STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 378, Complainant, vs. MASON COUNTY, Respondent.	)	CASE 6961-U-87-1414 DECISION 3116-A - PECB DECISION OF COMMISSION

Owen Linch, Business Representative, appeared on behalf of the complainant.

Gary P. Burleson, Prosecuting Attorney, by Michael E. Clift, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

Mason County seeks review of a decision of Examiner Frederick J. Rosenberry, who found that the employer violated RCW 41.56.140(1) and (4), by conditioning collective bargaining on the withdrawal of certain pending litigation.

BACKGROUND

This case is the continuation of a dispute that began shortly after the general election in November of 1984, when two new members were elected to the Board of Commissioners of Mason County. In the weeks that followed, the "lame duck" members of the county board negotiated with the union on what has come to be known as the parties' "original" collective bargaining agreement for 1985-86. When the employer's new officials took office, they refused to honor the "original" agreement negotiated by their predecessors,

and asked the union to bargain as if that agreement did not exist. The union responded with unfair labor practice charges.

During the balance of 1985 and early 1986, the union refused to give up its claim concerning the "original" agreement by entering into unqualified bargaining in response to the employer's requests. The parties did, however, enter into two "interim" agreements which, we find, clearly reserved the possibility of some further bargaining between the parties for 1985-86.

In Mason County, Decision 2307-A (PECB, 1986), this Commission found that two of the negotiating sessions which led to the "original" 1985-86 collective bargaining agreement between these parties had been held in violation of the Open Public Meetings Act, Chapter 42.30 RCW, but that the defect could have been "cured" by action taken at a properly held public meeting. Accordingly, we found that the employer committed an unfair labor practice under Chapter 41.56 RCW, when it refused to consider the negotiated agreement for ratification or rejection at an open, public meeting held pursuant to Chapter 42.30 RCW.[1]

The employer petitioned for judicial review, and the Superior Court for Mason County reversed the Commission. The court held that the "original" agreement negotiated in contravention of Chapter 42.30 RCW was null and void, and could not be rehabilitated. Thus, the court held that no unfair labor practice occurred. Mason County v. PERC, (Mason County Superior Court, 86-2-00141, 1987).

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[1] Attempting to give effect to both Chapter 41.56 RCW and Chapter 42.30 RCW, we had fashioned our remedial order against the premise that a violation of the Open Public Meetings Act could be abated by the public body considering the agreement, in good faith, at an open public meeting. We reiterate that we did not order Mason County to ratify the contract. Such an order would have subverted the intent of the Open Public Meetings Act.

The facts at issue in the instant case occurred just prior to and immediately following the decision of the Superior Court. While the union and the Commission both appealed the decision of the Superior Court, the union indicated that it desired to return to the bargaining table for 1985-86. At that point, the employer changed its position and refused to bargain unless the appeals were dropped.[2]

ISSUES ON REVIEW

On review, the employer challenges the Examiner's determination on most of the issues, contending that:

1. The complaint is barred by the 6-month limitation period set forth in RCW 41.56.160.

2. The Commission lacks subject matter jurisdiction over the unfair labor practice charges, because jurisdiction to determine the validity of the previously negotiated 1985-86 labor agreement rested with the courts.

3. The union made an "election of remedies" when it appealed the Superior Court decision, and so has absolved the employer of any duty to bargain further for 1985-86.

4. There was insufficient evidence of the county's refusal to bargain within the meaning of RCW 41.56.140(1) and (4).

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[2] Although not known to the parties at the time, and thus not a factor in the instant case, the decision of the Superior Court has since been affirmed. Mason County v. PERC, ___ Wn.App ___ (Division II, 1989). The Supreme Court denied review. ___ Wn.2d ___ (1989).

DISCUSSION

The Statute of Limitations

We do not agree with the employer's claim that the union's "real complaint" in this case is the employer's failure to ratify the "original" 1985-86 agreement. That was, and remains, a separate issue, which was resolved by the courts.

The complaint in this case was filed by Teamsters Local 378 on July 30, 1987, and pertained to the employer's refusal to negotiate during June and July of 1987 on an agreement to replace the "original" agreement for 1985-86. We agree with the Examiner that this action concerns only conduct by the employer which took place during the two months immediately preceding the filing of the complaint. The fact that the negotiations desired by the union would have pertained to an earlier period does not alter that fact. RCW 41.56.160 relates to the time period when complained-of conduct occurred, not to the period of time under discussion in the requested negotiations.

Jurisdiction

The employer's brief in support of its petition for review states that "jurisdiction to determine the validity of the original 1985-86 labor agreement rests" with the courts. We agree. The courts have firmly declared that the "original" labor agreement was void for all purposes. Having said that, we also observe that the statement has nothing to do with this case. We are concerned here only with what went on after the Superior Court ruled that the "original" agreement was a nullity. In particular, this case involves what happened when the union asked to bargain an agreement to replace the "original" agreement, and the employer refused.

Election of Remedies

The employer next contends that the union elected its remedy by pursuing the issue of the prior case to the courts, and so has given up its right to insist on further negotiations for 1985-86.

The Continued Existence of a Duty to Bargain -
The duty to bargain collectively is satisfied by signing a written contract. RCW 41.56.030(4); State ex rel. Bain v. Clallam County, 77 Wn.2d 542 (1970). It is clear that these parties have neither a written contract, nor a binding obligation to sign a contract, for the 1985-86 period.

In rejecting the employer's argument regarding subject matter jurisdiction, the Examiner observed, at page 9 of his decision:

> As a consequence of the Court's order invalidating . . . the ["original"] labor agreement . . . the employer was left with the bargaining obligation. [Footnote omitted] The Court order did not grant the employer dispensation from its obligation to bargain in good faith with the union.

We find no flaw in the Examiner's reasoning, although we find it is more aptly stated in relation to the employer's "election of remedies" claim. The courts have entirely relieved the employer of the "original" agreement for 1985-86, but they have not relieved the employer of its statutory duty to bargain in good faith for the 1985-86 period. There was, in fact, never any satisfaction of the duty to bargain imposed by Chapter 41.56 RCW.[3]

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[3] Even if our decision had been affirmed, the employer would not have been placed in an "untenable" position by continuing negotiations after the Superior Court ruled. Had it chosen to ratify the "original" agreement, its bargaining obligation would have ended. Had it exercised its right to refuse ratification, then the bargaining obligation would merely have continued.

We agree with the Examiner that the union did not surrender its collective bargaining rights for 1985-86 under an "election of remedies" or similar theory, by appealing the determination of the Superior Court. If there was any lingering doubt at the time this case arose, the affirmation of the Superior Court decision on appeal has clarified the situation. The parties never had, and do not have, an agreement for the period at issue.

Sufficiency of the Evidence

The Interim Actions and Agreements -

The employer asserts that a letter from the union dated November 1, 1985, as well as the interim agreements that followed, evidence the parties' intent that any obligation to bargain collectively would be "suspended" until a final court ruling was obtained. The employer complains that the union acted consistently with the interim agreements until June 23, 1987, when it requested bargaining.[4] Importantly, the interim agreements did not relate only to the court proceedings. Their references to "bargaining" indicate to us that the possibility of further bargaining was contemplated by the parties. The "suspension" of bargaining has ceased to operate now that a final court ruling has been obtained.

Union Bad Faith -

The employer also asserts that the facts concerning the parties' correspondence and interim agreements constitute "bad faith" on the part of the union which should excuse the employer from its duty to bargain. The employer never filed unfair labor practice charges against the union, however, and the union's potential culpability for a "refusal to bargain" unfair labor practice under RCW 41.56-.150(4) is not before us.

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[4] Prior to that time, the union had refused several requests from the employer to re-negotiate the 1985-86 contract.

This argument would be without merit even if the employer had filed timely charges against the union. We have previously held that one party's "bad faith" unfair labor practice or other unlawful conduct does not excuse or justify unlawful conduct on the part of the other party. See, Steilacoom School District, Decision 2527 (EDUC, 1986). Accordingly, the union's conduct did not justify the employer's refusal to bargain.

The Examiner found that, after the appeal of the Superior Court decision was filed, the county took the position that it would not bargain until after the appellate court rendered its decision. The Examiner interpreted the employer's position as holding collective bargaining "hostage" to the appeals process, and as being an unlawful precondition on bargaining. We have today held in another case that withdrawal of litigation is not a mandatory subject of collective bargaining, and that a party commits an unfair labor practice by conditioning collective bargaining on the withdrawal of litigation. Clark County PUD, Decision 3045-B (PECB, 1989). We find that the Examiner's decision is amply supported by the record.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact, conclusions of law and order issued in the above-entitled matter by Examiner Frederick J. Rosenberry are affirmed and adopted as the findings of fact, conclusions of law and order of the Commission.

2. Mason County, its officers and agents, shall notify Teamsters Union, Local 378, in writing, within thirty (30) days following the date of this Order as to what steps have been taken

to comply herewith, and at the same time provide Teamsters Union, Local 378 with a signed copy of the notice required herein.

3. Mason County, its officers and agents, shall notify the the complainant, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the complainant with a signed copy of the notice required herein.

4. Mason County, its officers and agents, shall notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required herein.

ISSUED at Olympia, Washington, this 11th day of October, 1989.

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.