City of Wenatchee (Wenatchee Police Guild), Decision 7401 (PECB, 2001)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF WENATCHEE,	)	
	)	
Complainant,	)	CASE 15547-U-00-3935
	)	
vs.	)	DECISION 7401 - PECB
	)	
WENATCHEE POLICE GUILD,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the City of Wenatchee (employer) on December 26, 2000. The complaint alleged that the Wenatchee Police Guild (union) refused to bargain in violation of RCW 41.56.150(4), and committed other unfair labor practices in violation of RCW 41.56.440, by breach of its good faith bargaining obligations in declaring impasse less than 60 days after commencement of the parties' negotiations, and by indicating that it preferred to disclose its "bottom line" position to a mediator or arbitrator.

On December 29, 2000, the union filed a letter with the Commission. Under WAC 391-45-110, the preliminary ruling and deficiency notice process is limited to a review of the complaint. The union's letter cannot be considered in preparing a deficiency notice.

The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice was issued on March 6, 2001, indicating that it was not possible to conclude that a cause of action existed at that time. The deficiency notice stated that the employer and union are subject to the following impasse resolution procedure under Chapter 41.56 RCW:

> **RCW 41.56.440 Uniformed personnel--Negotiations--Declaration of an impasse--Appointment of mediator.** Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, That a mediator does not have a power of compulsion.

The deficiency notice stated that while a violation of RCW 41.56.440 may be evidence of breach of a party's good faith

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[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.

bargaining obligations through a course of conduct, it is not a *per se* unfair labor practice violation.

The deficiency notice explained that the complaint alleged that the parties' first negotiations meeting occurred on September 20, 2000. On November 15, 2000, the 56th day of the 60-day statutory negotiation period mandated by RCW 41.56.440, the union rejected the employer's "bottom line" proposal and declared an impasse. The Commission's docket records indicate that the union did not actually file a request for mediation until December 29, 2000. *See* Case 15552-M-00-5412. While the union is alleged to have declared "that an impasse exists" before expiration of the 60-day statutory period, it did not "submit the dispute to the commission for mediation" until well beyond the 60-day period. The deficiency notice indicated that the complaint failed to support a violation of RCW 41.56.440.

The deficiency notice further explained that the complaint alleged that the employer communicated its "bottom line" proposal to the union in a negotiations meeting on November 15, 2000. When that proposal was rejected by the union, the employer requested that the union disclose its "bottom line" proposal. The union responded that it would prefer to give that information to the mediator or arbitrator. While a complete refusal to make a proposal may be evidence of breach of a party's good faith bargaining obligations through a course of conduct, a refusal by a party in one negotiations meeting to disclose its "bottom line" proposal is not a *per se* unfair labor practice violation. A party's bargaining tactics in a course of conduct situation must be examined in light of all of the surrounding circumstances. The deficiency notice indicated

that the complaint failed to allege sufficient additional behavior to support a course of conduct charge.

The deficiency notice advised the employer that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised the employer that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed. Nothing further has been received from the employer.

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 15th day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Director of Administration

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.