

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL 3315,)	
)	
Complainant,)	CASE 9802-U-92-2232
)	
vs.)	DECISION 4336-A - PECB
)	
SNOHOMISH COUNTY FIRE DISTRICT 3,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	

Derik Millich, President of IAFF Local 3315, and W. Mitchell Cogdill, Attorney at Law, appeared for the union.

Foster Pepper & Shefelman, by P. Stephen DiJulio, Attorney at Law, appeared for the employer.

This matter comes before the Commission on a timely petition for review filed by International Association of Fire Fighters, Local 3315, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke.¹

BACKGROUND

On May 15, 1992, International Association of Fire Fighters, Local 3315 (union), filed a complaint charging the Snohomish County Fire Protection District No. 3 (employer) with unfair labor practices. The complaint alleges that, for a period of approximately seven years through 1991, the employer had provided "cost of living" wage increases to its employees on January 1 of each year; that the union was recognized by the employer as exclusive bargaining

¹ Snohomish County Fire District 3, Decision 4336 (PECB, 1993).

representative some time after July of 1991; that the union requested bargaining prior to December 16, 1991; and that the employer's Board of Fire Commissioners decided, on December 16, 1991, not to grant cost of living increases to fire fighters represented by the union, because the parties were engaged in the bargaining process. The complaint further alleged that the withholding of the "cost of living" increase from bargaining unit employees was an interference with the employees' rights, and constituted bad faith bargaining.

On June 4, 1992, Executive Director Marvin L. Schurke issued a preliminary ruling letter pursuant to WAC 391-45-110, concluding that an employer of organized employees is obligated to maintain the status quo on matters of wages, hours and working conditions, and would place itself in peril by unilaterally granting any wage increase, whether called a "cost of living" increase, or some other term. The union was given a period of 14 days in which to file an amended complaint stating a cause of action or face dismissal of the complaint.

On June 11, 1992, the union filed an amended complaint together with a letter disagreeing with the basic premise of the preliminary ruling letter. The union stated it believed the employer to be violating the status quo by failing to follow a past practice. The amended complaint alleged facts that were substantially the same as were stated in the original complaint, however.

On April 1, 1993, the Executive Director issued an order of dismissal, stating that the allegations of the complaint and amended complaint failed to state a cause of action. The Executive Director observed that an employer is entitled to act unilaterally with regard to **unrepresented** employees, and that there was no allegation that the employer was under any obligation to grant another "cost of living" increase to those employees. The Executive Director further stated that the wages of bargaining unit

employees became a subject for collective bargaining, that the status quo obligation commenced when the union became the exclusive bargaining representative of the employees, and that employees must look to negotiations between their union and employer for any and all wage increases once they have organized, "not to any further unilateral action by the employer".

On April 21, 1993, the union filed its petition for review. On May 13, 1993, the employer filed a response requesting the petition for review be denied.

POSITIONS OF THE PARTIES

The union argues that the annual "cost of living" increase was a key element in the ongoing compensation package of each bargaining unit member. The union thus contends that the employer altered the status quo by discontinuing its past practice of granting annual "cost of living" wage increases, without consulting with the employees' bargaining representative.

The employer agrees that the complaint was properly dismissed for failing to state a cause of action, and asks that the order of dismissal be affirmed.

DISCUSSION

The facts alleged in the pleadings are not in dispute. The employer has maintained a practice of granting employees general "cost of living" increases annually. That practice was established at a time when the employees involved were **unrepresented**. The employer withheld an annual increase **after**: (1) The union was recognized as exclusive bargaining representative, and (2) the union requested bargaining. In the words of the complaint itself,

the practice was discontinued because "collective bargaining was to be undertaken concerning the 1992 contract".

The Commission has consistently held that once employees have exercised their statutory right to select an exclusive bargaining representative, an employer is prohibited from taking unilateral action in regard to the wages, hours, and working conditions of those employees, and has the obligation to maintain the status quo. See, Franklin County, Decision 1890 (PECB, 1984), which involved an employer granting employees a wage increase during a time when negotiations for a collective bargaining agreement had not been completed. See, also, City of Tukwila, Decision 2434-A (PECB, 1987); City of Yakima, Decision 3564-A (PECB, 1990).

In this case, the union argues that the status quo includes wage practices that pre-date recognition of the union. The Executive Director correctly stated that the wages of bargaining unit employees became a subject for collective bargaining "and the employer's status quo obligations commenced, as soon as the union became the exclusive bargaining representative of the employees involved here". That being the case, granting the bargaining unit employees a general wage increase in January of 1993 would have involved a **change** from the status quo which the employer was legally required to maintain.

The union cites no National Labor Relations Board (NLRB) or Commission precedent in support of its position in this case. In fact, the only authority cited by the union is the grievance arbitration award issued in City of Kansas City, Kansas and Fraternal Order of Police Lodge 4, 94 LA 191 (Berger, 1989). The employer argues the union's reliance on that case is misplaced, and that it does not support the union's argument here. We agree.

The first reason for rejecting Kansas City lies in the nature of what was being interpreted. The decision relied upon by the union

arose out of an arbitration proceeding involving the interpretation of an existing collective bargaining agreement, not the administrative enforcement of a collective bargaining statute such as RCW 41.56.140(4). In City of Bellevue v. IAFF, Local 1604, 119 Wn.2d 373 (1992), the Supreme Court of the State of Washington gave unanimous and strong endorsement to the interpretation and enforcement of Chapter 41.56 RCW by this Commission, rather than by arbitrators.

A second reason for rejecting reliance on Kansas City lies in factual distinctions. The pay practice which was discontinued in Kansas City had been applied to **represented** employees over a period of several years, and the case does not address the "first contract" situation of the parties before us here. Kansas City is more comparable to Snohomish County, Decision 1868 (PECB, 1984), where an employer refused to grant "step increases" to two employees under the terms of an expired labor contract, not only while negotiations for a new contract were taking place, but also during the pendency of interest arbitration. That refusal was based on the employer's assertion that it had to maintain the status quo as of the date the previous contract expired. The Examiner stated:

The employer had a salary schedule in effect, under which employees were entitled to step increases based on length of service. Examination of the record indicates that the step increase system was not raised by either party during negotiations. If the step increase issue was not raised in negotiations, respondent should not have withheld payment. Complainant had no opportunity to negotiate on the subject, and respondent's failure to pay the step increases actually constituted a unilateral change of the type the employer says it avoided.

The Examiner in that case thus rejected the employer's argument, not only because of the pendency of interest arbitration, but also because of the employer's bargaining obligation.

The annual "cost of living" increases claimed by the union here had been memorialized in contracts signed by this employer with its fire fighters between at least 1988 and 1990, but we do not find those individual contracts binding for the purposes of our discussion here. As a general proposition, it has long been held that individual employment contracts are not binding on the collective bargaining process, once the employees have exercised their right to organize.²

For the increase claimed by the union here to take effect, the employer would need to determine specific amounts, and establish an actual change in a wage scale. Such a change is markedly different from the kind of wage scale that was being continued in effect in Snohomish County, where amounts fixed ahead of time were to be paid when employees attained certain levels of longevity, and the employer had no element of discretion. In this case, the cost of living increases cannot be said to be an established fixed wage scale, allowing for no employer discretion. See, Radisson Plaza v. NLRB, ___ F.2d ___, 142 LRRM 2761 (8th Circuit, 1993), where the Court affirmed the NLRB's practice of applying an exemption from the duty to bargain only in cases where the wage increase is automatic, and does not involve an exercise of discretion.³

² J.I. Case Co. v. NLRB, 321 U.S. 332 (1944).

³ In Radisson, the NLRB had ruled that the employer's action could not be described as a continuation of a past practice applying a "clearly delineated program" to employee wages, since the wages were not automatically deducible, by a formula without discretionary elements, from data made known to the union. The procedure by which the adjustments were determined was sufficiently flexible, having discretionary elements, so as to make it subject to the bargaining obligation.

In the present case, the Executive Director correctly found that the employer's status quo obligations commenced when the union became the exclusive bargaining representative of the employees - not before that time, when the employees were unrepresented. The employer had an obligation to allow employees to continue to advance through its then existing wage schedule based upon their years of experience. It was not obligated to change the wage levels in the schedule. By maintaining the status quo in regard to wages, and refraining from granting pay increases to represented employees outside of the bargaining process, the employer avoided committing an unfair labor practice.

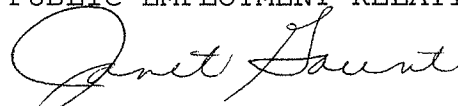
NOW, THEREFORE, it is

ORDERED

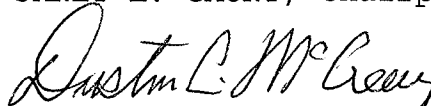
The order of dismissal issued April 1, 1993 in the above-captioned matter by Executive Director Marvin L. Schurke is AFFIRMED.

Issued at Olympia, Washington, the 19th day of April, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



DUSTIN C. McCREARY, Commissioner

Commissioner Sam Kinville did not take part in the consideration or decision of this case.