

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE OFFICERS GUILD,)	
)	
Complainant,)	CASE 21561-U-08-5493
)	
vs.)	DECISION 10041 - PECB
)	
CITY OF SEATTLE,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
_____)	

On February 28, 2008, the Seattle Police Officers Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Seattle (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 10, 2008, indicated that it was not possible to conclude that a cause of action existed at that time for some 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 allegations. Nothing further has been received from the union.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, and

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.

finds a cause of action for the allegations of the complaint as fully set forth below in the preliminary ruling. The employer must file and serve its answer to the allegations contained in the preliminary ruling 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), domination or assistance of a union in violation of RCW 41.56.140(2), and refusal to bargain in violation of RCW 41.56.100 and RCW 41.56.140(4), by (1) actions of employer officials on February 26, 2008, in circumventing the union through direct dealing with employees represented by the union, by (a) presenting incomplete, inaccurate, and intentionally misleading collective bargaining proposals and information to bargaining unit members without the presence of the union and before presenting the same proposals and information to the union, and (b) presenting an economic offer to bargaining unit members without the presence of the union and before presenting the same offer to the union; (2) breach of its good faith bargaining obligations by (a) its aforementioned actions on February 26, 2008, and (b) a course of conduct designed to frustrate the collective bargaining process, as specifically alleged in paragraph 2.18 of the statement of facts.

The allegations of the complaint concerning 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) state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice stated that it was not possible to conclude that a cause of action existed for allegations of the complaint concerning employer domination or assistance of a union in violation of RCW 41.56.140(2) and refusal to bargain in violation of RCW 41.56.100. Those allegations of the complaint are defective.

Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. Complaints must conform to WAC 391-45-050.

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.

RCW 41.56.140(2)

The complaint appears to allege employer domination or assistance of a union in violation of RCW 41.56.140(2) (domination). The union did not check the box on the complaint form alleging employer domination. The complaint's only references to the allegation of employer domination are parenthetical citations in the cause of action headings and in paragraphs 2.16 and 2.17 of the statement of facts. Aside from the numerical references to RCW 41.56.140(2), the statement of facts and the remedy only allege employer interference and refusal to bargain. The complaint is unclear regarding the allegation of employer domination or assistance of a union.

RCW 41.56.100

The complaint alleges employer refusal to bargain in violation of RCW 41.56.100. The union's purpose in citing this statute is

unclear. Under RCW 41.56.100, a public employer has a duty to engage in collective bargaining with an exclusive bargaining representative. However, the Commission adjudicates allegations of employer refusal to bargain under RCW 41.56.140(4), not under RCW 41.56.100. The union's use of RCW 41.56.100 to allege an employer refusal to bargain violation is redundant.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain 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 (1) actions of employer officials on February 26, 2008, in circumventing the union through direct dealing with employees represented by the union, by (a) presenting incomplete, inaccurate, and intentionally misleading collective bargaining proposals and information to bargaining unit members without the presence of the union and before presenting the same proposals and information to the union, and (b) presenting an economic offer to bargaining unit members without the presence of the union and before presenting the same offer to the union; (2) breach of its good faith bargaining obligations by (a) its aforementioned actions on February 26, 2008, and

(b) a course of conduct designed to frustrate the collective bargaining process, as specifically alleged in paragraph 2.18 of the statement of facts.

The above-noted allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. The City of Seattle 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 allegations of the complaint concerning employer domination or assistance of a union in violation of RCW 41.56.140(2) are DISMISSED.
4. The allegations of the complaint concerning employer refusal to bargain in violation of RCW 41.56.100 are DISMISSED.

ISSUED at Olympia, Washington, this 18th day of April 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraphs 3 and 4 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.