STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA POLICE MANAGEMENT ASSOCIATION, LOCAL 26,	)	
Complainant,	)	CASE 19756-U-05-5008
vs.	)	DECISION 9158 - PECB
CITY OF TACOMA,	)	
Respondent.	)	ORDER OF DISMISSAL

On August 30, 2005, Tacoma Police Management Association, Local 26 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Tacoma (employer) as respondent. The complaint concerns a bargaining unit of police lieutenants and captains. The complaint included a notice of intent to make a motion for temporary relief under WAC 391-45-430. As required by WAC 391-45-430(2), processing of the complaint was expedited.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on August 31, 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.

On September 9, 2005, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral changes in established policies and practices concerning the confidentiality and release of information for unsustained allegations of misconduct by employees, and for unsustained internal affairs files, without providing an opportunity for bargaining.

The complaint contained several defects. One, the complaint was filed with the Commission on August 30, 2005. News media reports indicate that the union filed a lawsuit against the employer in Pierce County Superior Court prior to that date. An article entitled "Judge Bars Release of Brame Records" by Curt Woodward of The Associated Press, published in the *Seattle Post-Intelligencer* edition of August 30, 2005, at pages B1 and B2, states as follows:

> The Tacoma Police Union Local 6, which represents police officers, detectives and sergeants, and Local 26, which represents captains and lieutenants, filed a motion Friday [August 26, 2005] to block release of the documents [from a Washington State Patrol investigation].

The same article describes the union's position at a August 29 hearing in the lawsuit as follows:

> Two Tacoma police union locals had argued that collective bargaining gave them the right to protection from the kind of disclosure at issue. They were opposed by the city [of Tacoma] and the city's daily, The News Tribune.
>
> [Thurston County Superior Court Judge Gary] Tabor said that the state Public Disclosure Act trumps any private agreements . . . .

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.

The deficiency notice stated that there is substantial basis for concern as to whether the Commission should attempt to assert jurisdiction in this case, where the matter is already before the superior court. At a minimum, the union would need to supply full details and pleadings for the lawsuit reported in the news media.

Two, even if the union could correct the first defect, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

> WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:
>
> . . . .
>
> (2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The complaint does not conform to the requirements of WAC 391-45-050. Paragraphs 1 through 4 of the statement of facts use the general phrase "policy and long standing practice" to describe various subjects affected by the complaint. Paragraph 6 alleges that "On or about August 24, 2005, the Union learned that the City had unilaterally and without bargaining changed the policies and long standing practices referred to in the paragraphs above . . ." Thus, the complaint lacks factual details.

The deficiency notice stated that the union would need to explain what specific policies and practices of the employer are in

dispute. When were the policies and practices established? Are the policies and practices in writing? What change in policies and practices occurred on or about August 24, 2005?

Three, even if the union could correct the first defect, the statement of facts lacks any information connecting the policies and practices in dispute to the employer's personnel policies, to the parties' collective bargaining relationship, or to the parties' expired collective bargaining agreement. The allegation in paragraph 5 that the policies and practices are mandatory subjects of collective bargaining is conclusionary at best.

The amended complaint addresses defects one, two and three. In relation to defect one, the amended complaint indicates that the union filed a lawsuit in superior court on August 26, 2005, concerning the employer's obligations under Chapter 41.56 RCW. The union filed its lawsuit prior to the filing of this complaint. The priority of action rule controls the outcome of this case. The Commission must decline jurisdiction over the complaint.

NOW, THEREFORE, it is

ORDERED

The amended 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 7th day of November, 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.