STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY POLICE OFFICERS GUILD,	)	
	)	CASE 9885-U-92-2256
Complainant,	)	
vs.	)	DECISION 4258-A - PECB
KING COUNTY,	)	
	)	DECISION OF COMMISSION
Respondent.	)	

Hoag, Vick, Tarrentino & Garrettson, by Deborah Bellam, Attorney at Law, appeared on behalf of the union.

Norm Maleng, Prosecuting Attorney, by Maureen Madion, Deputy Prosecuting Attorney, appeared on behalf of the employer.

This case comes before the Commission on a timely petition for review filed by the King County Police Officers Guild (union), seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke on December 21, 1992.[1]

BACKGROUND

This case grew out of another unfair labor practice proceeding involving the same parties. The original complaint charging unfair labor practices was filed with the Commission on November 18, 1991,[2] and alleged that King County (employer) committed an "interference" violation by limiting the participation of a union representative during an investigatory interview which the employee

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[1] King County, Decision 4258 (PECB, 1992).

[2] Case 9493-U-91-2116.

involved reasonably believed could result in disciplinary action against him. In a preliminary ruling letter issued pursuant to WAC 391-45-110 on December 12, 1991, the Executive Director determined that a cause of action existed in Case 9493-U-91-2116, for an "interference" violation under National Labor Relations Board v. Weingarten, 420 U.S. 251 (1975).

On April 8, 1992, the union sought to file an amended complaint in Case 9493-U-91-2116. Without citation of any statute, the union sought to add a claim that the employer committed an unfair labor practice by failing to follow its own departmental policies in connection with the above-mentioned investigatory interview. The Executive Director found the amendment raised legal theories different from those raised by the original complaint, and caused a separate case to be docketed under the case number indicated above. The processing of the original allegation proceeded separately.[3]

In making a preliminary ruling on the above-captioned case, the Executive Director considered allegations that the employer committed unfair labor practices by: (1) Refusing to permit the union representative to participate in the above-mentioned interview; (2) failing to advise the employee of the name of the officer in charge of the investigation; (3) failing to inform the employee in writing of the allegations made against him before the

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[3] The parties waived their right to a formal hearing in that matter, and submitted a stipulation of facts and briefs to Examiner Mark S. Downing. On February 16, 1993, Examiner Downing issued a decision finding that the employer committed an "interference" violation, and overturning the discharge of the employee involved. King County, Decision 4299 (PECB, 1993). The employer petitioned for review, particularly as to the remedy. The Commission affirmed the Examiner's decision in King County, Decision 4299-A (PECB, 1993). That matter remains open on the Commission's "compliance" docket, pending resolution of final details concerning the back pay and interest due to the employee involved.

interview began; (4) failing to advise the employee he was suspected of misconduct which, if sustained, could be grounds for administrative disciplinary action or the filing of criminal charges; and (5) failing to advise the employee that he could consult with an attorney before submitting to a personal interview.[4] No specific subsection of RCW 41.56.140 was identified as the basis for those claims. On May 8, 1992, the Executive Director issued a preliminary ruling letter which concluded that the complaint in the above-captioned case did not state a cause of action. The union was given 14 days to file and serve an amended complaint which stated a cause of action, or face dismissal.

On May 18, 1992, the union requested reconsideration of the preliminary ruling in the above-captioned case, and explained that it was alleging a "refusal to bargain", on the basis that the employer's deviations from its own procedures constituted unilateral changes of employee working conditions. On June 11, 1992, the Executive Director requested the parties to furnish information concerning the propriety of deferral of the "unilateral change" allegations to arbitration under the procedures contained in the parties' collective bargaining agreement. Both parties agreed that deferral was inappropriate, because their collective bargaining agreement had expired.

On December 21, 1992, the Executive Director dismissed the complaint in this case. After stating that none of the statutes governing the Commission's jurisdiction "make the Commission the ... enforcer of an employer's unilaterally adopted personnel policies", the Executive Director stated:

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[4] With the exception of item (2) and the reference to "departmental policies", the same allegations were included almost verbatim in the stipulation of facts submitted by the parties and recited by the Examiner in King County, Decision 4299 (PECB, 1993).

> The allegations filed on April 8, 1992 fall short of asserting that the employer has announced and/or unilaterally implemented any **blanket change** of the policies it had previously announced and published in its departmental manual. Rather, it appears that the union merely asks the Commission to hold the employer to the terms of its own previously announced manual. Under those circumstances, no cause of action is found to exist for unfair labor practice proceedings before the Public Employment Relations Commission.
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> Decision 4258 (PECB, 1992) at p.4.

The union filed a timely petition for review, thus bringing the case before the Commission.

POSITIONS OF THE PARTIES

The union takes the position that, in order to state a cause of action, a complaint need only allege there was an established past practice, and a unilateral change in the status quo established by that practice. It contends that the Executive Director erred by concluding that there must be a blanket change by the employer before any change constitutes an unfair labor practice, and that the amended complaint in this case states a cause of action.

The employer agrees with the Executive Director's ruling, and asks that it be affirmed.

DISCUSSION

The unilateral action alleged to be unlawful in this case was the employer's failure, in regard to the questioning of one police officer, to follow a previously announced personnel policy covering investigatory interviews. The union does not claim that the employer announced any new or different policy.

We view the present case as analogous to City of Pasco, Decisions 4197-A and 4198-A (PECB, 1993). In that case, the employer had an established practice of requiring applicants for police officer positions to sign training expense reimbursement contracts prior to their employment. The Commission was asked to decide whether requiring one individual to sign such a contract after he became a bargaining unit employee constituted an unlawful "unilateral change". Relying on City of Yakima, Decision 3564-A (PECB, 1991), the Commission concluded that the belated enforcement of the employer's policy in Pasco was merely an attempt "to assure consistency in the application of an unchanged policy", and found no violation.[5] In the case now before us, the employer did not adopt any new policies. Rather, its conduct amounted to no more than an apparently isolated violation of an existing policy which occurred only in regard to one police officer.

The facts alleged by the union in this case were part of the basis for the Examiner's findings of fact and conclusions of law, as well as the order in King County, Decision 4299-A (PECB, 1993). The remedial order issued in that case pertained to all bargaining unit employees, not just to the one officer directly involved.

The Cases Relied Upon by the Union

The union relies on Mason County, Decision 1486 (PECB, 1982); Grandview School District, Decision 1893 (PECB, 1984); Snohomish County, Decision 1868 (PECB, 1984); and Town of Granite Falls, Decision 2692 (PECB, 1987). It claims those decisions support its argument that an employer violates RCW 41.56.140(4) even if a unilateral change affects only one or two bargaining unit employees, and that there is no requirement that an employer make a

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[5] It was noted in Pasco that a violation would be found if the employer had actually adopted a new policy (e.g., requiring police officers to sign such contracts after commencing their employment).

"blanket change" in order for there to be a violation. The employer asserts that the facts of the cited cases "cannot be equated with the isolated act of deviating from a personnel policy". We agree with the union that a violation of RCW 41.56-.140(4) can arise from a change that affects only a small number of employees. This change must represent a departure from established practice, however. The cases cited by the union are distinguishable in that respect.

In Mason County, the employer attempted to place a bargaining unit employee under a personal services contract while a new collective bargaining agreement was being negotiated. When the union objected to the changes made, the employer refused to negotiate any part of them.

In Grandview School District, three special education high school students were assigned bargaining unit work in one of the employer's elementary school cafeterias at the minimum wage plus their meals. The employer made these assignments following a change from half-day to full-day kindergarten schedules, which affected the lunch times and scheduling of bargaining unit serving crews at two elementary schools. Although students had been used in the past, their assignment had been confined to the schools where they were enrolled, for which they were paid and received a free lunch. Special education students had worked before but had never been paid. Although no bargaining unit employees lost hours initially as a result of this change, the students experienced increased work opportunities. At the start of the next school year, however, the employer reverted back to half-day kindergarten with a compressed serving schedule, retaining the three special education student servers and eliminating one bargaining unit employee. The anticipated changes in the food service schedule were discussed with the union during negotiations, but the use of students as servers at the elementary school was neither raised nor discussed. After noting that the work hours of bargaining unit work servers

were cut, and that the use of the high school students at the elementary school was a **sharp departure** from any past practice, the Examiner in that case found that bargaining over one aspect "of a broad subject" did not satisfy the duty to bargain over others. The Examiner then remedied the employer's unilateral change by ordering a restoration of the status quo.

Snohomish County involved the withholding of a step increase from two bargaining unit employees during the pendency of interest arbitration. The parties' expired collective bargaining agreement had contained a salary schedule under which employees were entitled to step increases based on length of service, and no issue had been raised concerning the step increases during negotiations for a successor contract. The withholding of step increases would presumably have been extended to other employees in the bargaining unit as they became eligible for step increases. The Examiner in that case noted that RCW 41.56.470 requires that existing wages, hours and other conditions of employment **shall not be changed by action of either party** during the pendency of issue arbitration proceedings, and that the payment of step increases was the status quo, so that the failure to pay the increase constituted an unlawful unilateral change.

In Town of Granite Falls, the employer imposed numerous work rules which affected two employees in a proposed bargaining unit during the pendency of a question concerning representation. A violation was found based on that "unilateral change".

Each of the cases cited by the union involved announced changes of policy that were to remain in effect (or at least had the potential to remain in effect) beyond the particular incident. In contrast, the debate about the sufficiency of the pre-disciplinary notice in this case has never involved more than an isolated incident, with no announced changes of policy or procedure that were to have any

ongoing effect on either the employee directly involved or other bargaining unit employees.

We agree with the Executive Director that no cause of action exists for unfair labor practice proceedings before the Commission.

NOW, THEREFORE, it is

ORDERED

The order of dismissal issued by the Executive Director 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 matter.