

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

OFFICE AND PROFESSIONAL EMPLOYEES	)	
INTERNATIONAL UNION, LOCAL 11,	)	CASE NO. 6188-U-86-1175
	)	
Complainant,	)	DECISION 2792 - PECB
	)	
vs.	)	
	)	
CITY OF RICHLAND,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
	)	

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On January 22, 1986, Office and Professional Employees International Union, Local 11 (complainant) filed a complaint charging unfair labor practices alleging that the City of Richland (respondent) had violated RCW 41.56.140(4), by unilaterally changing scheduling procedures for holiday work. On January 24, 1986, the parties were invited to comment on the propriety of deferring the dispute to grievance arbitration. The respondent filed its response to the deferral inquiry on February 3, 1986, and complainant filed its response on February 11, 1986.

On April 11, 1986, the parties were informed that the unfair labor practice case would be held in abeyance as an open case on the Commission's docket, pending the determination, through arbitration, of a related grievance pending under the collective bargaining agreement between the parties. At the Commission's request, the parties reported the status of the dispute while the matter was pending in the grievance arbitration process.

An arbitration hearing was conducted before Arbitrator Janet L. Gaunt on June 17, 1987. On August 20, 1987, Arbitrator Gaunt issued an arbitration award stating that the contract "... clearly grants the City the right to determine whether employees work a holiday or not." The arbitrator sustained the employer's position on the holiday work schedule issue, and denied the grievance. The respondent herein has provided the Commission with a copy of the arbitration award, and has requested dismissal of the unfair labor practice complaint.

In a preliminary ruling issued September 4, 1987, the complainant's attention was directed to the "deferral to arbitration" standards set forth by the Commission in Stevens County, Decision 2602 (PECB, 1987). As they would apply to the instant matter:

If the arbitrator concludes that the employer's conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. It would logically follow that the union's right to bargain the matter will have been waived by the language of the collective bargaining agreement that protects the employer's action. Assuming that the standards for acceptance of the award are otherwise met in such a situation, the union should anticipate dismissal of the unfair labor practice allegation based upon the "waiver" conclusion.

Such a result was reached in City of Spokane, Decision 2398 (PECB, 1986), where an arbitrator's decision resolved the question of waiver by contract and made pending unfair labor practice proceedings unnecessary.

The complainant was notified in the September 4, 1987 preliminary ruling that it appeared the standards for deferral to an arbitration award had been met in this case. The complainant

was afforded a specific period within which to show cause why the complaint charging unfair labor practices should not be dismissed. Nothing further has been received from the complainant.


NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED.

DATED at Olympia, Washington, this 9th day of October, 1987.

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.