CITY OF TACOMA, Decision 5049-A (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 483,	)	CASE 11519-U-95-2699
Complainant,	)	DECISION 5049-A - PECB
vs.	)	
CITY OF TACOMA,	)	ORDER DENYING MOTION TO REOPEN HEARING
Respondent.	)	

The complaint charging unfair labor practices filed in this case on January 11, 1995, was found to state a cause of action as to an allegation that the employer refused to bargain the effects and impacts of its decision to eliminate a bargaining unit position of customer service consultant. Katrina I. Boedecker was designated as Examiner in the matter. A hearing was held February 8, June 10 and 11, 1996.

After the close of the evidentiary hearing, but prior to the submission of legal argument by the parties, the complainant filed a motion to reopen the record for submission of additional testimony. The declaration of IBEW Business Manager David Smith in support of that motion basically states that he discovered, on or about June 26, 1996, that the Department of Utilities had created a new "energy service account executive" position which could perform work previously performed by the consumer service consultants. The employer submitted a response asking that the motion be denied.

The union cites a "WAC 291-250-350" in support of its motion, but no such title, chapter or section has ever existed in the Washing-

ton Administrative Code. The regulation which controls this proceeding is WAC 391-45-270, which provides, in part:

> ... Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

An additional condition inherent in the consideration of any motion to admit evidence is that the offered evidence be relevant and material to the case at bar.

The consumer service consultants were laid off from the employer's Customer, Finance and Administrative Division in April of 1995. A year later, the energy service account executive position was created in connection with a reorganization in the employer's Light Division. The implication that the employer did not provide an adequate response to the union's request for information in early 1995 and did not bargain the effects of the layoff, because it did not bargain with the union over the creation of the account executive position a year later, is illogical. If the union has some challenge to make concerning the creation of the energy service account executive position, it should be made in a separate proceeding. This new information about a newly created position does not bear on the complaint that has already been subject to a full hearing.

The Examiner finds the new evidence offered in this case is outside the scope of this proceeding. It follows that an amendment of the complaint would be inappropriate at this late date, since the subject matter is not germane to this proceeding.

NOW, THEREFORE, it is

ORDERED

The complainant's motion to reopen the record for submission of additional testimony is DENIED.

Entered at Olympia, Washington on the 26th day of August, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner
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This Order is appealable only after the Findings of Fact, Conclusion of Law and Order are issued on the complaint in accordance with WAC 391-45-350.