City of Richland, Decision 6120-A (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 280,	)	
Complainant,	)	CASE 12860-U-96-3099
vs.	)	DECISION 6120-A - PECB
CITY OF RICHLAND,	)	ORDER DENYING MOTIONS FOR MODIFICATION, STAY OF ORDER, AND STAY OF PERIOD FOR APPEAL
Respondent.	)	

Davies, Roberts & Reid, LLP, by Michael R. McCarthy, Attorney at Law, appeared on behalf of the complainant.

Menke, Jackson, Beyer & Elofson, LLP, by Rocky L. Jackson, Attorney at Law, appeared on behalf of the respondent.

On December 4, 1997, the undersigned Examiner issued his findings of fact, conclusions of law and an order in the above-captioned matter, ruling that the City of Richland (employer) committed certain unfair labor practices in violation of RCW 41.56.140 and making a remedial order.[1]

A motion which the employer filed with the Examiner on December 9, 1997, has been considered under WAC 391-45-330, which permits an Examiner to withdraw or modify a decision within 10 days after its issuance.[2]

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[1] City of Richland, Decision 6120 (PECB, 1997).

[2] The 10-day period ended on a Sunday, so the period within which the Examiner may act is extended through December 15, 1997, by operation of WAC 391-08-100.

BACKGROUND

On December 5, 1996, International Union of Operating Engineers, Local 280 (union) filed a complaint charging unfair labor practices alleging that the City of Richland had transferred work historically performed by employees in a bargaining unit represented by Local 280 to members of another bargaining unit. The union further charged that the employer refused to bargain the matter. A preliminary ruling was issued on February 5, 1997, finding a cause of action to exist. Walter M. Stuteville was designated as Examiner. A hearing was held on July 31, 1997, and the parties filed briefs to complete the record. The Examiner's findings of fact, conclusions of law and order followed.

The employer's motion filed on December 9, 1997, encompasses several matters:

- The employer requests that the Examiner clarify the decision, by confirming in writing that paragraph 2.a of the ORDER requires the assignment of the storekeeper function to a current employee of the bargaining unit represented by Local 280, to the exclusion of the IBEW storekeeper;
- The employer requests a stay of the period for filing a petition for review of the Examiner's decision; and
- The employer requests a stay of paragraph 2.d of the Examiner's order, based upon a claim that the next regular meeting of the Richland City Council will be prior to any decision on this Motion for Review; and
- The employer requests that the Examiner reconsider paragraph 2.d as an unnecessary, and extraordinary, remedy.

Because of the short time period allowed by the rules, the Examiner has not solicited, received or considered a position from the union.

DISCUSSION

WAC 391-45-330 provides:

> On the examiner's own motion or on the motion of any party, the examiner may set aside, modify, change or reverse any findings of fact, conclusions of law or order at any time within ten days following the issuance thereof, if any mistake is discovered therein: *Provided, however,* That this section shall be inoperative after the filing of a petition for review with the commission.

Emphasis by *italics* in original; emphasis by **bold** supplied.

No other rule permits an Examiner to "reconsider" a decision after it is issued.

Request to Clarify Paragraph 2.a of the ORDER

This case involving "skimming" of bargaining unit work was decided under well-established precedents dating back to South Kitsap School District, Decision 472 (PECB, 1978). Paragraph 2.a. of the order requires the employer to:

> a. Restore and maintain the status quo ante, by assigning the work of the central stores storekeeper function to an employee or employees who are members of the bargaining unit represented by Local 280.

The employer has not alleged that a mistake has been discovered in this case. Contrary to the assertion by the employer in its motion, the order does not describe how the employer is to comply, only that it must restore the status quo ante which consisted of certain warehouse work being performed by employees in the bargaining unit represented by Local 280.

The questioned paragraph is clear on its face, and needs no further clarification. Restoration of the work in question to the appropriate bargaining unit goes to the very heart of this "skimming" case, and is not a "mistake" under findings of fact and conclusions of law which are not referenced by the employer's motion. How that restoration is to be accomplished is up to the employer, subject to any contractual obligations it has under collective bargaining agreements with the union(s) involved.[3]

Motion for a Stay of Appeal Period

WAC 391-45-350 provides for appeal of an Examiner's Findings of Fact, Conclusions of Law and Order to the Commission, upon a petition for review filed within 20 days. Neither the Examiner, the Executive Director nor any Commission member has authority to extend the period for filing a petition for review. The motion is entirely outside the scope of WAC 391-45-330.

Motion for a Stay of Paragraph 2.d

Paragraph 2.d of the ORDER required that the notice which is customarily required as part of the remedial order where an unfair labor practice violation is found be read at a forthcoming meeting

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[3] The ORDER did not mandate the layoff of any particular person employed by the City of Richland.

of the Richland City Council.[4] No provision of Chapter 391-45 WAC is cited or found which permits an Examiner to stay an order.

Request for Reconsideration of "Extraordinary" Remedy

The requirement that the employer read the compliance notice at a public meeting of its governing body is consistent with the Commission's decision in Seattle School District, Decision 5542-C (PECB, 1997). The Superior Court for King County has denied a request for a stay of that Commission order. Without allegation or indication of a mistake, the Examiner has no authority to act on the motion.

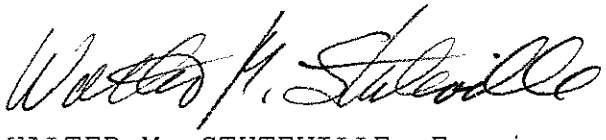
NOW, THEREFORE, it is

ORDERED

The motions filed by the City of Richland with the Examiner on December 9, 1997 are DENIED.

Issued at Olympia, Washington, this 15th day of December, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner

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[4] The validity of that paragraph is discussed separately, under the "request for reconsideration" heading.