

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF)	
STATE EMPLOYEES,)	CASE 17348-U-03-4480
)	DECISION 8163 - PSRA
Complainant,)	
)	CASE 17349-U-03-4481
vs.)	DECISION 8164 - PSRA
)	
WASHINGTON STATE DEPARTMENT OF)	
FISH & WILDLIFE,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

On March 26, 2003, the Washington Federation of State Employees (union) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Fish & Wildlife (employer) as respondent. The complaints concerned a reorganization involving two bargaining units. The complaint involving the construction and maintenance section unit was docketed by the Commission as Case 17348-U-03-4480, while the complaint involving the fish hatcheries program unit 1 was docketed as Case 17349-U-03-4481.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 21, 2003, indicated that it was

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

not possible to conclude that a cause of action existed at that time for the allegations of employer refusal to bargain concerning its decision to reorganize in violation of RCW 41.56.140(4). The union was given a period of 21 days in which to file and serve amended complaints or face dismissal of the defective allegations.

The union filed an amended complaint in each case on August 5, 2003. After review of the amended complaints, the Director of Administration dismisses the defective allegations of the complaints for failure to state a cause of action.

DISCUSSION

The complaints alleged that the employer refused to bargain in violation of RCW 41.56.140(4), by its failure to provide the union with an opportunity for bargaining concerning the employer's decision to reorganize and/or the effects of that decision. The deficiency notice indicated that in *METRO*, Decision 2845-A (PECB, 1988), the Commission stated:

METRO retains its management prerogatives, including the right to plan for its own re-organization, but must simply bargain first on matters such as transfer of bargaining unit work and the effects of re-organization.

The deficiency notice indicated that the complaints lacked sufficient facts to suggest that the employer could have been obligated to bargain its decision to reorganize. The deficiency notice stated that a public employer may reorganize the manner in which it chooses to provide services to the public, including the creation and elimination of positions, and changes in duties for existing positions. However, the employer must negotiate any

effects of a reorganization, including the wage level of new and changed positions, with the exclusive bargaining representative of affected employees.

The deficiency notice indicated that the allegations of the complaints under RCW 41.56.140(4) concerning the employer's refusal to bargain the effects of its decision to reorganize appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

The amended complaints provide more detailed allegations concerning the employer's failure to bargain the effects or impacts of its decision to reorganize. However, the amended complaints continue to allege that the employer had an obligation to bargain its decision to reorganize. The allegations of the amended complaints concerning the employer's refusal to bargain its decision to reorganize are dismissed. The allegations of the amended complaints concerning the employer's refusal to bargain the effects of its decision to reorganize state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the refusal to bargain allegations of the amended complaints in Cases 17348-U-03-4480 and 17349-U-03-4481 concerning the effects of the employer's decision to reorganize state a cause of action, summarized as follows:

Employer refusal to bargain in violation of
RCW 41.56.140(4) [and if so, derivative "in-

interference" in violation of RCW 41.56.140(1)], by refusing to bargain the effects of its decision to reorganize.

The amended complaints will be the subject of further proceedings under Chapter 391-45 WAC.

2. Washington State Department of Fish & Wildlife shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the amended complaints, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matters.

The answer 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 amended complaints. Service shall be completed no later than the day of filing. 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 amended complaints, will be deemed to be an admission that the fact is true as alleged in the amended complaints, and as a waiver of a hearing as to the facts so admitted. See WAC 391-45-210.

3. The allegations of the amended complaints in Cases 17348-U-03-4480 and 17349-U-03-4481 concerning employer refusal to bargain in violation of RCW 41.56.140(4) involving the employer's decision to reorganize are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of August, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.