

NO. 89344-6

SUPREME COURT
OF THE STATE OF WASHINGTON

KITSAP COUNTY,
Petitioner,

v.

KITSAP COUNTY DEPUTY SHERIFFS' GUILD,
Respondent.

**BRIEF OF KING COUNTY SHERIFFS OFFICE
AMICUS CURIAE**

JOHN URQUHART
King County Sheriff

DIANE HESS TAYLOR
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FILED

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STATE OF WASHINGTON

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TABLE OF AUTHORITIES

Cases

- Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, Dec. 11098-B (PECB, 2013) p. 2
- Board of Regents v. Roth*, 408 US 564, 577-578, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) p. 7
- Lewis County v. Teamsters, Local 252*; State office of Governor, Decision 10533, State Office of Governor, Decision 10313 p. 4
- Litton Fin. Printing Div., v. Nat'l Labor Relations Bd.*, 501 U.S. 190, 206, 111 S.Ct. 2215, 115 L.Ed.2d 177 (1991) p. 6
- Pierce County v. Pierce County Captain's Ass'n.*, PERC No. 22679-1-09-0539, (Krebs, 2010) p. 4

Statutes

- RCW 41.56.465 pp. 2, 3, 4, 6
- RCW 41.56.030 pp. 2 (fn), 4
- RCW 41.56.430 p. 4
- RCW 41.56.950 p.6 (fn)

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AMICUS BRIEF BY KING
COUNTY SHERIFFS OFFICE IN
SUPPORT OF DIRECT REVIEW
BY THE WASHINGTON STATE
SUPREME COURT

I. INTRODUCTION

The King County Sheriffs Office supports Kitsap County's petition for Direct Review of the Pierce County Superior Court's decision to strike a portion of an interest arbitration award because it involved a retroactive reduction in benefits. The issue is appropriate for Direct Review because the facts that gave rise to the lower court's decision are common. It is not unusual for Collective Bargaining Agreements (CBA's) to expire before a successor agreement is ratified, and retroactive awards are the norm.

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In addition, the lower court's decision violates RCW 41.56.465, which sets forth the criteria on which the appropriate level of wages and benefits are to be based.¹

Finally, the lower court inappropriately interpreted the maintenance of the status quo, after the CBA expired, as creating a property right. The contractual rights had expired, and there was no other justification for creation of a property right to historical wages and benefits.

II. STATEMENT OF THE CASE

Washington's labor laws require that the parties to a collective bargaining agreement bargain in good faith, and refrain from making unilateral changes unless legal obligations to bargain have been fulfilled. "The Collective Bargaining obligation requires that the employer maintain status quo for all mandatory subjects of bargaining, except when such changes are made in conformity with the statutory collective bargaining obligation" *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, Dec. 11098-B (PECB, 2013), p.3. In the case at bar, the employer was

¹ RCW 41.56.465(e) states it applies to employees listed in RCW 41.56.030(7)(a) through (d), but that section was revised to become subsection (13) rather than (7).

acting responsibly when it refrained from making unilateral changes to wages and benefits that would have more accurately reflected the market. Instead, the employer appropriately completed the dispute resolution process outlined for interest arbitration in RCW 41.56.465.

The interest arbitrator found that benefits during that post-expiration time frame were over market, and awarded a reduction in such benefits retroactively. The lower court erroneously struck a portion of the award, undermining the statutory framework for interest arbitrations, which sets forth criteria on which wages and benefits are to be determined. RCW 41.56.465. The lower court here created an imbalance in the award by striking a portion of it.

In the labor arena, maintaining the status quo is a product of balancing rights between employers and employees before changes can be bargained. The lower court erroneously interpreted the “status quo” as creating a property right.

III. ARGUMENT

A. The Lower Court’s Striking of a Portion of an Interest Arbitration Award Violates Washington State Labor Law

Interest arbitration is provided for uniformed law enforcement

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personnel because they are deemed to provide a critical function and do not have the right to strike. RCW 41.56.030(13); RCW 41.56.430. Interest arbitration is a continuation of the collective bargaining process. *Lewis County v. Teamsters, Local 252*; State office of Governor, Decision 10533, State Office of Governor, Decision 10313.

The lower court's decision eviscerates the balance of power in collective bargaining, by striking a portion of the interest arbitrator's award. That award is considered the result of the bargaining process, and is presumed to be what the parties would have agreed to if they had been able to reach agreement based upon the statutory criteria. *Pierce County v. Pierce County Captain's Ass'n., PERC No. 22679-1-09-0539*, (Krebs, 2010), p.2. In addition, by striking a portion of the award, the lower court violates RCW 41.56.465, which mandates the criteria on which compensation is to be appropriately based (market comparables). The award as a whole is based upon factual findings after a hearing of all of the evidence. The lower court's tampering with a portion of the award, creates an imbalance that invalidates the remaining award.

This scenario is not an unfamiliar in the labor arena. King County is

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currently bargaining a successor contract with the King County Police Officers Guild (KCPOG, or “the Guild”). The contract at issue expired December 31, 2012. Delays in bargaining on the part of the Guild have maintained wages and health care benefits that are above market comparables. The County requested to commence bargaining in May or June 2012, but the KCPOG was not willing to meet until September 29, 2012. Unavailability created further delays. Declaration of Lance King.

There is little effective relief when a party engages in dilatory conduct, because filing an Unfair Labor Practice Charge (ULP) usually results in further delay, with remedies limited to admonishments and directives. Declaration of Diane Hess Taylor.

The market research conducted by King County indicates that Guild members are paid substantially more than market comparables and that their health care is substantially better than comparable agencies and also that of all other King County employees. King Dec.

King County’s proposal on benefits was designed to bring Guild members in line with comparable jurisdictions and fellow County employees, resulting in reduced costs to King County and its taxpayers.

Such reduced costs to King County would be approximately \$800,000.00 per year. King Dec.

Because the KCPOG's CBA expired on 12/31/12, imposing the level of benefits in King County's proposal would result in a retroactive reduction, just like the Kitsap County case before the court. The only potential relief for the employer King County (and its taxpayers) is a retroactive adjustment to their health care benefits, as was awarded by the arbitrator in the Kitsap County case at issue. Such an award, even though appropriate under our state's labor laws², would be impossible under the lower court's decision.

B. The Lower Court Erroneously Found the Status Quo Created a New Property Right after Contract Expiration

The post-expiration obligations to maintain the status quo are rooted in statute and common law and not in contract. *Litton Fin. Printing Div., v. Nat'l Labor Relations Bd.*, 501 U.S. 190, 206, 111 S.Ct. 2215, 115 L.Ed.2d 177 (1991). It is clearly understood in the realm of labor relations, that this status quo requirement is like a cease-fire imposed by law that must be maintained while the parties progress through a series of dispute resolution

² RCW 41.56.950; RCW 41.56.465.

processes. This is roughly analogous to the landlord and tenant who are at “loggerheads” at the end of a lease. The landlord cannot simply resort to self-help and immediately remove the tenant; the tenant enjoys certain rights, including the right to remain in the premises until a court issues an eviction notice.

For a “taking” in violation of one’s constitutional rights to occur there must be a legitimate entitlement to the claimed property right, not just a “unilateral expectation.” The property right must have an independent source; it does not spring from the Constitution itself. *Board of Regents v. Roth*, 408 US 564, 577-578, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). The Guild has no contractual right to the wages and benefits provided for in an expired contract. While Kitsap County could not have unilaterally stopped following the terms of the former contract without inviting the Guild to file a ULP charge against them, those obligations are embedded in labor law concepts, not contractual ones. Adhering to accepted labor law did not create a property right in the case at bar.

The clear benefit that results from maintaining the status quo after contract expiration is to provide stability and continuity so that the

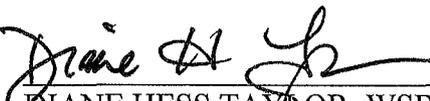
relationship between the parties is more conducive to bargaining the successor contract.

IV. CONCLUSION

The lower court's ruling is in error, and invites discord in labor relations because unions and guilds will have even more incentive to delay the bargaining process, and employers who are hamstrung from seeking retroactive relief from over-market compensation, will be forced to unilaterally implement what they believe to be reasonable in order to cut their losses. The King County Sheriff seeks leave to provide a more detailed brief on the topics discussed herein if this matter is granted Direct Review.

DATED this 16th day of December, 2013, in Seattle, Washington.

For JOHN URQUHART
KING COUNTY SHERIFF:

By: 
DIANE HESS TAYLOR, WSBA# 15972
Legal Advisor for the King County Sheriff's Office

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NO. 89344-6

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DECLARATION OF
LANCE KING
IN SUPPORT OF AMICUS
BRIEF BY KING COUNTY
SHERIFF'S OFFICE IN
SUPPORT OF DIRECT REVIEW

My name is Lance King. I am over 18 years of age and competent to declare the following:

1. I currently hold the position of Senior Manager of Human Resources for the King County Sheriffs Office, but for four (4) years, up until about August 2013, I worked as the assigned labor negotiator representing the King County Executive and bargained contracts involving all Sheriff's Office represented employees.
2. I worked as a labor negotiator for King County for approximately seven (7) years, between September 2006 and August 2013. Between December 2009 and April 2010, I was also the interim supervisor for

all negotiators in King County where I was aware of the status of all collective bargaining agreements (more than seventy (70) contracts) within the county. During the time I was a negotiator and interim supervisor, many of bargaining unit successor contracts were not ratified and implemented by the unions and the county before expiration of the prior contract.

3. I am aware of county collective bargaining agreements that were ratified two (2) or more years after the expiration of the existing collective bargaining agreement.
4. In cases where a successor collective bargaining agreement was ratified after the expiration of the existing contract, I am unaware of any county collective bargaining agreement that did not implement wages and benefits retroactively from the date the existing collective bargaining agreement expired.
5. I personally worked on negotiations with the King County Police Officers Guild (KCPOG, or Guild) for the successor contract to the contract that expired 12/31/12, from the beginning of those negotiations until the fall of August 2013. I tried to initiate bargaining in about May or June 2012, and the KCPOG would not meet with us

until September 29, 2012. We exchanged initial proposals on October 9, 2012.

6. During the 2012 and 2013 negotiations with the Guild, the unavailability of the Guild's counsel for significant periods of time contributed to slowing and stalling of the bargaining process.
7. The wage data we gathered during bargaining in 2012-2013 showed the Guild's wages and benefits were substantially above market. Our proposal was designed to bring both of these aspects of compensation consistent with market comparables and with internal comparability with fellow King County employees. Since the successor agreement covers 1/1/13 forward, the implementation of that proposal would involve retroactive take backs with regard to health benefits. Without the ability to retroactively recoup the overpayments, employees would receive a significant unearned windfall.
8. Most King County employees receive benefits as negotiated by the Joint Labor Management Insurance Coalition (JLMIC), which has agreed on health care benefits from January 1, 2014 to December 31, 2016.

9. The Amalgamated Transit Union (ATU), Local 587, went to interest arbitration with King County in July 2013 on the sole issue of health care benefits. In August 2013 the interest arbitrator awarded the same health care benefits as negotiated by the JLMIC noted above.
10. Members of the King County Police Officer's Guild (KCPOG) receive substantially better health care benefits than every other employee in King County.
11. If the KCPOG were on the same plan, with the same administrator, as all other County employees, the County would save approximately \$800,000.00 per year, based on estimates provided by the County's consultant, MERCER, a Marsh & McLennan Company.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed on this 16 day of December, 2013, in Seattle, WA.



Lance King

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DECLARATION OF
DIANE HESS TAYLOR
IN SUPPORT OF AMICUS
BRIEF BY KING COUNTY
SHERIFF'S OFFICE IN
SUPPORT OF DIRECT REVIEW

My name is Diane Hess Taylor. I am over 18 years of age and competent to declare the following:

1. I currently hold the position of Legal Advisor for the King County Sheriff's Office, and have held this position since November 7, 2012. Prior to this position, I worked as a labor negotiator/litigator for the King County Office of Labor Relations (May 2012 to November 2012), and as a Senior Deputy Prosecutor for King County, Civil Division, Labor and Employment Section (1995 – 2005).
2. As a legal advisor/labor negotiator, I bargain on behalf of the King County Sheriff for the ten (10) bargaining units in the Sheriff's Office.
3. I attended the Labor and Employment Relations Association (LERA) conference in April 2013, and sat in on a lecture by a labor attorney

DECLARATION OF DIANE HESS
TAYLOR - 1

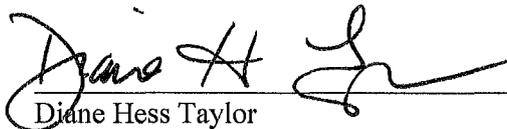
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(Michael McCarthy) where filing Unfair Labor Practice charges against an employer was encouraged to avoid impasse and slow down the bargaining process. In my experience, this is a generally understood concept in the labor community, and several Public Employment Relations Commission (PERC) employees were present in the room during this presentation.

4. I am involved in the current negotiations with the King County Police Officer's Guild (KCPOG). The matter has been in mediation for several months. The process has been delayed by periods of substantial unavailability on the part of the Guild's counsel.
5. There is ineffective relief for employers who wish to address dilatory conduct because filing an ULP charge usually results in additional delay, and provides insufficient remedies in the form of admonishments and/or directives.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed on this 16th day of December, 2013, in Seattle, WA.


Diane Hess Taylor

DECLARATION OF DIANE HESS
TAYLOR - 2

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