STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION, LOCAL 1576,	)))	
Complainant,	))	CASE 14811-U-99-3728
vs.	)))	DECISION 7321 - PECB
SNOHOMISH COUNTY PUBLIC TRANSPORTATION BENEFIT AREA, d/b/a COMMUNITY TRANSIT,	))))	ORDER DENYING MOTION TO AMEND
Respondent.	))))	

> *Jared Karstetter*, Attorney at Law, appeared for the complainant.
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> Stoel Rives L.L.P., by *Timothy J. O'Connell*, Attorney at Law, appeared for the respondent.

On September 30, 1999, Amalgamated Transit Union, Local 1576 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Community Transit (employer) as respondent. A preliminary ruling was issued under WAC 391-45-110 on October 26, 1999, finding a cause of action to exist on allegations concerning:

> The employer's refusal to bargain in violation of RCW 41.56.140(4) and (1), by unilateral transfer ("skimming" or "contracting out") of bargaining unit work to persons outside of the bargaining unit.

The matter was held in abeyance, pending receipt and review of an arbitration award. The purpose of that deferral was to determine

whether the alleged employer conduct was allowed by the parties'
collective bargaining agreement.

On February 15, 2001, the union sought to amend the complaint with
two additional allegations of violations of RCW 41.56.140:

In the first proposed amendment, the union claims that work
encompassing the distribution and/or posting of bus schedules is
generally assigned to "customer information specialist" (CIS) and
"customer assistance specialist" (CAS) classifications in the
bargaining unit represented by the union, and that coach operators
in that bargaining unit have been assigned in the past when
additional personnel were needed for that purpose. It is alleged
that new schedules were to be disseminated throughout the region in
January of 2001, and that the union learned on or about February 1,
2001, that the employer was going to use temporary employees
supplied by an outside agency to augment the CIS/CAS staff. The
employer is alleged to have used temporary employees over the
union's protests, and the union now claims that the employer has
skimmed bargaining unit work to non-bargaining unit employees.

In the second proposed amendment, the union asserts that the
employer illegally hired employees of a private employer, Coach
USA, to drive routes when coach operators in the bargaining unit
represented by the union did not volunteer to work overtime to
cover the routes.

The employer protests that the amendments would dramatically
broaden the facts in controversy, and it provided information in
support of its objection. Specifically, the employer states that
the parties' most recent contract expired on March 31, 2000, that
the parties have been in bargaining since early 2000, and that the
union sought to exert increased pressure on the employer in early
January of 2001. The employer asserts that the union leadership
encouraged members to engage in a concerted refusal to work

overtime, and that the two management decisions which the union is protesting in the proposed amendments are directly related to the union's concerted refusal to work overtime. Reference to the Commission's docket records discloses that the parties are now receiving mediation assistance from the Commission staff.

The Washington Administrative Code (WAC) allows for the amendment of complaints charging unfair labor practices. WAC 391-45-070 outlines the criteria for such amendments.[1]

> (1) A complaint may be amended upon motion made by the complainant, if:
> (a) The proposed amendment only involves the same parties as the original complaint;
> (b) The proposed amendment is timely under any statutory limitation as to new facts;
> (c) The subject matter of the proposed amendment is germane to the subject matter of the complaint as originally filed or previously amended; and
> (d) Granting the amendment will not cause undue delay of the proceedings.

It is apparent that these amendments involve the same parties, and that they are timely for acts occurring in January and February of 2001.[2]

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[1]   These motions to amend are properly before the Examiner. WAC 391-45-070(2)(b) includes: "After the appointment of an examiner but prior to the opening of an evidentiary hearing, amendment may be allowed upon motion to the examiner and subject to due process requirements."

[2]   RCW 41.56.160(1) states: "The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission."

However, the proposed amendments do not involve subject matter identical to the subject matter of the original complaint. The original complaint concerns the employer's compliance with contractual provisions for offering "new service." The proposed amendments concern the employer's delivery of ongoing work. It is clear that the employer's defenses to the proposed amendments would involve claims of unlawful partial strike activities, rather than the waiver by contract defense asserted to the original complaint. Instead of the contract analysis involved in the original complaint, resolution of the proposed amendments would call for analysis of "emergency" in a statutory setting. Thus, the allegations the union seeks to add to the complaint are not germane to the issues raised by the original complaint.

In accordance with WAC 391-45-070(3), the proposed amendments will be docketed as new cases, and will be processed independently.[3]

NOW, THEREFORE, it is

<div align="center">ORDERED</div>

The motion to amend the complaint charging unfair labor practices in this matter is denied.

ISSUED at Olympia, Washington, this __20th__ day of March, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KATRINA I. BOEDECKER, Examiner

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[3]   WAC 391-45-070(3) includes: "Where a motion for amendment is denied, the proposed amendment shall be processed as a separate case."