STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1191-WC,	CASE NO. 6869-U-87-1391
Complainant,	DECISION 2932-A - PECB
vs.	
WALLA WALLA COUNTY,	DECISION OF COMMISSION
Respondent.	

Pamela G. Bradburn, General Counsel, appeared on behalf of the complainant.

Mary A. Koch, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

Walla Walla County has petitioned the Commission for review of a decision issued by Examiner Kenneth J. Latsch on May 18, 1988.[1] The Examiner concluded that the employer committed a "refusal to bargain" unfair labor practice by the conduct of its negotiator during negotiations on a contract "reopener" with the Washington State Council of County and City Employees, Local 1191-WC.

The relevant facts concerning this dispute are fully set forth in the Examiner's decision and are incorporated, by reference, herein.

---

1 Decision 2932 (PECB).

ISSUES

The employer presents four issues for review:

1. Did the Executive Director err by not dismissing the union's complaint for failure to state a cause of action, after advising the union to amend, and the union stating it would not do so?

2. Did the Examiner err by limiting the scope of the evidence to the negotiating sessions which occurred on the "reopener"?

3. Did the Examiner err by finding that the employer refused to give good faith consideration to any proposal made by the union concerning the issue of union security?

4. Did the Examiner err in concluding that the employer committed a refusal to bargain unfair labor practice in violation of RCW 41.56.140(1) and (4)?

DISCUSSION

Did the Union State a Cause of Action?

The correspondence that took place shortly after the union's complaint was filed indicates that the Executive Director initially interpreted the complaint under WAC 391-45-110 as merely alleging a "refusal to agree", which is non-actionable. The Executive Director wrote to counsel for the union, advising her to amend the complaint to state a "refusal to bargain" cause of action, or he would dismiss.

In a written response, counsel for the union explained that the original complaint in fact alleged a "refusal to bargain", and that she would not amend the complaint. She stated that if the Executive Director dismissed the complaint, the union would appeal. The Executive Director accepted her explanation as an amendment, and did not dismiss the complaint, on the grounds that in light of the explanation, it did, in fact, state a cause of action.

The employer contends that a dismissal is mandatory under WAC 391-45-110 if a complaint fails to state a cause of action. It calls attention to WAC 391-45-070, claiming that it allows amendments only by motion, pointing out that counsel for the union did not move to amend and, in fact, refused to amend. Therefore, the employer contends that the Executive Director erred when he did not dismiss the complaint.

The union submits that the issue should have been submitted to the Commission, pursuant to WAC 391-45-350, within 20 days after the Executive Director's preliminary ruling assigning the case to the Examiner for hearing. The union further contends that the employer misunderstands the process described above, and the action taken by the Executive Director.

The union's procedural argument is without merit. An order of dismissal issued by the Executive Director under WAC 391-45-110 is a final order subject to review by the Commission under WAC 391-45-350. By contrast, the assignment of a case for hearing is merely an interlocutory action which does not bind the Examiner to find a violation, and it is then the Examiner's decision that is subject to review under WAC 391-45-350.

We find that the Executive Director's action in this case was proper. As a administrative agency, our process for initial

handling of unfair labor practice complaints does not involve the degree of formality that one would expect in court proceedings. The Executive Director serves only in a screening capacity with respect to complaints that are filed. Many of the representatives of the parties that appear before the agency are not attorneys. Accordingly, the Executive Director endeavors to consider substance over form. After the union explained its complaint in its letter response, and notwithstanding the union's refusal to "amend", the Executive Director properly interpreted the complaint as having been amended and stating a cause of action.

Did the Employer Fail to Bargain in Good Faith?

The third and fourth issues raised by the employer are different views of the same analysis. The Examiner found that the employer refused to give good faith consideration to the union's proposals on union security, and so concluded that the employer had committed a "refusal to bargain" violation.

In support of its position, the employer points to the several negotiating sessions that were held on the subject of union security, and to the language of RCW 41.56.030(4) stating that a party is not required to make concessions.

The union presents an analysis of similar language in the National Labor Relations Act, 29 U.S.C. 158(d) and its legislative history, arguing that the good faith bargaining obligation requires proposals and counterproposals on a subject that is on the table. NLRB v. American National Insurance Co., 343 U.S. 395 (1952).

The Examiner set forth a detailed, fully reasoned decision as to why he believed a violation occurred, and we agree with his

analysis. As the Examiner stated in his opinion, there is a "fine line" between a firm position on a mandatory bargaining subject and bad faith. This reflects the natural tension between the obligation to bargain in good faith and the statutory mandate that there is no requirement that concessions be made or an agreement be reached. RCW 41.56.030(4). This case turns on the evidence concerning the first negotiating session between the parties, when the employer's negotiator went so far as to suggest that the union select another issue to discuss,[2] citing the employer's long-standing opposition to union security measures, and then, according to several witnesses, declared the parties to be at an "impasse" when the union persisted with its union security demand. Although several meetings followed during which the parties discussed the union security issue, the die was cast. The first meeting strongly suggested that the employer simply would not consider the union security issue. The employer's subsequent meetings with the union, and its listening to union proposals, does not alter the situation. The employer made no proposals of its own on the subject of union security, and did nothing else to indicate that those later discussions were anything except surface bargaining.

<u>Was the Scope of Evidence Improperly Limited?</u>

The employer maintains that the "totality of the circumstances" must be considered when determining the ultimate issue of good faith bargaining. Thus, argues the employer, the Examiner erred when he refused to allow evidence of contemporaneous negotiations between the county and the representatives of other bargaining units, as well as evidence of past negotia-

---

[2] The negotiations were under a contract "reopener" which allowed each party to select one subject, in addition to wages, for discussion.

tions between the employer and this union. The employer, in its brief, did not further describe the nature of the evidence that the Examiner excluded.

The union contends that the employer did not properly object to the Examiner's ruling at the hearing, and that it raises the issue for the first time on review. Moreover, the union asserts that the Examiner properly excluded evidence of outside negotiations.

We agree that the "totality of circumstances" must be considered. Nevertheless, such circumstances must be relevant, and not unduly remote, to the ultimate issue before the Commission in the particular case. Viewing the facts of this case, which concerns the single issue of union security, the events which occurred at the bargaining table are the most relevant, if not the only relevant, events.

The Examiner has a duty to control the scope of the evidence at the hearing, so as to preclude the time-consuming process of receiving evidence that will have, at most, a marginal effect on the ultimate determination of the case. The employer implies that the evidence excluded would demonstrate a sincere, longstanding employer position that employees should be allowed freedom of choice with respect to union membership or fees, and that Walla Walla County has consistently maintained this position. While we do not doubt the sincerity of the employer's motives, we do not see how this evidence, even if considered, would affect the outcome of the proceedings. It is the circumstances at the bargaining table that mostly determine whether or not good faith bargaining has taken place. Viewing the facts in this case, we do not believe consideration of the evidence offered by the county would affect the outcome. Thus,

if any error occurred (and we do not think it did), it would not be reversible.

NOW, THEREFORE, it is

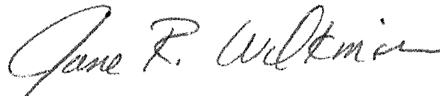
ORDERED

1. The findings of fact, conclusions of law and order issued by Examiner Kenneth J. Latsch are AFFIRMED and adopted as the findings of fact, conclusions of law and order of the Commission.

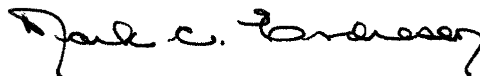
2. Walla Walla County shall, within thirty (30) days following the date of this order, provide notice of its compliance as set forth in the Examiner's decision.

DATED at Olympia, Washington, this 16th day of November, 1988.

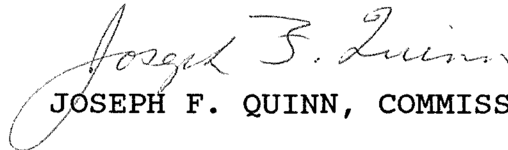
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, CHAIRMAN



MARK C. ENDRESEN, COMMISSIONER



JOSEPH F. QUINN, COMMISSIONER