

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY )	)	
AND CITY EMPLOYEES, LOCAL 270, )	)	
	)	
Complainant, )	)	CASE 14445-U-99-03579
	)	
vs. )	)	DECISION 6819 - PECB
	)	
CITY OF SPOKANE, )	)	ORDER OF DISMISSAL
	)	
Respondent. )	)	
	)	
	)	

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On March 11, 1999, the Washington State Council of County and City Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Spokane (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice sent to the parties on July 27, 1999, identified several problems which prevented finding a cause of action to exist on the basis of the complaint, as filed. The union was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

An amended statement of facts filed by the union on August 20, 1999, is now before the Executive Director for processing under WAC 391-45-110. The amended statement of facts does not provide sufficient additional information to support finding a cause of action to exist. The complaint is dismissed.

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<sup>1</sup> At that stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

DISCUSSION

The union marked boxes on the complaint form to indicate claims of employer interference with employee rights, employer domination of or unlawful assistance to the union, and employer refusal to bargain. The controversy arose after November 16, 1998, when the union received a decision by Arbitrator Thomas F. Levak concerning a non-uniformed employee of the employer.

In the course of rendering his decision, Arbitrator Levak commented as follows:

The Police Department Code of Ethics (the "Code"), dated April 1, 1992, which are a part of the Department's P&Ps was offered and received. However, notwithstanding the testimony of City witnesses, the Arbitrator finds that the Code, on its face, relates to and governs only sworn police officers, not civilian employees of the Department. Every provision of the Code directly and specifically references peace officers; no provision references civilian employees. Those Code standards relied upon by the City have no applicability to the Grievant.

Union Staff Representative Randy Withrow sent a letter to Lieutenant Jim Nicks of the Spokane Police Department on November 24, 1998, concerning an issue involving dispatchers, a classification of non-uniformed City of Spokane employees represented by the union. In the last paragraph of that letter, Withrow added what he characterized in this complaint as "... a demand for negotiations" concerning policies and procedures. The letter stated:

Additionally, due to the recent Arbitrator's decision ... it was noted in the decision that the Arbitrator held that the policies and procedures do not apply to Radio Dispatchers.

Please be advised that if the Department intends to create policies and procedures for Radio, they are subject to negotiations and

this correspondence should be considered your official notification of the Union's intent to negotiate any and all policies and procedures that would be designed for Dispatch Personnel represented by Local 270.

Chief of Police Alan Chertok replied on behalf of the employer, on December 3, 1998:

In the Nicks letter you intimate that the arbitrator's decision ... indicates that the Spokane Police Department Policy and Procedures Manual does not pertain to civilian employees. That is not the case. The arbitrator ruled, narrowly in the ... case singly, that [the employee] was not given notice that the ethics portion of the manual (1) was the basis of her termination; and (2) pertained to her as a civilian employee ....

The arbitrator felt that the manual *appeared* to pertain only to sworn law enforcement officers. The arbitrator's opinion was partially based upon the fact that he did not have the entire manual before him for examination.

What the arbitrator declined to state in his opinion was the fact that civilian employees sign an acknowledgment indicating that they have read the manual and understand that the contents therein pertain to their employment. Such signed acknowledgments are maintained in the respective individual personnel files. [The employee] signed such an acknowledgment, which is in her personnel file. The Spokane Police Department Policy and Procedures have been in effect in current format since 1992. The SPD does not believe that the policies and procedures in the manual which are already in effect create "new" policies and procedures for the radio center, as indicated in your letter.

As an administrative matter relating to the Nicks letter example, I want you to know that I consider it important to keeping an open line of communication along the bureaucratic chain of command and thereby ensure that no surprises occur along that chain. To engender this openness in communication, I request that

all formal communications that you have with the Police Department Administration come through my office. As department head of the Spokane Police Department, I will ensure that appropriate correspondence is copied an/or transmitted along the chain of command to the appropriate recipient. (I expect, of course, that you will send copies directly to specific union employees who may be the subject of the issues contained in the correspondence.) We will log in such received correspondence by date and time and ensure its appropriate dissemination.

I'd further respectfully request that when you send me such correspondence, you not transmit copies to any other police officials. I find it curious that in the Nicks letter you saw fit to copy five people who are not in the Police Department.

Be assured that I very quickly disseminate information along the chain of command when received; recipients will see by signature, initials, or stamp that their chain of command has viewed the document. In using this procedure, we can all ensure that interested parties in the SPD chain of command are made aware of issues between Local 270 and the Department.

Please understand that neither the Spokane Police Department generally nor me individually will be responsible for reacting to requests or queries contained in correspondence sent as an original copy to another level in the Police Department. ...

[Emphasis by *italics* and underline in original.]

The Union responded with the complaint initiating this proceeding. It characterized its November 24, 1998 letter as "... a demand to bargain concerning any policies and procedures that the Department may wish to negotiate", and charges that the response by Chertok: Improperly instructed the union to not communicate with officials other than the chief; ignored the decision of the arbitrator; refused to bargain the policies and procedures as they effect civilian employees; instituted a process that interferes with and restrains the exclusive bargaining agent in the performance of its

duties; and instituted policies that interfere with an employee's rights as a union member.

#### The Deficiency Notice

The deficiency notice sent on July 27, 1999, pointed out several problems which prevented the finding of a cause of action to exist:

1. The union's characterization of its November 24, 1998 letter as a demand for bargaining is not supported by careful review of the document itself.<sup>2</sup> There is a demand to bargain any "new" policies applying to civilian personnel,<sup>3</sup> but there is no demand to bargain existing policies. There is also no allegation or supporting documents that suggest new policies were being created, or even that the employer had evidenced any intention to change existing policies; and
2. The complaint was unclear as to what the union was referring to when it charged that the employer "...instituted a process that interferes with and restrains" the union, or that it "instituted policies that interfere with an employee's rights as a union member".

#### The Amended Complaint

##### Duty to Bargain Policies -

In its amended complaint, the union explained that it believed the decision by Arbitrator Levak "clearly" excluded non-commissioned personnel from the coverage of the employer's Policies and Procedures Manual. While it is clear that the parties disagree

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<sup>2</sup> The obligation to accept alleged facts as true and provable does not require the Executive Director to ignore patent conflicts in a complainant's documents.

<sup>3</sup> The letter states, "... if the department intends to create policies and procedures".

about the meaning and significance of the arbitrator's decision, that is not a basis for proceedings before the Public Employment Relations Commission. The Commission does not assert jurisdiction to enforce the agreement to arbitrate grievances, the procedures for arbitration of grievances, or the awards issued by arbitrators on grievance disputes. Thurston County, Decision 103 (PECB, 1976). If the union desires to obtain enforcement of the arbitrator's decision growing out of the parties' contract, it would need to proceed in a court which can assert jurisdiction over the parties' contractual relationship.

Numerous Commission precedents have stated and reiterated the principle that an employer must give notice and provide opportunity for bargaining if it desires to **change** the wages, hours or working conditions of union-represented employees, but the union has not invoked those precedents here. The amended complaint recounted that the union's position was ignored by the chief, and that "in conversations with the union" the chief indicated that the police department did not have to negotiate. The union did not furnish any further details concerning this alleged refusal to bargain, however, and particularly did not allege any unilateral **change** of practice which could give rise to a duty to bargain. Even if the arbitrator was correct in concluding that the written policies and procedures have no application to the employees represented by this union, the employer would be at liberty to continue applying its actual practices. Without specific dates and information, it is not possible to determine that this set of facts constitutes a cause of action.

The union's claims concerning communications with the employer are similarly off the mark. Just as RCW 41.56.140 prohibits employers from interfering with the right of employees to representatives of their own choosing, RCW 41.56.150 requires a union to deal with the representatives chosen by an employer. Further, while the union characterizes the communications policy instituted by Chertok as

restricting "the ability of shop stewards to deal with immediate supervisors", review of the actual letter again does not support that characterization. On its face, the letter only deals with "formal communication that you have with my office", referring to communications between union staff and the department. There are no references to shop stewards or employee/supervisor communications. These facts remain insufficient to state a cause of action.

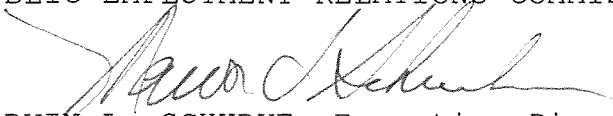
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED.

Issued at Olympia, Washington, this 3<sup>rd</sup> day of September, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.