STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, LOCAL 280, Complainant, vs. SPOKANE SCHOOL DISTRICT, Respondent.	)	CASE 8694-U-90-1896 DECISION 3553 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-captioned matter on July 13, 1990. The complaint has been reviewed by the Executive Director for the purposes of making a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is presumed that all of the facts alleged in the complaint are true and provable. The question at hand is whether an unfair labor practice violation could be found.

Local 280 has been the exclusive bargaining representative of the custodial/maintenance employees of the Spokane School District.[1] Another organization filed a representation petition with the Public Employment Relations Commission June 29, 1990, seeking to replace Local 280 as exclusive bargaining representative of the bargaining unit.[2] The operative allegation of the complaint in this case is that, on or about July 9, 1990, the employer refused

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[1] Notice is taken of the docket records of the Commission in Case 6898-E-87-1190, which indicate that Local 280 was re-certified as exclusive bargaining representative following an election conducted by the Commission. See, Spokane School District, Decision 2766 (PECB, 1990).

[2] Case 8676-E-90-1461. The employer, petitioner and Local 280 have entered into an election agreement under WAC 391-25-230. The case remains pending.

to engage in further collective bargaining negotiations with Local 280. Local 280 alleges a "refusal to bargain" under RCW 41.56.140-(4).

In Yelm School District, Decision 704-A (PECB, 1980), the employer and incumbent union shut down negotiations concerning a new contract for the portion of a bargaining unit affected by a "severance" petition, but continued bargaining and concluded a contract on the remainder of the historical unit. The "severance" petitioner advanced the shutdown of bargaining on the disputed employees as evidence of their abandonment by the incumbent, but the Hearing Officer and the Executive Director rejected that theory. On a petition for review, the Commission stated:

> The petitioner takes exception to a ruling by the Hearing Officer which excluded from introduction in evidence an exhibit offered by the petitioner purporting to establish that the [disputed] classification was excluded from final agreements and implementations of agreements between the employer and the [incumbent] after the petition was filed in this matter. We find that the employer followed well-settled principles in avoiding controversial involvement with a class of employees disputed under a question concerning representation. Those parties had, in fact, no other legal option open to them. (Emphasis supplied)

The Commission's ultimate dismissal of the "severance" petition permitted the employer and incumbent union to resume their relationship at the point where they had left off.

The issue of bargaining by an employer and incumbent union on a new contract during the pendency of a representation petition was revisited by the Executive Director in Pierce County, Decision 1588 (PECB, 1983). The incumbent union in that case relied upon a shift of federal policy indicated in RCA Del Caribe, 262 NLRB 963 (1982) as a basis for its claim that it was entitled to continued negotia-

tions during the pendency of a representation petition, and it sought overturning of the Yelm School District precedent. Noting that Yelm was a decision of the Commission itself, and that the policy enunciated by the Commission was consistent with National Labor Relations Board (NLRB) precedent dating back to Midwest Piping and Supply, 63 NLRB 1060 (1945), the Executive Director declined to tamper with the Yelm precedent and dismissed unfair labor practice charges filed by the incumbent union. No petition for review was filed with the Commission in that case.

The "shutdown of bargaining for a new contract during the pendency of a question concerning representation" policy enunciated in Yelm and left intact in Pierce County was again found to be controlling in the dismissal of "refusal to bargain" unfair labor practice charges filed by incumbent unions in Selah School District, Decision 2425 (PECB, 1986) and in Mid Valley Hospital, Decision 3372 (PECB, 1989). There was no petition for review in either of those cases.

Congress and state legislatures have provided administrative procedures through agencies such as the Commission and the NLRB, to resolve questions concerning representation. The representation case process establishes long-term relationships, so great care is indicated. "Laboratory conditions" are maintained for the conduct of representation elections. Lake Stevens-Granite Falls Transportation Cooperative, Decision 2462 (PECB, 1986). As noted in Washington State Patrol, Decision 2900 (PECB, 1988), employer influence in the selection and internal affairs of unions was of key concern in the Congressional debate which preceded adoption of the National Labor Relations Act (NLRA), and Section 8(a)(2) of the NLRA was adopted to preclude improper employer assistance to unions. Such a concern is equally apt under RCW 41.56.040, which secures for public employees "the free exercise of their right to organize and designate representatives of their own choosing" (emphasis supplied). RCW 41.56.140(2) is the counterpart to

Section 8(a)(2) of the NLRA. The NLRB's Midwest Piping doctrine arose out of a case involving competing unions, and out of a concern that an employer has no rightful place in influencing its employees' choice between competing unions. The situation in the instant case similarly presents a risk of employer conduct showing a preference as between competing unions. The employer properly shut down bargaining with the incumbent to avoid controversial involvement.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above-entitled matter is DISMISSED as failing to state a cause of action.

Dated at Olympia, Washington, the 8th day of August, 1990.

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.