

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DONALD J. WAKENIGHT,)	
Complainant,)	CASE NO. 3458-U-81-499
vs.)	DECISION NO. 1289-A - PECB
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, AFL-CIO,)	
Respondent.)	
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DONALD J. WAKENIGHT,)	CASE NO. 3581-U-81-535
Complainant,)	DECISION NO. 1290-A - PECB
vs.)	
CITY OF SEATTLE,)	ORDER DENYING MOTION TO REOPEN PROCEEDINGS
Respondent.)	

The complaint charging unfair labor practices was filed in Case No. 3458-U-81-499 on May 22, 1981. The complaint charging unfair labor practices was filed in Case No. 3581-U-81-535 on August 4, 1981. Each case was reviewed pursuant to WAC 391-45-110, and was found to allege facts on which an unfair labor practice violation could be found. Both of these cases, along with several others, were assigned to Examiner Katrina I. Boedecker of the Commission staff for hearing. Notice was issued setting a hearing date. On October 23, 1981, the parties executed an "Agreement and Release" purporting to resolve all of the unfair labor practices allegations in the captioned cases. The provision of that document now in question states:

"The City of Seattle Personnel Department will complete a classification audit on the positions currently held by Donald Wakenight and Mae Phillips by November 30, 1981."

Other provisions of that document stated the alternative results of the classification audit with, in some instances, further steps to be followed for implementation of particular results. The document specifically provides for withdrawal of an inequity issue from the bargaining table:

"so that the Complainant can pursue the process that he has elected in this Agreement and Release".

The document executed October 23, 1981 was filed with the Public Employment Relations Commission on November 3, 1981 under cover of a letter from the complainant requesting withdrawal of the complaints in the captioned cases. Orders were issued on November 12, 1981 closing the cases.

On December 8, 1981, Wakenight filed a request with the Commission that the captioned cases be "reactivated", asserting:

"The City of Seattle Personnel Department failed to complete the classification study on the date required in the second paragraph of the agreement and release. The classification recommendation requires the signature of the personnel director and was not completed until December 1, 1981."

The Commission had previously received a copy of correspondence between Wakenight and city personnel department officials questioning the time at which the classification study had been completed and requesting certain information supporting the classification study. Attached to the request filed on December 8, 1981 was a copy of a letter to Wakenight from the City's Personnel Director, wherein it is indicated that the classification study was completed on November 25, 1981, that the paperwork reached the Personnel Director's desk on November 30, 1981, and that the classification study was signed by the Personnel Director on December 1, 1981. Also attached to the December 8, 1981 submission to the Commission was a copy of a reply by Wakenight to the Personnel Director in which he questions the honesty of both the city's intentions and procedures.

By letter dated December 9, 1981, the respondents in the captioned cases were advised that the materials filed with the Commission on December 8, 1981 were being regarded as a motion to reopen the cases, and all parties were afforded a period for making written responses to the motion.

On December 18, 1981, Wakenight filed with the Commission a copy of a letter which he directed on December 17, 1981 to the city's Labor Relations Director. Therein, he reiterates his request that the agreement and release be deemed void because the classification study was not signed by the Personnel Director until December 1, 1981. Further, he characterizes the classification study as a farce, indicates his refusal to pursue available procedures for appeal of the classification study, and indicates a desire to initiate a "step 3 grievance". Attached thereto was correspondence entitled "Step III Grievance #E17-81-1".

On December 24, 1981, Local 17 filed a written response to the motion. Following detailed recitation of the facts leading to the unfair labor practice cases and their settlement, the union states that the audit of Wakenight's position was completed on November 25, 1981 and that the results were formalized in a report dated November 30, 1981. A copy of the report document, dated November 30, 1981, is attached to the union's statement. The

union describes Wakenight's arguments concerning the December 1, 1981 sign-off by the Personnel Director as "a technical argument", and urges interpretation of the agreement and release document as requiring that the review be completed by November 30, without guarantee that all documents would be signed by that time. The union notes Wakenight's refusal to utilize the appeal procedures available within the classification process, and its own confusion as to the course Wakenight intended to follow. The union argues that the request is untimely, having come more than twenty days following the issuance of the Orders closing the cases and therefore beyond the time provided in WAC 391-45-330 for withdrawal of a decision. Further, it contends that the motion should be denied because Wakenight has elected to utilize a contractual procedure to which the Commission should defer its unfair labor practice jurisdiction. The union argues that it has met all of its obligations under the agreement and release, and that any breach of that legally binding contract should be remedied in the Superior Courts.

In its response filed on December 24, 1981, the City states that classification interviews were held as early as November 6, 1981 and that a recommendation was completed by November 25, 1981; that a technical error was corrected on November 30, 1981, and that final signatures were affixed on the morning of December 1, 1981. An affidavit is supplied in support of these statements. The City argues that the terms of the agreement and release are outside the purview of the Commission, that the motion was made beyond the twenty day period specified in WAC 391-45-330, and that there is no mistake or newly discovered evidence justifying the use of WAC 391-45-330 even if the request were timely. The City argues that it complied with the terms of the agreement and release by completing the classification audit on November 25, 1981. Finally, the city contends that any technical violation by reason of delay of final signatures until December 1, 1981, was "de minimus" in its effect, i.e., that the complainant did not thereby suffer any damages or monetary loss.

In a letter filed with the Commission on December 31, 1981, Wakenight details his reasons for seeking reopening of these cases. He relies on verbal assurances which he was given at the time the agreement and release document was signed, on a lack of good faith by the city in its handling of the classification study, on the collective bargaining agreement between the city and the union, and on the cooperation between the city and the union.

Further correspondence to date adds little.

DISCUSSION:

It is not necessary to decide in this case the circumstances, if any, under which the unraveling of a settlement agreement will justify setting aside an

order closing an unfair labor practice case. It is clear that Mr. Wakenight is unhappy with his wage rate. The number of allegations filed in this course of litigation and the almost incredible volume of paper filed regarding this motion to reopen are weighty testimony to that fact. But litigation is designed to bring resolution to disputed issues, and it has had that effect with respect to issues within the jurisdiction of the Public Employment Relations Commission. The agreement and release signed by the parties and filed with the Commission clearly indicates the election of Wakenight to take his wage dispute outside of the collective bargaining process protected by RCW 41.56, and to process his claim thereafter under the city's personnel procedures. All of the claims advanced by Wakenight in support of the motion to reopen, including the claim that the agreement and release was violated by delay of the Personnel Director's signature until December 1, 1981, concern the quality of the city's actions in connection with the classification process. Accepting the uncontested facts that the classification study was complete by November 30, 1981, except for the Personnel Director's signature, and that the final sign-off was made on the morning of December 1, 1981, there was at most a technical violation of the settlement agreement. Wakenight has neither made claim of or shown any prejudice to his rights under RCW 41.56 stemming from the delay of a few hours in affixing the final signatures to the classification documents. His complaints concerning the quality of the classification process are matters to be pursued through the channels of the classification process rather than through the collective bargaining process which he expressly abandoned in the agreement and release.

NOW, THEREFORE, it is

ORDERED

The motions of the complainant to reopen the proceedings in the captioned matters are denied.

DATED at Olympia, Washington this 22nd day of January, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director