

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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|----------------------------|---|----------------------|
| AMALGAMATED TRANSIT UNION, |) | |
| LOCAL 1576, |) | |
| |) | CASE 19259-U-05-4892 |
| Complainant, |) | |
| |) | DECISION 8946 - PECB |
| |) | |
| vs. |) | |
| |) | |
| COMMUNITY TRANSIT, |) | |
| |) | |
| Respondent. |) | |
| |) | ORDER OF DISMISSAL |
| |) | |
| |) | |

On March 8, 2005, 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. The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1), refusal to bargain in violation of RCW 41.56.140(4), and violation of RCW 41.56.470, by its elimination of the associate dispatcher and associate instructor positions from the bargaining unit.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 30, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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.

No further information has been filed by the union. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The complaint is defective. A change in the scope of work performed in an employer's operation has been held to be a permissive subject of bargaining. *Port of Seattle*, Decision 4989 (PECB, 1995). In general, 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 the reorganization, including the wage level of new and changed positions, with the exclusive bargaining representative of affected employees.

The complaint involves a bargaining unit of employees of a public passenger transportation system. Such employees are entitled to interest arbitration under RCW 41.56.492. That statute provides that the following provisions of RCW 41.56.470 are applicable to such employees:

RCW 41.56.470 UNIFORMED PERSONNEL--ARBITRATION PANEL--RIGHTS OF PARTIES. During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under chapter 131, Laws of 1973.

RCW 41.56.470 prohibits unilateral changes by a public employer in "wages, hours and other conditions of employment," or mandatory subjects of bargaining, for employees subject to interest arbitra-

tion procedures under RCW 41.56.492. However, RCW 41.56.470 does not prohibit unilateral changes in permissive subjects of bargaining by a public employer. See *King County*, Decision 8373 (PECB, 2004).

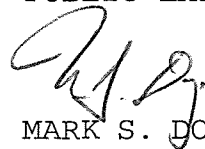
NOW, THEREFORE, it is

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 20th day of May, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.