

King Fire District 43 (International Association of Fire Fighters,
Local 3062), Decision 9045 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING FIRE DISTRICT 43,)	
)	
Complainant,)	CASE 19451-U-05-4939
)	
vs.)	
)	
INTERNATIONAL ASSOCIATION OF FIRE)	DECISION 9045 - PECB
FIGHTERS, LOCAL 3062,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	
)	

On May 5, 2005, King County Fire District 43 (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the International Association of Fire Fighters, Local 3062 (union) as respondent. The employer and union are parties to a collective bargaining agreement that expired on December 31, 2003. The statement of facts attached to the complaint indicates that the union filed a grievance on January 28, 2005, concerning the employer's discontinuation of a medical insurance plan. When the union demanded arbitration of the grievance, the employer asserted that the grievance was not subject to arbitration.

The union filed a lawsuit against the employer in King County Superior Court on April 26, 2005. The lawsuit alleges that the employer has violated section 23.1 of the parties' agreement, and RCW 41.56.100, 41.56.140 and 41.56.470. The union filed an amended lawsuit on April 27, 2005. The employer filed an amended complaint with the Commission on May 12, 2005, providing information concerning the amended lawsuit.

The amended complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 24, 2005, indicated that it was

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.

not possible to conclude that a cause of action existed at that time. The employer was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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

DISCUSSION

The allegations of the amended complaint concern union interference with employee rights in violation of RCW 41.56.150(1) and refusal to bargain in violation of RCW 41.56.150(4), by filing a lawsuit in superior court to compel arbitration of a grievance under the parties' expired collective bargaining agreement, and to enforce statutory unfair labor practice and interest arbitration provisions.

The complaint has several defects. One, the employer argues that the union's grievance is not subject to arbitration as the dispute arose after expiration of the collective bargaining agreement. That defense may be considered by a court or an arbitrator. The Commission does not assert jurisdiction to enforce the agreement to arbitrate, the procedures for arbitration, or the awards issued by arbitrators on grievance disputes. *Thurston County Communications Board*, Decision 103 (PECB, 1976).

Two, parties to a collective bargaining agreement may enforce their contractual and statutory rights by filing a lawsuit in the courts. In *City of Yakima*, 117 Wn.2d 655 (1991), the Supreme Court held that the superior courts and the Commission have concurrent jurisdiction to resolve unfair labor practice complaints involving the interpretation of public employee collective bargaining statutes. The union in *City of Yakima* filed an unfair labor practice complaint with the Commission in February, 1989. The employer filed a declaratory judgment action against the union and the Commission in superior court in August, 1989. The superior court declined jurisdiction over the employer's action under the

priority of action rule. In affirming the superior court's holding, the Supreme Court explained that under the priority of action rule, the tribunal first gaining jurisdiction of a matter retains exclusive authority over it until the matter is resolved. There is no case pending before the Commission concerning the matters at issue in the union's lawsuit. The allegations of the complaint do not state a cause of action for union interference with employee rights in violation of RCW 41.56.150(1), or refusal to bargain in violation of RCW 41.56.150(4).

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 1st day of August, 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.