners. The Examiner therefore concludes that there is no contract in existence as to which the obligation to sign already exists.

Both parties have cited State ex. re. Bain v. Clallam County, 77 Wn2d 542 (1970). In that decision, the Supreme Court harmonized the collective bargaining process, which is generally conducted under Chapter 41.56 RCW in private negotiations, with the ratification procedures conducted by public employers in order to comply with their obligations under the open meetings laws. Referring to RCW 41.56.030(4), the Court said:

> The foregoing section uses language designed to show a legislative intention that there be no oral collective bargaining agreements. It means that until reduced to writing and executed by the bargaining parties, an agreement does not, under the statute, become a collective bargaining agreement. Any understanding arrived at in collective bargaining negotiations necessarily, therefore, remains preliminary, or, as the court found here, merely tentative until merged into a written agreement. Obviously, the legislature in authorizing and in empowering county commissioners to enter into written agreements did so to avoid the very thing that happened here: conducting county business privately--as in the Elks' club--from which the public could be excluded, possibly binding the county and its treasury to contractual obligations established only by parol evidence, and leaving the county dependent on the memory and recollection of the negotiators.
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> (5) The county is a political subdivision of the state and its power is limited strictly to that granted by the state legislature. State ex rel. King County v. Superior Court, 33 Wn.2d 76, 204 P.2d 514 (1949). Especially is this rule to be enforced where the public treasury will be directly affected. State ex rel. Thurston County v. Department of Labor & Indus., 167 Wash 629, 9 P.2d 1085 (1932). Within its sphere of responsibility, the board of county commissioners exercises the county's legislative power along with certain executive and, to a very limited degree, perhaps some judicial authority. 77 Wn. 2d 542, at 547:

This case does not deal directly with the enforcement of an oral collective bargaining agreement, and so the Bain decision is not directly controlling. Nevertheless, the Bain decision is instructive when considering whether all of the conditions precedent to signing of a contract have been met. The ratification process cannot be overlooked or disregarded. Even in the Island County and South Columbia/East Columbia cases, supra, the orders required

execution of collective bargaining agreements only after completion of a public ratification process conducted in good faith, as contemplated in the Bain decision.

The complainant has the burden of proof in any unfair labor practice case. See: WAC 391-45-270. The Examiner finds that the record fails to substantiate the complaint of an unfair labor practice by Grant County. Although the county did not call the sheriff or any other witness to directly contradict Hobart's testimony as to what transpired in "side" negotiations between the union and the sheriff, the union did not call the sheriff or any other witness to establish the authority of the sheriff to act on behalf of the employer in negotiating such an oral side agreement. For whatever reasons, no such oral agreement was presented for ratification by the commissioners at the same time as other provisions relating to the new step pay system. There is no evidence that the commissioners ever directly or indirectly ratified an oral agreement made by the sheriff in excess of his authority. On the contrary, it appears that the commissioners considered the matter and rejected the oral agreement in the September 28, 1981 response to the union.

Having considered the evidence, testimony, arguments, and post-hearing briefs, the Examiner now makes the following:

FINDINGS OF FACT

1. Grant County, Washington, is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

2. Truck Drivers, Warehousemen and Helpers, Local No. 148 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).

3. Grant County recognizes Local No. 148 as exclusive bargaining representative of employees in the sheriff's department of Grant County, excluding elected officials and confidential and supervisory employees.

4. The union and the county reached agreement on a collective bargaining agreement for 1980 which contained a revised pay structure. The parties had discussion of how the new pay structure would be applied to existing employees.

5. On September 3, 1981, the union complained to the county's negotiator, that the county was not administering the salary portion of the contract as had been previously agreed. The union relied on an oral "side" agreement made by the union with the sheriff.

6. There is no evidence of ratification or condonation by the Board of Commissioners of Grant County of any assumption of authority by the sheriff to bargain collectively with the union on financial matters, or of ratification of any agreement reached by the sheriff with the union concerning administration of the new pay plan implemented in 1980. Prior to responding to the union's September 3, 1983 letter the commissioners rejected the claimed agreement. The county, in its September 28, 1981 reply, maintained that its administration of the salary schedule was proper.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The sheriff of Grant County was acting beyond the scope of his actual or apparent authority in negotiating any oral side agreement with the union on financial matters, so that the union had no basis to claim it had reached an agreement as to which all conditions precedent to execution have been met.

3. The respondent, Grant County, did not refuse to engage in collective bargaining in violation of RCW 41.56.140 nor did the respondent interfere with, restrain or coerce public employees in the exercise of their rights guaranteed by RCW 41.56.140 and RCW 41.56.010.

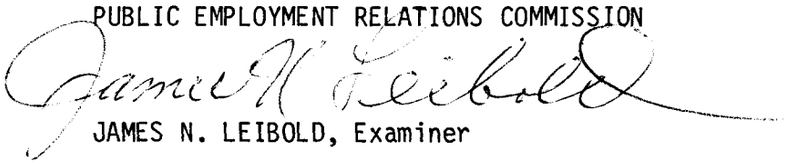
On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

ORDER

The complaint charging unfair labor practice filed in the above entitled matter is dismissed.

ISSUED at Olympia, Washington, this 27th day of May, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JAMES N. LEIBOLD, Examiner