Douglas County, Decision 6129 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DOUGLAS COUNTY SHERIFF'S DEPUTIES GUILD,	)	
Complainant,	)	CASE 13370-U-97-3263
vs.	)	DECISION 6129 - PECB
DOUGLAS COUNTY,	)	
Respondent.	)	ORDER OF DISMISSAL

On August 29, 1997, Douglas County Sheriff's Deputies Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Douglas County (employer) had committed violations of RCW 41.56.140. Specifically, the union asserted that the employer had violated a past practice of giving the same wage increase to all employees of the Sheriff's Department.

The complaint was reviewed by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110.[1] In a deficiency notice issued on October 10, 1997, the union was notified that the complaint, as filed, failed to state a cause for action. The union was given a period of 14 days in which to file and serve an amended complaint which states a cause of action, or face dismissal of the complaint.

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[1] At that stage of the proceedings, all the of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

On October 24, 1997, the complainant filed an amended complaint that more fully explained the facts alleged in its original complaint. Nevertheless, the amended complaint still fails to state a cause of action.

DISCUSSION

The union's complaint is based on a premise that all employees of the Douglas County Sheriff's Department have historically been treated alike in wage increases, regardless of whether they were represented for the purposes of collective bargaining.[2] The union complains here that the unrepresented (command staff) employees of the Sheriff's Department were given a wage increase in 1997 that was different from that given to some of the employees represented by the union. Accepting the latter fact as true, the union's theory is nevertheless built on an unsound foundation.

The Bargaining Unit Structure -

The union acknowledges that the department-wide bargaining unit it historically represented was split in the parties' 1996 - 1998 collective bargaining agreement. While it seems to more associate "a substantial pay raise ... for the uniformed deputies" with the onset of their eligibility for interest arbitration, the split of the bargaining unit would have been the first result of an amendment to RCW 41.56.030 which was enacted by the Legislature in 1995 with a delayed effective date of July 1, 1997:

> 41.56.030. Definitions. As used in this chapter:

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[2] There is reference in the complaint to a predecessor organization. Notice is taken of the Commission's docket records for Case 10220-E-93-1684, in which the Douglas County Sheriff's Guild was certified as exclusive bargaining representative of Sheriff's Department employees, replacing Teamsters Union, Local 760.

> ...
> (7) "Uniformed personnel" means: (a) ... (ii) beginning on July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.
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> [1995 c 273 § 1. Prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.].

According to figures published by the Office of Financial Management, Douglas County had a 1996 population substantially in excess of 10,000 but far less than 70,000. The effect of the legislative action was thus to make only the law enforcement officers employed in the Douglas County Sheriff's Department eligible for interest arbitration under RCW 41.56.430 et seq.. Any corrections personnel

or support personnel included in that department remained ineligible for interest arbitration. WAC 391-35-310 provides:

> WAC 391-35-310. Employees eligible for interest arbitration. Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

Thus, the employer and union had no choice but to split up the department-wide bargaining unit which had historically existed.

The term "command staff" is not clearly defined in this complaint, but an inference is available that the persons in that group would be law enforcement officers as defined in RCW 41.26.030. Since "supervisors" have bargaining rights under Chapter 41.56 RCW,[3] *and* since separate bargaining units of "supervisors" are appropriate under Chapter 41.56 RCW,[4] *and* since bargaining units of law enforcement supervisors have the same interest arbitration rights as bargaining units of rank-and-file law enforcement employees,[5] there is ample support for an inference that the "command staff" would be more comparable to the law enforcement officers who are newly-eligible for interest arbitration than to the non-uniformed employees in the department. There is also support for an inference that an employer faced with the possibility that its supervisory employees might organize, bargain to impasse, and go to interest arbitration might be highly motivated to treat supervisors

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[3] Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

[4] City of Tacoma, Decision 95-A (PECB, 1977); City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

[5] City of Seattle, Decision 1667-A (PECB, 1984).

in a manner that is at least comparable to the collective bargaining agreement negotiated for their closest counterparts within the employer's workforce.

The Separate Negotiations -
The complaint alleges that the union and employer agreed on a substantial wage increase for the rank-and-file law enforcement officers, but did not reach agreement on a similar increase for the now-separate non-commissioned bargaining unit. The wage increase given to the command staff apparently equaled the increase negotiated for the commissioned unit, but exceeded the smaller increase negotiated for the non-commissioned unit.

The union marked only the "Other Unfair Labor Practice" box on the forms for both the original complaint and the amended complaint, but its attempt to invoke a "past practice" points to a claim under the "refusal to bargain" prohibition of RCW 41.56.140(4). The statute defines "collective bargaining", as follows:

> (4) "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. ...

RCW 41.56.030(4) [emphasis by **bold** supplied].

Status as an "exclusive bargaining representative" is established under RCW 41.56.080, where reference to "a bargaining unit" leads back to the determination of appropriate bargaining units in RCW 41.56.060 and to the "peculiar to an appropriate bargaining unit"

language of RCW 41.56.030(4). Under City of Wenatchee, Decision 2216 (PECB, 1985) and City of Pasco, Decision 3368-A (PECB, 1990), affirmed 119 Wn.2d 504 (1992), the "peculiar" language has been interpreted as limiting a union's sphere of influence to grievance procedures and the wages, hours and working conditions of the employees within the bargaining unit that it represents. Having effected the separation of bargaining units required by the Commission's precedents and rule, the union and employer now have two separate bargaining relationships, and the union is no longer even entitled to condition settlement of the contract covering the commissioned employees unit on the wage increase granted to the non-commissioned unit. This union certainly has no right to bargain concerning the wage increases granted by the employer to employees outside of both of the bargaining units it represents.

The union does not allege that it was misled by bad faith on the part of the employer when it agreed to the wage increase for the commissioned employees. Nor, does the complaint contain any allegation that the union was misled by bad faith on the part of the employer during the negotiations for the non-commissioned unit. In Benton County, Decision 6035 (PECB, 1997), the Examiner wrote:

> The "refusal to bargain" unfair labor practices in RCW 41.56.140(4) and RCW 41.56.150(5) protect the collective bargaining process, rather prescribing the outcome to be negotiated by the parties. Parties are entitled to insist to impasse on mandatory subjects of collective bargaining (i.e., "wages, hours and working conditions"), and have the right to look at the world around them when deciding whether to make concessions or accept proposals advanced by the opposite party in negotiations. Important in this case, "peculiar to ... bargaining unit" language contained in that definition has been interpreted to mean that an exclusive bargaining representative ... is not in a position to negotiate for what will or will not be granted to employees outside the bargaining unit.

Past practices concerning employees outside of the non-commissioned unit are neither binding, nor a basis for reopening the negotiations, in the non-commissioned unit without the consent of the employer. There is no basis to conclude that the union's unhappiness with the employer's decision to grant the command staff a wage increase equal to that granted to the rank-and-file commissioned personnel could be cured through unfair labor practice proceedings before the Commission.

Statute of Limitations -
The deficiency notice included that the complaint appeared to be untimely under RCW 41.56.160, which imposes a six month statute of limitations on the filing of unfair labor practice complaints. The complaint filed in this case on August 29, 1997 was only timely, on its face, as to acts or events occurring on or after March 1, 1997.

The collective bargaining agreement furnished as an attachment to the complaint indicated the contract is effective from January 1, 1996 through December 31, 1998, and that any economic or benefit changes were to be made effective on January 1, 1997, so this complaint would clearly be untimely as to actions contemporaneous with the contractual wage increase. The original complaint and the amended complaint both lack clear specification of when the disputed wage increase was decided upon or implemented.

The test for applying the statute of limitations is based on when the union knew or *reasonably should have known* of the disputed action. While the union alleges that it first learned of the disputed wage increase in "the middle of March", there is no suggestion of concealment by the employer of wage increases that would have been a matter of public record. Even if the amended complaint otherwise stated a cause of action, dismissal would be indicated because it lacks sufficient factual allegations to support an exception to the statute of limitations.

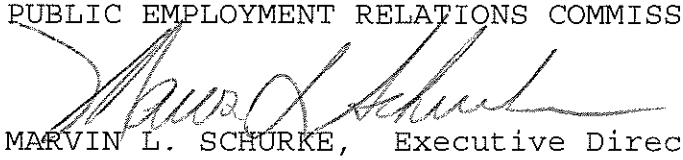
NOW, THEREFORE, it is

ORDERED

The complaint filed in the above-captioned matter is DISMISSED as failing to stated a cause for action.

Issued, at Olympia, Washington, this 19th day of November, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.