STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 437, Complainant, | ) | CASE 16619-U-02-4336 |
| vs. | ) | DECISION 8153 - PECB |
| CITY OF BREMERTON, Respondent. | ) | ORDER OF DISMISSAL |

On August 19, 2002, International Association of Fire Fighters, Local 437 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Bremerton (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice (first deficiency notice) issued on April 22, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. The first deficiency notice stated that processing of the complaint would be held in abeyance until a related grievance arbitration proceeding was resolved.

On May 14, 2003, Arbitrator David I. Gedrose, a member of the Commission staff, issued an Arbitration Award in Case 16625-A-02-1384. After a review of the Arbitration Award, a second deficiency notice was issued on June 23, 2003, indicating again that it was not possible to conclude that a cause of action existed. The union

[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.

was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case. As nothing further has been received from the union, the Director of Administration dismisses the complaint for failure to state a cause of action.

## DISCUSSION

The complaint alleged that the employer violated RCW 41.56.140(4) by changing a past practice in which paramedics had been paid for 50 hours of continuing education each year. The complaint also cited provisions of a collective bargaining agreement in effect between the parties and described the processing of a related grievance filed under the parties' agreement.

The first deficiency notice listed three problems with the complaint. First, the 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 first deficiency notice indicated that if the union was claiming a violation of contractual rights, it would have to seek a remedy through the grievance and arbitration machinery of the contract. Second, the "unilateral change" allegation of the complaint would properly be deferred to arbitration under WAC 391-45-110(3). The first deficiency notice stated that only if an arbitrator ruled that the parties' contract is silent on the subject would there be a basis to proceed with the unfair labor practice case. Third, the parties were proceeding to arbitration in Case 16625-A-02-1384, which was filed with the Commission on the day following the complaint.

The first deficiency notice held that processing of the complaint would be held in abeyance, and that further action on the case

would be upon motion of either party after the related grievance arbitration proceedings had been concluded, or upon the initiative of the Executive Director or Director of Administration after the related grievance arbitration proceedings had been concluded.

The second deficiency notice indicated that on May 14, 2003, Arbitrator Gedrose issued an Arbitration Award in which he denied the grievance filed by the union. Responding to a procedural defense asserted by the employer, Arbitrator Gedrose concluded that the union's request for arbitration was untimely, so that the union was not entitled to a hearing on the merits of the underlying dispute.

The second deficiency notice referenced the first deficiency notice's statement that the union's claim of a violation of the parties' agreement was misplaced under *City of Walla Walla*, Decision 104 (PECB, 1976). The second deficiency notice indicated that if the union was claiming a violation of contractual rights, it lost the opportunity to obtain a remedy when the arbitrator denied the grievance. The second deficiency notice stated that to the extent the union may have intended to allege an unlawful "unilateral change" in the complaint, a clarifying amendment would be needed.

The second deficiency notice pointed out that further cautions were appropriate with regard to the issues that would be before the Commission in a proceeding on an amended complaint that contained an adequate "unilateral change" allegation:

First, the case would not be subject to deferral to arbitration, because the award issued by Arbitrator Gedrose precluded reaching the merits of the underlying claim in arbitration.

Second, the unfair labor practice provisions of the statute protect the *process* of collective bargaining, so the Examiner would

receive and consider evidence concerning the proper interpretation of the collective bargaining agreement to determine whether the employer had satisfied its duty to bargain. If the Commission were to proceed with a hearing on the unfair labor practice complaint and conclude that the employer had violated the parties' collective bargaining agreement, the unfair labor practice complaint would be dismissed; if the contract protected the employer's conduct at issue, the complaint would be dismissed. In both of those situations, the conclusion about the contract necessarily carried with it a conclusion that the parties would have bargained the issue. The second deficiency notice stated that an unfair labor practice violation could only be found if the parties' contract was silent on the subject, so that a duty to bargain existed.

As the union did not file an amended complaint in response to the second deficiency notice, the complaint is dismissed.

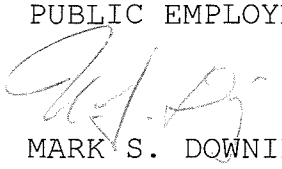
NOW, THEREFORE, it is

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 17th day of July, 2003.

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.