

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	CASE 10644-U-93-2478
)	
Complainant,)	
)	
vs.)	DECISION 4568-A - PECB
)	
ASOTIN COUNTY,)	
)	ORDER OF REMAND
Respondent.)	
)	

T. Kae Roan, Staff Representative, appeared on behalf of the union.

Roy Wesley, Consultant, appeared on behalf of the employer.

This case comes before the Commission on a timely petition for review filed by Washington State Council of County and City Employees, seeking to overturn an order closing case¹ issued by Executive Director Marvin L. Schurke, and a denial of a request to reopen the case.

BACKGROUND

On August 26, 1993, the Washington State Council of County and City Employees, AFSCME, AFL-CIO (union), filed a complaint charging unfair labor practices against Asotin County (employer), alleging the employer refused to bargain. Specifically, the union alleged the employer had withdrawn a previously offered increase in longevity from contract negotiations. The union considered the totality of the employer's conduct in regard to negotiations for a successor agreement to be inappropriate.

¹ Asotin County, Decision 4568 (PECB, 1993).

Prior to any action on the complaint, the union filed a withdrawal of the case on December 21, 1993. On December 22, 1993, the Executive Director ordered the case closed.

On January 10, 1994, the union filed a request to reopen the matter. It explained that two unfair labor practice cases had been filed on the same date, and it was the other case 10645-U-93-2479 that the union had wanted to withdraw.² The union wanted this case, 10644-U-93-02478, to remain open.

On March 3, 1994, the Executive Director sent a letter to the parties seeking the position of the employer with respect to the complainant's request to reactivate the case. The employer responded that the error was not its responsibility, and that the employer had been left with the impression the matter of a longevity pay increase for sheriff's deputies had been settled and rendered moot. It cited the union's ratification of the employer's final offer which did not address longevity pay. The employer contended that if the case were to be reinstated, it would be prejudiced by the action, since a number of labor relations decisions made by the county during the period in question could not be retracted. Further, the employer argued that the two parties were engaged in negotiating a successor agreement concerning the matter of pay for sheriff's deputies, and that reinstatement of the case would exacerbate that process. It argued that longevity pay can be introduced by the union as a subject of bargaining during the current negotiations.

The Executive Director denied the union's request to reopen the case on August 3, 1994, citing the following reasons: (1) the employer did not waive its rights under Chapter 41.56 RCW, (2) the

² Case 10645-U-93-2479 was against Asotin County Public Works, and involved contracting out. Case 10644-U-93-2478 was against Asotin County Sheriff, and involved a good faith bargaining issue.

employer did not agree to the union's request for reconsideration, and (3) the employer and union executed a collective bargaining agreement based in part on the withdrawal of the unfair labor practice complaint.

On August 22, 1994, the union filed a timely petition for review, asserting that incorrect statements made by the employer in its letter, were the basis for the denial of its motion to reopen the case.

DISCUSSION

There appear to be questions of fact concerning the existence of prejudice to the employer. The pleadings indicate that the contested withdrawal was mailed on December 21, 1993. That date was subsequent to the union's ratification of the collective bargaining agreement, and we have no facts from which to conclude that the employer was prejudiced by reliance on the unfair labor practice complaint withdrawal when agreeing to the contract. On January 10, 1994, the union clarified its intent as to the case it wished to withdraw. We have assertions, but no proof, that prior to that date the employer made labor relations decisions in reasonable reliance on an understanding that the unfair labor practice complaint regarding longevity pay had been withdrawn.

In order to provide the Commission with a record from which we can fairly judge the employer's claim of prejudice, we are reopening this case for a limited evidentiary hearing at which the employer and union can offer evidence which they feel supports (or rebuts) the employer's claim of prejudice. The hearing will be scheduled on a high priority basis. Based upon evidence submitted at the hearing, the Commission will decide whether further proceedings on the merits of the complaint in this case are warranted.

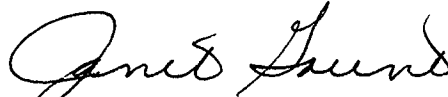
NOW, THEREFORE, it is

ORDERED

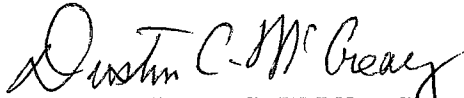
Case 10644-U-93-2478 involving the Washington State Council of County and City Employees, AFSCME, AFL-CIO, and Asotin County, is hereby remanded to the Executive Director for further processing consistent with this decision.

ISSUED at Olympia, Washington, this 13th day of October, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



DUSTIN C. McCREARY, Commissioner



SAM KINVILLE, Commissioner