STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLARK COUNTY CUSTODY OFFICERS GUILD,	)	
Complainant,	)	CASE 11440-U-94-2684
vs.	)	DECISION 5373-A - PECB
CLARK COUNTY,	)	
Respondent.	)	DECISION OF COMMISSION

Hoag, Garrettson, Goldberg & Fenrich, by Taylor L. Jacobson and Jaime B. Goldberg, Attorneys at Law, appeared on behalf of the union.

Michael R. Snyder, Consultant, appeared on behalf of the employer.

This case comes before the Commission on a timely petition for review filed by the Clark County Custody Officers Guild, seeking to overturn a decision issued by Examiner Pamela G. Bradburn.[1]

BACKGROUND

Prior to the onset of this dispute, Clark County (employer) had a bargaining relationship with Office and Professional Employees International Union, Local 11, covering a bargaining unit of custody employees in the sheriff's office. The employer and Local 11 were parties to a collective bargaining agreement which was in effect from July 22, 1992 through December 31, 1994. That contract contained detailed provisions on work schedules, which are set forth in the Examiner's decision.

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[1] Clark County, Decision 5373 (PECB, 1995).

On August 31, 1994, the employer advised employees of shift changes. After Local 11 informed the employer that the collective bargaining agreement required the employer to consult with and discuss the proposed changes with that union, the employer notified custody staff on September 8, 1994 that its decision regarding shift changes was retracted and that discussions regarding shift changes would be reopened. By letter dated September 22, 1994, the employer informed Local 11 that it was in receipt of a communication raising a question concerning representation, and that it was suspending bargaining with Local 11 pending resolution of the representation case.

On October 3, 1994, Clark County Custody Officers Guild (CCCOG) filed a petition for investigation of a question concerning representation with the Commission, seeking to replace Local 11 as exclusive bargaining representative of the bargaining unit.[2]

At a meeting held on October 18, 1994, the employer and Local 11 discussed the shift change proposals. As a result of that meeting, the employer revised some of its original proposals involving shift scheduling.

On November 18, 1994, the CCCOG filed a complaint charging unfair labor practices, alleging that the employer interfered with employee rights under RCW 41.56.140(1), by negotiating changed work shifts with Local 11 after the representation petition was filed. The CCCOG was certified as exclusive bargaining representative of the custody officers' bargaining unit on May 31, 1995.

Examiner Pamela Bradburn held a hearing on June 13, 1995, and dismissed the complaint on November 30, 1995. The CCCOG petitioned for review on December 14, 1995, thus bringing the case before the Commission.

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[2] Case 11345-E-94-1866.

POSITIONS OF THE PARTIES

The CCCOG argues that shift scheduling is a mandatory subject of bargaining, and that the employer's consultation with Local 11 regarding implementation of a new schedule during the pendency of a question concerning representation was an unfair labor practice. The union contends that public policy requires the maintenance of laboratory conditions during a question concerning representation.

The employer did not respond to the petition for review. It had asserted in its post-hearing brief that it was applying the status quo in administering the existing agreement with the incumbent exclusive bargaining representative at the pertinent time.

DISCUSSION

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, Snohomish County Fire District 3, Decision 4336-A (PECB, 1994), and cases cited therein. The Commission has previously concluded that the establishment of work shifts is a mandatory subject of bargaining. Spokane County, Decision 2167-A (PECB, 1985); City of Bremerton, Decision 2733-A (PECB, 1987.

Chapter 41.56 RCW accords a privileged status to an exclusive bargaining representative. RCW 41.56.090. The duty to bargain exists only between an employer and the exclusive bargaining representative of its employees. RCW 41.56.030(4). In this case, Local 11 was the exclusive bargaining representative of the affected employees at the time of the occurrences giving rise to these unfair labor practice allegations.

The mere filing of a representation case does not change the status of an exclusive bargaining representative. Renton School District, Decision 1501-A (PECB, 1982), is instructive. In that case, the Examiner found that the employer committed an unfair labor practice by withholding dues from employees and holding the dues in escrow during the pendency of a representation question. Since RCW 41.56.110 only authorizes dues deduction for an exclusive bargaining representative, that employer should have continued to satisfy its obligation toward the incumbent union until the representation question was resolved. It is important to note here that the CCCOG did not acquire status as exclusive bargaining representative until May 31, 1995.

The CCCOG cites Yelm School District, Decision 704-A (PECB, 1980), and other cases in support of its argument that the Commission has a strong rule requiring a cessation of negotiations while a question concerning representation is pending.[3] Those precedents do not, however, preclude continued dealings between the employer and incumbent union to administer the existing contract. To do so would leave employees vulnerable to a loss or forfeiture of contractual rights and benefits, regardless of the outcome of representation proceedings.

In this case, the employer and Local 11 had already bargained about work shifts. Several different alternate scheduling formats were set forth in the contract, each requiring the employer to consult with the union prior to any change. The employer action at issue in this case was its consultation with Local 11, as expressly required by the collective bargaining agreement then in existence between those parties. We have no difficulty concluding that the disputed activity occurred within the context of administering the existing contract.

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[3] In this case, the employer properly ceased negotiations with Local 11 for a new contract.

The Examiner outlined public policy arguments in favor of maintaining the status quo for employees within a proposed bargaining unit, and we concur with that analysis. We also agree with the Examiner that Local 11 retained the right to represent the custody officers' bargaining unit, with respect to those wages, hours, and working conditions outlined in its collective bargaining agreement, until the CCCOG was certified as exclusive bargaining representative. By administering the collective bargaining agreement in existence, the employer was maintaining the status quo.[4]

When it filed its representation petition, the CCCOG acquired some status in the employment relationship: (1) It would have had standing to file objections in the event of employer conduct which violated the "laboratory conditions" principles applied in representation cases; and (2) It would have had standing to pursue unfair labor practice complaint based on an interference theory under RCW 41.56.140(1), in the event of a unilateral change on a matter not covered by the existing contract. It did not, however, acquire any bargaining rights under RCW 41.56.030(4) and 41.56.140-(4) by merely filing the representation petition.[5] It clearly did not become a party to or acquire any rights under the collective bargaining agreement between the employer and Local 11.

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[4] Had the employer not complied with its contractual obligations, Local 11 might have filed unfair labor practice charges alleging a premature withdrawal of recognition.

[5] In Emergency Dispatch Center, Decision 3255-B (PECB, 1989), the employer unilaterally discontinued a practice of allowing employees to rotate days off, but the Examiner dismissed "refusal to bargain" allegations made by the union which later acquired status as the exclusive bargaining representative, since only the incumbent union can assert rights under that theory.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law and Order issued by the Examiner in this matter are affirmed and adopted as the Findings of Fact, Conclusions of Law and Order of the Commission.

Issued at Olympia, Washington, on the 16th day of April, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner