STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, FOOD PROCESSING EMPLOYEES, PUBLIC EMPLOYEES, WAREHOUSEMEN AND HELPERS UNION LOCAL NO. 760,	)	CASE NO. 5689-U-85-1045
Complainant,	)	DECISION 2233-A - PECB
vs.	)	
GRANT COUNTY,	)	DECISION OF COMMISSION
Respondent.	)	

Hafer, Price, Rinehart and Schwerin, by John Burns, Attorney at Law, appeared on behalf of the complainant.

Paul Klasen, Grant County Prosecuting Attorney, by Bruce L. Lemons, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

This case comes before the Commission on a petition of the Grant County District Court for review of findings of fact, conclusions of law and order issued on March 12, 1986 by Examiner William A. Lang. No briefs have been filed in support of or in opposition to the petition for review. The Grant County Board of County Commissioners submitted a letter indicating its concurrence with the decision of the examiner.

FACTS

In August of 1984, Grant County voluntarily recognized Teamsters Local 760 (the union) as the exclusive bargaining

representative of certain employees working in the Grant County district court. The union and the county began collective bargaining for a contract covering the district court employees as a part of a previously existing bargaining unit of county employees. The negotiations concluded on October 22, 1984, and a collective bargaining agreement was signed by two county commissioners and the union's secretary-treasurer.

The two district court judges did not sign the collective bargaining agreement. Although they were aware of the county's recognition of the union as the exclusive bargaining representative of the district court employees, we find that they never expressly authorized the county commissioners to bargain on their behalf with respect to issues relating to conditions of employment other than wages and wage-related benefits.

On January 10, 1985, the district court judges terminated the employment of Roberta Norris, a district court clerical employee within the scope of the August, 1984, voluntary recognition agreement. Norris filed a grievance under the collective bargaining agreement, contending that the judges had violated the agreement. A grievance meeting was scheduled for January 30, 1985, to include the union, the county commissioners, the judges and the grievant. But that meeting was cancelled, because the judges refused to attend. They contended that the agreement, insofar as it related to non-wage conditions of employment, was inapplicable to district court employees.

On February 19, 1985, the union filed a complaint charging unfair labor practice with the Public Employment Relations Commission, alleging that Grant County had violated RCW 41.56 .140(4) by refusing to process the grievance pursuant to the collective bargaining agreement. A hearing was held before the

examiner and post-hearing briefs were filed. In paragraph 2 of his Findings of Fact, the examiner held that the district court is a public employer within the meaning of RCW 41.56.030(1), as a political subdivision of Grant County.[1] Based on that premise, the examiner concluded that there had been a "refusal to bargain" violation of the collective bargaining law. The examiner also found that the judges had authorized the county commissioners to bargain on their behalf. The examiner ordered the judges to cease and desist from refusing to honor the collective bargaining agreement. He further ordered them to recognize and bargain with the union, process the grievance of Roberta Norris, and post appropriate notices. This petition for Commission review followed.[2]

ISSUES PRESENTED

1. Whether employees of district courts are "public employees" under Chapter 41.56 RCW, so as to require their employers to bargain collectively with their representatives on non-wage matters.

2. If such employees are public employees within the provisions of Chapter 41.56 RCW, did the Grant County district court judges

---

[1] Since the matter was contested, this was more aptly denominated a conclusion of law, and we review it as such.

[2] In the meantime, the same jurisdictional issue has been raised, both before the Commission and in the Superior Court, by three other counties. The Snohomish County District Court judges have caused a declaratory judgment action to be filed, and have sought a writ of prohibition in the Thurston County Superior Court. Simultaneously, unfair labor practice charges pending against that employer before the Commission are being held in abeyance until this case is decided. More recently, similar issues have been raised with respect to the district courts in Yakima County and Grays Harbor County.

authorize the county commissioners to bargain with the union with regard to non-wage issues?

DISCUSSION

The union contends that the county committed an unfair labor practice by refusing to process the Norris termination grievance. Ordinarily, the Public Employment Relations Commission (PERC) declines to assert jurisdiction over unfair labor practice allegations pertaining to contract violations, such as a provision of an agreement requiring grievance arbitration. See, Thurston County Communications Board, Decision 103 (PECB, 1976). Here, however, the conduct of the district court judges is more pervasive than a mere refusal to process one grievance. There is a withdrawal of recognition of the union as exclusive bargaining representative concerning non-wage matters, and the Grant County Prosecuting Attorney, on behalf of the judges, challenges PERC's jurisdiction over the district court. Therefore, the complaint was properly processed as a refusal to bargain unfair labor practice case.

While conceding that Grant County is a public employer under RCW 41.56.030(1), and that bargaining is therefore appropriate on wages and wage-related items, the judges assert that no bargaining may be had on non-wage conditions of employment. They contend that their employees are dual status employees, governed by the holding of the Supreme Court in Zylstra v. Piva, 85 Wn.2d 743 (1975).

The examiner rejected the employer's contention, holding that the precedent concerning superior courts is inapposite because the superior courts are constitutional courts. The examiner

ruled that the district courts are not constitutional courts, but creatures of statute. Therefore, he reasoned, the legislature has the power to make them subject to the collective bargaining act.

The ratio decidendi of the Supreme Court in Zylstra was:

1. The plaintiffs' employment (among a group of probation counselors and detention workers in a juvenile facility) bore a substantial relationship to both Pierce County and to the state of Washington.

   - The relationship to the county was grounded in the statute providing that the compensation of juvenile facility employees was to be fixed and paid by the county.

   - The relationship to the state was grounded upon the common law test of the employer-employee nexus, i.e., the right of control. A statute provided that the juvenile court employees were to be hired, controlled and discharged by the judges of the superior court. Therefore, the judges, possessing the requisite control over the employees, were deemed to be employers. Since superior court judges are state officers in the judicial branch of government, their employees were deemed, under the holding in Roza Irrigation Dist. v. State, 80 Wn.2d 633 (1972), to be state employees.

2. The Supreme Court sought to effectuate the purpose of Chapter 41.56 RCW to the extent possible, preserving as large a sphere of collective bargaining as possible. Hence, wages and wage-related items were held to be bargainable with the county.

3. By limiting the scope of bargaining to wages and wage-related issues, the Supreme Court avoided any conflict between branches of government. Because of the doctrine of separation of powers, and because of concern over potential intrusion into the province of inherent judicial power to manage the court system, the Supreme Court declined to order a broader scope of bargaining.

The concurring opinions of Justices Finley and Utter elaborated upon the concepts of separation of powers and the inherent power of the judiciary to manage its own affairs. However, the key fact was the right of control asserted by the superior court judge, who is a member of the state judicial branch.

The compensation of district court employees, like that of superior court employees, is under the jurisdiction of the county legislative authority. RCW 3.54.010. District court personnel are paid from county coffers. RCW 3.58.030. Thus, there is no question that wages and wage-related matters are subject to collective bargaining under Chapter 41.56 RCW.

RCW 3.54.020 provides that "the district court shall prescribe the duties of the clerks and the deputy clerks." The judges also possess power to hire and fire such employees at will. King County v. United Pacific Ins. Co., 72 Wn.2d 604, 612 (1967). The degree of control required to establish an employer-employee nexus is obviously present. See, James v. Ellis, 44 Wn.2d 599 (1974). Thus, the important inquiry here is whether a Washington district court judge is a member of the state judicial branch under the common law and statutory law of our state. If so, Zylstra controls. If not, then the district court judges could be deemed to be county officials for purposes of Chapter 41.56 RCW and the normal range of employment issues would be bargainable.

We do not find the debate about whether the district courts are constitutional or statutory to be conclusive. While it is clear that there are statutes which establish the district courts, the Supreme Court noted in Zylstra that the juvenile court is also a creature of the legislature.[3] Further, we note "the state constitution is the source for all judicial power of the state." Municipal Court v. Beighle, 28 Wn. App. 141, 143 (1981). Finally, we note that the Washington State Constitution provides, at Article IV, Section 1, that the judicial power of the state shall be vested, inter alia, in the justices of the peace. The "justice of the peace" title is the historical antecedent of the present district court judges, who are now the justices of the peace. RCW 3.30.030.

In City of Spokane v. J-R Distributors, Inc., 90 Wn.2d 722, 727 (1978), the Supreme Court stated in another context that "the administration of justice and the operation of the courts is a matter of state rather than local concern." We can take official notice of the fact that the district courts spend a considerable portion of their time enforcing state statutes, such as the laws prohibiting driving while under the influence of intoxicants, laws prohibiting driving without a valid operator's license, and the like. A lesser part of their caseload arises from enforcement of county ordinances.

Because the elements found controlling in Zylstra, are present here, we hold, under the doctrine of stare decisis, that district court employees are "state employees" for purposes of employment matters other than wages and wage-related benefits.

---

[3] As further support for its holding, the Supreme Court noted, in dictum, just as the legislative creation of the juvenile court did not interfere with judicial power, a legislatively created bargaining scheme for public employees did not invade the courts' ultimate power over their own affairs.

See, Roza Irrig. District v. State, 80 Wn.2d 633, 638 (1972). As in Zylstra, this decision preserves as broad a spectrum of bargaining for these public employees as practicable under a liberal construction of Chapter 41.56 RCW, without interfering with the inherent power of the judiciary to administer the courts. Thus, no separation of powers problem is presented.

Although we find that Zylstra is controlling in this case, we feel the better reasoned view is that court employees may be afforded bargaining rights without interfering at all with judicial functions. We have reviewed the decisions in other states where the bargaining rights of court employees have been decided by appellate courts under public employee collective bargaining laws like Chapter 41.56 RCW. A summary of the court decisions and agency rulings in those states is attached as an Appendix to this decision.

This subject has received a particularly thorough examination in our neighboring state of Oregon, where the state Supreme Court has held, in Circuit Court of Oregon v. AFSCME Local 502-A, 295 Or. 542, 669 P.2d 314 (1983), that the state's public employee collective bargaining act is constitutional, as against a "separation of powers" argument. Construing two statutes that were claimed to be in conflict so as to achieve harmony and consistency, the Oregon Supreme Court concluded that collective bargaining does not divest the courts of their authority to regulate the employment of their employees (in that case, counselors), but merely establishes the manner of exercise of the authority delegated to the judges by law without mandating agreement to any particular term or condition of employment. Responding to a "separation of powers" argument

advanced by the lower courts in opposition to collective bargaining,[4] the Oregon Supreme Court concluded that the Oregon Employment Relations Board was not exercising any judicial function in the performance of the labor law administration function delegated to it by the state legislature in the public employee collective bargaining act.[5]

Chapter 41.56 RCW, like the Oregon law, would not divest the court of its authority to regulate the employment of its employees. If applied to the courts, the PECBA would merely establish the manner of exercise of the authority delegated to the judges by the law, without mandating agreement to any particular term or condition of employment. Clearly, there are also parallel situations in Washington law, including administration of unemployment compensation laws by the Department of Employment Security, administration of Chapter 49.60 RCW (the law on discrimination) by the Human Rights Commission, administration of workmens' compensation laws by the Department of Labor and Industries and the Board of Industrial Insurance Appeals, and the administration of the statutes establishing the state retirement system applicable to court employees. Thus, if Zylstra were not binding on us, our holding would be that district court employees are public employees under Chapter 41.56 RCW for all purposes, and that the judges have a

---

[4] Indeed, in Oregon there is a specific constitutional provision prohibiting a person in one of the three separate constitutional departments of government from exercising any functions of another department. In Washington, the separation of powers doctrine is implicit, and grounded upon the common law.

[5] The court also noted that subjecting the courts to an administrative agency for this one sector of their operation was not unique. The employees of the courts were also covered by state laws on workmen's compensation, unemployment compensation and discrimination in employment, where administrative agencies might be called upon to decide issues touching upon the employment relationship of court employees.

duty to bargain in good faith. That would not mean that they would be forever forfeiting the management prerogatives traditionally retained by public employers. It would mean only that they would be situated similarly to other elected officials under the statute. At such time as labor-management relations actually did begin to intrude upon or interfere with judicial or court administrative functions, that would be soon enough to determine whether, and to what extent, the bargaining law would be circumscribed by the concept of separation of powers. The Supreme Court of our state would do well to reconsider the holding and rationale of Zylstra v. Piva.

The decision of the Executive Director in Pierce County, Decision 1039 (PECB, 1980) held that district court employees were public employees for all purposes, and then went on to make a unit determination. The present jurisdictional issue was not brought before the full Commission at that time, no petition for review having been filed. We now overrule that decision to the extent that it conflicts with our conclusion here, because we are bound by Zylstra, which we find not to be distinguishable.

Accordingly, the rulings of the examiner are hereby reversed, and the Commission makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Grant County is a "public employer" within the meaning of RCW 41.56.030(1), and is the employer of the district court employees for purposes of wages and wage-related issues.

2. The District Court for Grant County regulates the conditions of employment of its employees other than wages and wage-related matters.

3. Teamsters, Food Processing Employees, Public Employees, Warehousemen and Helpers Union Local No. 760 is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents certain employees employed in the Grant County District Court as part of a larger bargaining unit of employees of Grant County.

4. The judges of the Grant County District Court were aware of the collective bargaining agreement negotiated by the county commissioners and purporting to cover their employees for all issues, but the judges never authorized the county commissioners to bargain on their behalf with respect to issues other than wages and wage-related items.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The Grant County District Court is a part of the judicial branch of state government and, as such, is not a "public employer" within the meaning of RCW 41.56.030(1).

3. The employees of Grant County District Court are "public employees" under Chapter 41.56 RCW only for purposes of bargaining collectively with Grant County with respect to wages and wage-related matters.

4. With regard to personnel matters other than wages and wage-related matters, the employees of the Grant County District Court are not "public employees" under RCW 41.56 .030(2), but rather are employees of the judicial branch of state government.

5. The refusal of the Grant County District Court to recognize, bargain with and process grievances filed by Teamster Local 760 as to matters covered by paragraph 4 of these conclusions of law, including the discharge of Roberta Norris, was not a violation of RCW 41.56.140(4) and/or (1).

ORDER

The complaint charging unfair labor practices filed in this matter is DISMISSED.

ISSUED at Olympia, Washington, this 10th day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner

Commissioner Mark C. Endresen did not take part in the consideration or decision of this case.

APPENDIX TO GRANT COUNTY, DECISION 2233-A (PECB, 1986)

Our summary of the holdings by other state courts and by other state public employment relations agencies is as follows:

OREGON: The Oregon Supreme Court and Employment Relations Board (ERB) have held that court employees are subject to the state's public employee collective bargaining act and that, unless a real and present danger to court administration is shown, there is no problem with extending bargaining rights and ERB jurisdiction to court employees. Circuit Court of Oregon v. AFSCME Local 502-A, 295 Or. 542, 669 P.2d 314 (1983) [holding that juvenile court counselors are public employees]; Lent v. Employment Relations Board of the State of Oregon and the Oregon Public Employees Union, 664 P.2d 1110 (Or.App., 1983) [holding that the collective bargaining act is not inconsistent with statutes providing that the Chief Justice shall exercise administrative authority and supervision over courts, and rejecting separation of powers argument].

MICHIGAN: The Michigan courts have allowed the organization of most court employees. Teamsters Local 214 v. 60th District Court, 417 Mich. 291, 335 N.W.2d 470 (1983), adopting opinion of the Michigan Court of Appeals at 302 N.W.2d 203 [holding, over a "separation of powers" objection, that the court's assignment clerk was subject to the jurisdiction of the Michigan Employment Relations Commission]; Irons v. 61st Judicial District Court Employees Chapter of Local 1645, 362 N.W.2d 262 (Mich. App., 1984) [holding that court recorder/secretary position is not a sensitive position requiring trust and confidence of the judge and is, therefore, not exempt; but holding, using the canons of statutory construction, that the

judge was not obligated to retain the employee as his court recorder]. The question of whether Michigan's district court judges were "public employers" was settled in Judges of the 79th Judicial District v. Barry County, 385 Mich. 710, 190 N.W.2d 219 (1971). The Supreme Court of Michigan has rejected various assertions by public employers claiming exemption from the duty to bargain by virtue of conflicting constitutional provisions, statutes, home rule charters and the like. The courts have held that the Public Employment Relations Act prevails over each of these and requires bargaining for public employees. However, in In Re Petition for a Representation Election Among Supreme Court Employees, 406 Mich. 647, 281 N.W.2d 299 (1979), it was held that employees of the Supreme Court itself, under Article III, Section 2 of the Michigan Constitution, were precluded from coverage under the Public Employment Relations Act, because of the separation of powers doctrine.

WISCONSIN: The Wisconsin Employment Relations Commission has held that court employees generally may be part of a bargaining unit. In Wisconsin, the recent debate has been limited to whether certain high-level direct appointees of judges are excludable as "managerial", "professional", "supervisory" or the like. The Circuit Court has held that the clerk of court is not a "professional employee" with exempt status. See, Dane County v. WERC, Case No. 84-CV-1409, Decision Number: 21397 (Dane County Cir. Ct., February 25, 1985); Waupaca County Courthouse Employees, Decision 20854-C (Wisconsin Employment Relations Commission, September 16, 1985).

MASSACHUSETTS: Massachusetts has a specific statute providing that the Chief Administrative Judge is the employer for bargaining purposes with public employees. Court reporters have been held not to be "professional employees". See,

Commonwealth of Massachusetts, Commonwealth of Massachusetts Superior Court Reporters Association, and Operating Engineers, Local 6, Case No. SCR-2170 (Mass. Labor Relations Commission, August 30, 1983). By contrast, employees of the public defender's office have been held not under the jurisdiction of the Chief Administrative Judge, and therefore not public employees. Commonwealth of Massachusetts, Chief Administrative Justice, 1 National Public Employment Relations Reporter, IV-68 (Mass. Labor Relations Commission 22-10038, March 9, 1979).

PENNSYLVANIA: The Pennsylvania courts seem to have adopted a system similar to the "dual status" analysis of Washington's Zylstra v. Piva decision. The county may perform the bargaining for the judges, but the scope of bargaining is limited due to a separation of powers problem. See, e.g., Local 810 AFSCME v. Commonwealth ex. rel. Bradley, 479 A.2d 64 (1984); AFSCME v. PLRB, 477 A.2d 930 (1984); County of Allegheny v. Allegheny Court Association, 446 A.2d 1370 (1982); Esthelman v. Commissioners of County of Berks, 436 A.2d 710, 712 (1981); and Ellenbogen v. County of Allegheny, 388 A.2d 730 (1978). In these cases, Pennsylvania courts have held that: (1) court employees are entitled to collective bargaining rights under the PERA, although the process cannot encroach upon judicial authority to hire, fire and supervise court employees; (2) the reclassification of jobs or duties falls within the exclusive judicial function; (3) wages and other financial matters are arbitrable under Pennsylvania's interest arbitration statutes and, therefore, a final report on pay and a pay plan is arbitrable and subject to bargaining; and (4) the county commissioners are the managers for the courts in collective bargaining for those employees paid from county funds. Because of the inherent powers reasonably necessary to the courts to operate judicially and because of the separation of powers doctrine, a non-infringement principle has been

established whenever there is a "genuine threat" to judicial operations. Examples of topics that have been held not bargainable by the county commissioners on behalf of the judges are vacations, seniority, suspension and discharge (discipline), scheduling, overtime and rest periods, as well as holidays. It has been held that the county commissioners were not violating the collective bargaining act by refusing to bargain the above items. Sick leave, jury duty, funeral leave, and shift differential issues have also been held non-bargainable. Several Pennsylvania Labor Relations Board decisions require that "court appointed" and "court related" employees be included in separate bargaining units.

OHIO: Under the new Ohio Public Employees Collective Bargaining Act, the courts reserve the right to bargain or not to bargain with their employees. A determination of whether an employee is a court employee seems to depend on the nexus between the judge and the employee, with regard to supervision and control. See, e.g., State ex. rel. AFSCME Council 8, et. al. v. Spellacy, Chief Justice, et. al., 17 Ohio St.3d 112 (1985); Five County Joint Juvenile Detention Center and AFSCME Council 8, Case No. 84-RE-040-0092 (Ohio State Employment Relations Board, September 26, 1985).

ILLINOIS: The status of this subject under the new Illinois law is unclear. The State Labor Relations Board had held that court employees were public employees, but that the judges and the local government officials were "joint employers". County of Tazewell and AFSCME Council 31, Case No. S-RC-2 (Illinois State Labor Relations Board, September 27, 1985). The Circuit Court has held that court employees are not public employees. County of DuPage, IBEW Local 701 and Honorable Carl F. J. Henninger v. SLRB, Case No. 85MR0388 (Illinois Circuit Court, September 16, 1985);

NEW JERSEY: The courts have held that the judges have the sole discretion to decide the question whether employees are "public employees" or "judicial employees". The New Jersey Public Employment Relations Commission makes only findings of fact and an advisory recommendation on the issue. See, In the Matter of the Judges of Passaic County, 495 A.2d 848 (New Jersey Supreme Court, 1985) [holding that PERC does not have subject matter jurisdiction to make a final determination on which employees are judicial employees, but as a matter of comity, PERC may conduct a fact finding hearing in order to make factual recommendations]; In re County of Ocean, No. 78-49, 4 N.J.PER 92 (N.J. PERC), affirmed 167 N.J.Sup. 73, 400 A.2d 521 (Appellate Division, 1979) [holding that court clerks are an integral and necessary part of the judicial system]. The leading case in New Jersey appears to be Passaic County Probation Officers Association v. County of Passaic, 73 N.J. 247, 374 A.2d 449 (1977) [holding that PERC has no jurisdiction to decide such issues, as the court has preemptive power over the operation of the courts; that the Chief Probation Officer was an arm of the judicial system; and that a constitutional provision granting the Supreme Court power to administer the courts by rules prevails over the New Jersey Employer/Employee Relations Act of 1948].

MINNESOTA: Minnesota has held that court employees are "essential" employees and therefore cannot be included in a bargaining unit of other public employees. See, Hennepin County Court Employees, 1 NPER 24-10002 (Minn. Supreme Court, 1979). See, also, County of Ramsey, 1 NPER 24-10009 (Minn. Dist. Ct., 1979).

FLORIDA: Florida, where public employee collective bargaining is a matter of constitutional right, appears to have a unique line of cases holding that deputy court clerks are not

"public employees" as they are "appointed" as opposed to "employed". See, Murphy v. Mack, 358 So.2d 822 (Florida Supreme Court, 1978) [holding that although sheriff is a public employer within Chapter on Labor Organizations, as the sheriff's office is an agency of the State, and although the sheriff has the requisite control over the deputies, the deputy sheriffs are not public employees, and are not subject to PERC's jurisdiction because they are appointed and not employed] and its sequel Broward County, 17th Judicial Circuit (Court Clerk), and MEBA Federation of Public Employees v. PERC, (Florida Appellate, 1985), where the Florida Court of Appeals followed Murphy when the question related to court clerks.