

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 77,)	
)	
Complainant,)	CASE 19398-U-05-4925
)	
vs.)	DECISION 9827 - PECB
)	
CITY OF SEATTLE,)	
)	
Respondent.)	ORDER OF DISMISSAL
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On April 15, 2005, the International Brotherhood of Electrical Workers, Local 77 (union) filed a complaint charging unfair labor practices with the Commission against the City of Seattle (employer). The complaint was reviewed under WAC 391-45-110.¹ The Commission issued a preliminary ruling and deferral inquiry on June 1, 2005, finding that the following allegations of the complaint stated a cause of action:

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 change in payment for line service relief, without providing an opportunity for bargaining.

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.

The union filed an amended complaint on June 9, 2005. The Commission issued a revised preliminary ruling and deferral inquiry on June 14, 2005, finding that the following allegations of the amended complaint stated a cause of action:

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 change in payment for line service relief and use of operators when powerhouse is staffed, without providing an opportunity for bargaining.

On June 28, 2005, the employer filed an answer to the amended complaint and requested deferral to arbitration. The Commission deferred the amended complaint to arbitration on June 30, 2005.

On July 15, 2005, the union filed a letter disagreeing with the deferral decision, stating, "deferral of this matter effectively deprives Local 77 of an opportunity to obtain a timely ruling on the failure to bargain unfair labor practice charge. The parties are currently engaged in negotiations." The union's letter further stated that the union did not believe that "a formal motion for reconsideration [of the deferral decision] is a productive use of time and resources, and instead simply wishes to register its displeasure."

On April 6, 2007, the union filed a copy of an April 2, 2007, arbitration award issued by Arbitrator Gary L. Axon. The award found that the employer violated the parties' collective bargaining agreement when it temporarily transferred employees off of their regular shift in order to cover for a temporary absence on another shift. Under the award, the employer was ordered to:

1. Cease and desist the practice of rotating employees off of their regularly assigned shifts outside of the normal two-month shift rotation schedule to cover for temporary vacancies.
2. Reinstate the system in existence prior to April 2005 regarding payment for line service relief in the form of scheduling employees to work double shifts.
3. Make all affected employees whole for City Light's unilateral change in the process for covering temporary absences.

In its filing of April 6, 2007, the union requested the Commission to schedule the amended complaint for a hearing, stating:

Seattle City Light's conduct in making a unilateral change to working conditions during on-going negotiations was destructive to the collective bargaining process and to the spirit of negotiations. Seattle City Light's conduct during negotiations of making a unilateral change is wrong-in-and-of-itself which warrants a remedy. The harm that is done to the negotiating process is not remedied by the arbitrator remedying the contract violation.

On July 3, 2007, the Commission directed the union to show good cause, within fourteen days from July 3, why the amended complaint should not be dismissed. The union has not responded to the show cause directive. The amended complaint is dismissed.

DISCUSSION

Under WAC 391-45-110(3), the Commission defers contract interpretation questions to an arbitrator while retaining jurisdiction over the unfair labor practice complaint. After the arbitration award is issued, the Commission reviews the award. WAC 391-45-110(3) states:

WAC 391-45-110 Deficiency notice - Preliminary ruling - Deferral to arbitration.

. . . .
(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

. . . .
(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

The Commission may defer unilateral change allegations to arbitration under WAC 391-45-110(3)(a). The arbitration award was reviewed under WAC 391-45-110(3)(b). The June 1 and 14, 2005, preliminary rulings found that the complaint and amended complaint stated a cause of action for 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 change of employee wages, hours or working conditions without providing an opportunity for bargaining.

The union's letters of July 15, 2005, and April 6, 2007, appear to assert that the employer's conduct in making the unilateral change

was also a breach of the employer's good faith bargaining obligations. The Commission does not defer breach of good faith allegations to arbitration, because the alleged misconduct is an attack on the collective bargaining process that the Commission is responsible for enforcing under the statutory duty to bargain. However, the preliminary rulings did not contain a cause of action for breach of good faith. The Commission has processed this case solely as an allegation involving a unilateral change. The union has declined to show good cause for compelling a change of course by the Commission.

The June 30, 2005, deferral to arbitration letter stated:

4. The parties are to supply the Commission with a copy of any arbitration award resulting from the arbitration proceedings. The Commission reviews the arbitration award to determine its effect, if any, on this unfair labor practice case. The arbitrator draws his or her authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the contract. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:

- b. . . . If the arbitrator finds the employer's conduct was prohibited by the collective bargaining agreement, the arbitrator will need to remedy the contract violation. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, and the union should anticipate dismissal of the unfair labor practice allegation on a subject that was bargained by the parties and is merely a contract dispute.

The arbitrator found that the employer's conduct violated the parties' contract and ordered remedies to affected employees. The

arbitration award meets the Commission's fairness standards for acceptance of an award under WAC 391-45-110(3)(b).

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in the above captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 2nd day of August, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'D. I. Gedrose', is written over the printed name below.

DAVID I. GEDROSE, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

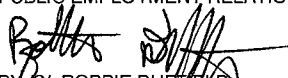
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 19398-U-05-04925 FILED: 04/15/2005 FILED BY: PARTY 2
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