

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WESTERN COUNCIL OF INDUSTRIAL)	
WORKERS, LOCAL 2767,)	
)	
Complainant,)	CASE 21127-U-07-5389
)	
vs.)	DECISION 9823 - PECB
)	
LEWIS PUBLIC HOSPITAL DISTRICT 1,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
)	

On June 21, 2007, the Western Council of Industrial Workers, Local 2767 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Lewis Public Hospital District 1 (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 28, 2007, indicated that it was not possible to conclude that a cause of action existed at that time for one of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegation. Nothing further has been received from the union.

The Unfair Labor Practice Manager dismisses the defective allegation of the complaint for failure to state a cause of action, and finds a cause of action for the interference and refusal to bargain (circumvention) allegations of the complaint. The employer must file and serve its answer to the interference and refusal to

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.

bargain allegations within 21 days following the date of this Decision.

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 (1) circumventing the union through direct dealing with an employee represented by the union, in signing an individual employment contract with Gwen Servey, and (2) refusing to meet and negotiate with the union regarding Servey's 16-hour shift.

The deficiency notice found that it was not possible to conclude that a cause of action existed for the allegation concerning the employer's refusal to meet and negotiate with the union. This allegation is defective for the following reason:

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 statement of facts attached to the complaint is not clear relative to the union's request to bargain the 16-hour shift. The union alleges that the employer refused the union's request to meet and negotiate concerning the shift. The union further requests as a remedy that the employer bargain changes to the collective bargaining agreement. However, the concluding paragraph to the statement of facts alleges only employer circumvention of the union. The scope of the complaint is unclear. Does the union allege that the employer committed a violation by refusing to meet and negotiate over Gwen Servey's 16-hour shift?

The deficiency notice stated that the allegations of the complaint concerning employer interference and circumventing the union state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission, after the union had an opportunity to respond to the deficiency notice.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain (circumvention) allegations of the complaint state a cause of action, summarized as follows:

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 circumventing the union through direct dealing with an employee represented by the union, in signing an individual employment contract with Gwen Servey.

The interference and refusal to bargain by circumvention allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Lewis Public Hospital District 1 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 complaint, 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 matter.

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 complaint. 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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

- 3. The allegation of the complaint concerning employer refusal to bargain in violation of RCW 41.56.140(4), by refusing to meet and negotiate with the union regarding Gwen Servey's 16-hour shift, is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 23rd day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.