

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| THOMAS GREEN, |) | |
| |) | |
| Complainant, |) | CASE NO. 6623-U-86-1321 |
| |) | |
| vs. |) | DECISION NO. 2579 - PECB |
| |) | |
| KING COUNTY, |) | |
| |) | |
| Respondent. |) | ORDER OF DISMISSAL |
| |) | |
| |) | |

Thomas Green filed a complaint charging unfair labor practices with the Public Employment Relations Commission on October 27, 1986. The complainant alleges that King County violated RCW 41.56.140(1) by its refusal to grant certain employees wage increases during the pendency of a question concerning representation. Pursuant to WAC 391-45-110, it is presumed for the purposes of this preliminary ruling that all of the facts alleged in the complaint are true and provable. The question before the Executive Director is whether the complaint states a claim for relief available through the unfair labor practice provisions of Chapter 41.56 RCW.

From the allegations of the complaint and matters of record of which notice is taken, the complainant is employed in a "courthouse" unit, which is composed of technicians, clerks, office assistants and related employees in several King County agencies: finance/purchasing; records and elections; facilities management; real property; automobile and marriage licenses.¹ A "decertification" petition was filed by several employees of

¹ The "courthouse" unit was previously before the Commission in King County, Decision 360-A (PECB, 1978), where Teamsters Union Local 882 retained its status as exclusive bargaining representative against a decertification effort.

the "Courthouse unit" on October 23, 1985, pursuant to WAC 391-25-010, seeking to remove Teamsters Union Local 882 as their exclusive bargaining representative.²

On November 6, 1985, Teamsters Union Local 882 filed a complaint charging unfair labor practices with the Commission, pursuant to Chapter 391-45 WAC, alleging that King County violated RCW 41.56.140(1) and (2) by assisting employees in the decertification campaign.³ Upon the filing of the union's unfair labor practice charges, the processing of the decertification petition was "blocked" under the provisions of WAC 391-25-370:

(1) Where representation proceedings have been commenced under this chapter and:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; 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 may suspend the representation proceedings under this chapter pending the resolution of the unfair labor practice case.

(2) The complainant(s) in the unfair labor practice case may file a request to proceed, in writing, with the executive director. Such request to proceed shall identify, by case number, the representation proceedings for which it is made, shall request those representation proceedings be continued notwithstanding the pending unfair labor practice case, and

² Case No. 6046-E-85-1082. Notice is taken of the proceedings in that case.

³ Case No. 6095-U-85-1143. Notice is taken of the proceedings in that case.

shall acknowledge that the commission will not entertain objections based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed conforming to the foregoing requirements the executive director shall resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

The union, as the complainant in the unfair labor practice case, declined to file a request to proceed with the representation case.

After hearing, the unfair labor practice charges were dismissed by the examiner on the merits.⁴ The union has petitioned for review of that matter by the Public Employment Relations Commission under the provisions of Chapter 391-45 WAC, and the matter remains pending before the Commission at this time.

The complainant herein alleges that the employer has refused to grant a wage increase and a scheduled increase of medical benefits to employees in the "courthouse" unit until such time as the pending question concerning representation has been determined. The complainant alleges that the employer has granted wage and benefit increases to non-represented employees. The complainant also alleges that the county's personnel manager has refused to provide a rationale for the denied pay raise, claiming that he must "maintain an absolute neutral position".

The Public Employment Relations Commission has emphasized the importance of maintaining "laboratory conditions" during the

⁴ King County, Decision 2553 (PECB, 1986).

pendency of representation proceedings. Maintenance of laboratory conditions is necessary to the free exercise by employees of their right under RCW 41.56.040 to select or refrain from selecting union representation. Accordingly, actions by both unions⁵ and employers⁶ have been found to be improper.

Since the decision on whether to select a bargaining representative belongs to the employees under the statute, employers are admonished to avoid controversial involvement with their employees during the pendency of a question concerning representation. Yelm School District, Decision 704-A (PECB, 1980). As regards the specific allegations of this complaint, changes by an employer of employee wages, hours and working conditions during the pendency of a question concerning representation have been held to improperly affect the laboratory conditions for conduct of the representation case. Mason County, Decision 1699 (PECB, 1983) [election results voided where employer granted unilateral increase in benefits during pre-election period].

In the instant matter, the employer is accused of misconduct because it has remained neutral in regards to the question concerning representation raised by an employee decertification petition. In fact, the employer would seem to have had no other lawful alternative. Accordingly, the complaint charging

⁵ See, Lake Stevens-Granite Falls Transportation Cooperative, Decision 2462 (PECB, 1986) [election results voided and new election ordered where prevailing union in original election conducted beer and pizza party for eligible voters and provided substantial gift to eligible voter on evening prior to election].

⁶ See, Valley General Hospital, Decision 500-C (PECB, 1981) [election results voided where employer interfered with employee rights during pre-election period].

unfair labor practices filed in this matter does not state a cause of action for unfair labor practice proceedings under Chapter 41.56 RCW.


NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 25th day of November, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.