

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED FOOD AND COMMERCIAL)	
WORKERS UNION, LOCAL 381,)	
)	
Complainant,)	CASE 14455-U-99-3582
)	
vs.)	DECISION 6765 - PECB
)	
GRAPEVIEW SCHOOL DISTRICT,)	
)	
Respondent.)	PRELIMINARY RULING AND
)	PARTIAL DISMISSAL
)	
)	

On April 1, 1999, United Food and Commercial Workers Union, Local 381 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Grapeview School District (employer) had engaged in several actions which were contrary to its obligation to bargain in good faith. The complaint was reviewed by the Executive Director under WAC 391-45-110.¹ A deficiency notice issued on May 17, 1999, pointed out that, while one allegation stated a cause of action, problems with other allegations prevented finding that a cause of action existed as to them.

The union was given a period of 14 days in which to file and serve an amended complaint which corrected the noted deficiencies, or face dismissal of the deficient allegations. The union submitted

¹ At that stage of the proceedings, all of the facts alleged in the 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.

a written response on June 1, 1999, and the case is again before the Executive Director for processing under WAC 391-45-110. The deficiencies have not been eliminated, and a partial order of dismissal is issued to limit the further proceedings to the allegation which states a cause of action.

Background (Untimely) Allegations

The complaint filed in this case on April 1, 1999 is timely, under RCW 41.56.160, only as to actions occurring on or after October 1, 1998.² Accordingly, the following items are taken as background information for which no remedy is available in this proceeding:

- That the union and employer met for approximately one year, beginning July 16, 1997, without reaching agreement on a contract;
- That the lengthy negotiations resulted from the unavailability of the employer's negotiator, and her lack of authority to enter into agreements at the bargaining table;
- That the parties entered into mediation on June 8, 1998; and
- That the parties reached agreement on all issues but union security, but apparently did not execute a written agreement on any of the agreements reached.

The union has not provided any different information in its response to the deficiency notice.

² The complaint was filed as a cover sheet without the required statement of facts on March 16, 1999. Even if the requisite time period were calculated from that date, these allegations still appear to be untimely.

Alleged Unilateral Change

The deficiency notice indicated that, assuming all of the facts alleged to be true and provable, the complaint stated a cause of action with respect to an allegation of:

Employer failure or refusal to bargain, by a unilateral change in the working conditions of school bus drivers on or about November 24, 1998.

With respect to this allegation, it was noted that long-established precedents require an employer to give notice to the exclusive bargaining representative of its employees, to provide opportunity for bargaining prior to implementing unilateral changes, and to bargain in good faith to impasse or resolution concerning mandatory subjects of bargaining. This allegation is being forwarded to an Examiner for further proceedings.

Violation of Contract and "Deferral" Considerations

The union's complaint suggests that the alleged unilateral change in working conditions of school bus drivers contravened a tentative agreement which had been reached on that issue as part of the parties' negotiations up to that time. Two concerns arise:

1. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). The Examiner will be looking at a violation of the duty to bargain, but not a violation of a contract or tentative agreement, in this case.

2. Inquiry about the propriety of "deferral to arbitration" under City of Yakima, Decision 3564-A (PECB, 1991), has been omitted in this case, absent any indication that the parties had a written and signed collective bargaining agreement in effect as of the date of the alleged unilateral change.

NOW, THEREFORE, it is

ORDERED

1. The allegation that the employer made a unilateral change in working conditions for school bus drivers on or about November 24, 1998, is hereby found to state a cause of action for further proceedings.
 - a. The person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

**File and serve its answer to the complaint
within 21 days following the date of this
order.**
 - b. The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing.
 - c. An answer shall:
 1. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

2. Assert any affirmative defenses that are claimed to exist in the matter.
 - d. Except for good cause shown, a failure to file an answer within the time specified, or the failure to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.
 - e. Martha M. Nicoloff of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. The Examiner will be issuing a notice of hearing in the near future. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 391-08-180, including making contact to determine the position of the other party prior to presenting the request to the Examiner.
2. Except as specified in paragraph 1 of this order, all of the other allegations of this complaint are DISMISSED as failing to state a cause of action.

Issued at Olympia, Washington, on the 22nd day of July, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 2 of 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.