City of Kennewick, Decision 6799 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNEWICK POLICE OFFICERS' BENEFIT ASSOCIATION,	)	
Complainant,	)	CASE 14552-U-99-3635
vs.	)	DECISION 6799 - PECB
CITY OF KENNEWICK,	)	
Respondent.	)	PRELIMINARY RULING AND PARTIAL DISMISSAL

On April 27, 1999, Kennewick Police Officers' Benefit Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Kennewick (employer) had violated RCW 41.56.140(1) and (4). A deficiency notice was issued July 2, 1999, in which certain allegations were found insufficient to state a cause of action and the union was given a period of 14 days in which to file and serve an amended complaint or face dismissal of those insufficient allegations. An amended complaint filed on July 14, 1999, is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.[1] Analysis of the amended complaint indicates the previously-noted deficiencies still

[1] At this 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.

exist. Accordingly, they are dismissed and further proceedings will be limited to the allegations which do state a cause of action.

DISCUSSION

The Alleged Unfair Labor Practices

After identifying the parties and setting forth general background regarding activities of bargaining unit employee and union officer Jack Simington, which culminated in an October 18, 1998 "no confidence" vote regarding the employer's chief of police, the original complaint was divided into four major sections.

Paragraph I.a. concerns a performance evaluation issued to Simington on October 20, 1998. The deficiency notice indicated that the complaint filed on April 27, 1999, was untimely as to this allegation. RCW 41.56.160 establishes a six-month limitation on the filing of unfair labor practice complaints. The amended complaint does not include this allegation, and this aspect of the original complaint is deemed to be withdrawn.

Paragraph I.b. concerns comments made by a sergeant about potential adverse effects of the "no confidence" vote. The deficiency notice pointed out that the complaint failed to allege any linkage by which the employer could be held liable for the statements of the sergeant, even if he was not a union member. The amended complaint alleges that the individual who made the statement is a supervisor excluded from the bargaining unit represented by the union. While

that addresses one aspect of the deficiency (by clarifying the status of the sergeant with regard to the union), it falls short of alleging any facts which could be a basis for finding that the sergeant was acting on behalf of the employer. It has long been established that supervisors themselves have bargaining rights under Chapter 41.56 RCW. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). The fact of being excluded from a bargaining unit under RCW 41.56.060 and City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981) does not automatically establish that all statements and actions of a supervisor are as an agent of the employer.

Paragraph I.c. concerns discriminatory imposition, in November of 1998, of a new (and unique) requirement that Simington submit daily reports on his activities. Assuming those alleged facts to be true and provable, the complaint states a cause of action as to this allegation.

Paragraph I.d. concerns discriminatory imposition, effective January 1, 1999, of a requirement that Simington wear a uniform while on duty, which it is alleged to have caused his performance to deteriorate because of the particular nature of his job activities. Assuming those alleged facts to be true and provable, the complaint states a cause of action as to this allegation.

The original complaint alleged, generally, that the foregoing employer actions also constituted an unlawful refusal to bargain.

The deficiency notice indicated the facts alleged were insufficient to state a cause of action under RCW 41.56.140(4). The amended complaint omitted the refusal to bargain allegation predicated upon those actions, and it is deemed to be withdrawn.

Paragraph II of the complaint is predicated upon an alleged refusal of the employer to bargain, by failing or refusing to respond to union requests, during an internal affairs investigation in March 1999, for identification of what rule or regulation violations were the subject of the interview. Assuming those alleged facts to be true and provable, the complaint states a cause of action as to this allegation.

Paragraph III is predicated upon an alleged refusal of the employer to bargain, in April of 1999, with regard to the employer's decision to eliminate Simington's position. Assuming those alleged facts to be true and provable, the complaint states a cause of action as to this allegation.

Paragraph IV is predicated upon alleged employer surveillance of Simington and unspecified discrimination against Simington. No facts are set forth, however, other than conclusionary statements which appear to relate to allegations previously detailed in the complaint. These allegations thus fail to state a cause of action warranting further proceedings under Chapter 391-45 WAC.

Other amendments to the original complaint merely constitute conclusionary allegations that the refusal to furnish information referenced in the second cause of action and any resulting

discipline violates RCW 41.56.140(3). No disciplinary actions are alleged however; and the conclusionary allegations that the actions complained of constitute a general course of conduct violative of RCW 41.56.040 do not state an independent cause of action.

NOW THEREFORE, it is

ORDERED

1. Paragraphs I.c., I.d., II., and III., as described above, are to be the subject of further proceedings under Chapter 391-45 WAC.

   A. WAC 391-45-110(2) **requires the filing of an answer** in response to a preliminary ruling which finds a cause of action to exist. Cases are reviewed after the answer is filed, to evaluate the propriety of a settlement conference under WAC 391-45-260, deferral to arbitration under City of Yakima, Decision 3564-A (PECB, 1991), priority processing, or other special handling.

   B. 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.

      An answer filed by a respondent shall:

i. 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.

ii. Specify whether "deferral to arbitration" is requested and, if so: Supply a copy of the collective bargaining agreement claimed to be applicable; identify the contract language requiring final and binding arbitration of grievances; identify the contract language which is claimed to protect the employer conduct alleged to be an unlawful unilateral change; provide information (and copies of documents) concerning any grievance being processed on the matter at issue in the unfair labor practice case; and state whether the employer is willing to waive any procedural defenses to arbitration.

iii. Assert any other affirmative defenses that are claimed to exist in the matter.

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 same date, on the attorney or principal representative of the person or organization that filed the complaint.

Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an

answer 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.

C. Vincent M. Helm 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 for the allegations found to state a cause of action and made the subject of further proceedings in paragraph 1. of this Order, all of the other allegations of the complaint and amended complaint are DISMISSED as failing to state a cause of action.

ISSUED at Olympia, Washington, this 23rd day of August, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order will be the final order of the agency on the matters covered thereby, unless a notice of appeal is filed with the Commission under WAC 391-45-350.