STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

OLYMPIA POLICE GUILD, Complainant, vs. CITY OF OLYMPIA, Respondent.	)	CASE 9767-U-92-2219 DECISION 4160 - PECB DECISION OF COMMISSION

This case comes before the Commission on a petition for review filed by the Olympia Police Guild, seeking to overturn an action of the Executive Director to "defer" the processing of the above-captioned case pending the outcome of related grievance arbitration proceedings under a collective bargaining agreement between the parties.

BACKGROUND

The Olympia Police Guild (union) filed a complaint charging unfair labor practices with the Commission on April 20, 1992. The allegations of that complaint include that the union is the exclusive bargaining representative of certain law enforcement personnel of the City of Olympia (employer); that the employer had implemented new guidelines concerning the hair styles worn by bargaining unit employees; and that the unilateral change was an unfair labor practice. Attached to the complaint was a copy of the collective bargaining agreement in effect between the parties for the period of January 1, 1991 through December 31, 1992.

The matter came before the Executive Director for a preliminary ruling under WAC 391-45-110. The Executive Director issued an

inquiry to the parties, seeking their positions as to the propriety of "deferral to arbitration" under the policies enunciated by the Commission in Stevens County, Decision 2602 (PECB, 1987).

Both parties responded to the Executive Director's inquiry. The employer supported "deferral", citing the grievance procedure of the collective bargaining agreement and "management rights" language which states:

> ARTICLE IV - MANAGEMENT RIGHTS
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> The Guild recognizes the prerogative of the City to manage or administer the Police Department in accordance with its responsibilities, powers, and authority, subject to other provisions of this Agreement. **City prerogatives include, but are not limited to, the following items:**
>
> **1. The right to establish rules and regulations; ...**

The union acknowledged that the contract was in effect and that it contained provision for final and binding arbitration of grievances, but it argued that "deferral" was not appropriate. As to the "management rights" language quoted herein, the union took the position that it was too general to cover dress codes, so that the contract is not reasonably susceptible to an interpretation that the conduct complained of was either prohibited by or protected by the collective bargaining agreement.

After considering the responses of the parties, the Executive Director issued a letter on June 4, 1992, advising the parties that the case would be carried in "deferred" status pending the completion of grievance/arbitration proceedings, and requesting that the parties keep the agency informed about the progress of the grievance/arbitration proceedings. The union purported to file a petition for review in the matter on June 24, 1992.

DISCUSSION

In Stevens County, Decision 2602, cited by the Executive Director, the Commission endorsed "deferral" of "unilateral change - refusal to bargain" unfair labor practice cases where the employer conduct at issue in the unfair labor practice case was "arguably protected or prohibited" by an existing collective bargaining agreement between the parties. That case was considered by the Commission on the basis of appeals filed by both parties, and their joint brief contending that the deferred charges should be heard by the Commission. Notwithstanding the joint efforts of the parties in that case, the "deferral to arbitration" was affirmed.

This Commission made a thorough review and restatement of its "deferral to arbitration" policy in City of Yakima, Decision 3564-A (PECB, 1991) (at pages 9 - 18), resulting in reiteration of the **"arguably protected or prohibited by the collective bargaining agreement"** standard for deferral in "unilateral change - refusal to bargain" cases. Certain procedural standards were identified,[1] none of which are applicable here.

The availability of interlocutory appeals from "deferral" orders was considered by this Commission in City of Yakima, Decision 3880 (PECB, 1991), as follows:

> The Commission's rules for processing of unfair labor practice cases, Chapter 391-45 WAC, make no provision for appeals to the Commission from interlocutory procedural rulings made by the Executive Director or other members of our staff. In this case, the employer sought to frame its petition for review as raising a question of "jurisdiction", and we accepted

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[1] I.e., that there was a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change; that the contract provide for final and binding arbitration of grievances; and that the employer waive any procedural defenses to arbitration.

> argument on that basis. Having considered the employer's arguments, we conclude that no issue of "jurisdiction" is, or ever was, raised by this appeal.
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> The Commission has, and has always had, jurisdiction over the "unilateral change" unfair labor practices alleged in this case. RCW 41.56.140(4); RCW 41.56.160. Even if the Commission were to "defer" its processing of the case under Stevens County, supra, and City of Yakima, supra, the Commission retains jurisdiction over an unfair labor practice case at all times while its processing is "deferred" pending the outcome of grievance and arbitration procedures.
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> WAC 391-45-110 calls for the Executive Director to make a "preliminary ruling" in each unfair labor practice case. At that stage of the proceedings, it is assumed that all of the facts alleged in the complaint are true and provable. A right of appeal exists if allegations are dismissed as failing to state a cause of action. In distinct contrast, however, no right of appeal attaches to the Executive Director's conclusion under WAC 391-45-110 that a case should be heard by an Examiner.
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> Rulings on the propriety of "deferral to arbitration" are commonly made by the Executive Director at the preliminary ruling stage, at or after the time it is determined that a complaint appears to state a cause of action. Rulings on "deferral" can also be made by an Examiner after his or her assignment to the case. Actions taken by the Executive Director and other members of our staff to implement the Commission's "deferral" policies do not involve questions of "jurisdiction". **The Commission's action in considering the petition for review in this case should not be taken as indicating that the Commission will accept or rule upon interlocutory petitions for review from "deferral" decisions in the future.**

[Emphasis by **bold** supplied.]

Our use of the term "arguably" opens the "deferral to arbitration" procedure to a wide range of cases. In the case at hand, the

union's attack on the "deferral to arbitration" goes to the question of whether the parties' contract actually protects or prohibits the employer's conduct, which is the very question left to the arbitrator under our policy. We decline to accept review of the interlocutory order deferring this case to arbitration.

Entered at Olympia, Washington, the 22nd day of September, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Janet L. Gaunt

JANET L. GAUNT, Chairperson

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Dustin C. McCreary

DUSTIN C. McCREARY, Commissioner