

City of Brier, Decision 9931 (PECB, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BRIER POLICE ASSOCIATION,)	
)	
Complainant,)	CASE 21240-U-07-5417
)	
vs.)	DECISION 9931 - PECB
)	
CITY OF BRIER,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	

Emmal, Skalbania, & Vinnege, by Alex Skalbania, Attorney
at Law, for the union.

Davis, Grimm, Payne & Marra, by Eileen Lawrence, Attorney
at Law, for the employer.

On September 4, 2007, the Brier Police Association (union) filed an unfair labor practice complaint with the Public Employment Relations Commission, naming the City of Brier (employer) as the respondent. The complaint alleges that the employer circumvented the union and illegally negotiated a reimbursement contract with a bargaining unit member. In October 2007, the union was decertified as the exclusive bargaining representative. On September 28, 2007, the employer moved to dismiss the complaint. The parties provided briefs to the motion.

ISSUE

The sole issue before the Hearing Examiner is whether the union's complaint is subject to dismissal based on the following three assertions:

1. The union is no longer the exclusive bargaining representative,
2. The union waived its rights to negotiate reimbursement contracts and thus the complaint is untimely, and
3. The subject matter of the complaint is not a mandatory subject of bargaining.

The Hearing Examiner concludes that the union lacks standing to pursue its complaint against the employer. Therefore, the complaint is dismissed.

ANALYSIS

Under RCW 41.56.030, the duty to bargain can only exist between a public employer and the incumbent exclusive bargaining representative of its employees. It follows that only an employer or an incumbent exclusive bargaining representative can be granted a remedy under RCW 41.56.150(4). Accordingly, because a decertified union cannot be granted a remedy under the statute, refusal to bargain and derivative interference claims cease to exist after decertification. *Vancouver School District*, Decision 2575-A (PECB, 1987). In *Vancouver School District*, after a bargaining unit sought to change its representation, the employer refused to bargain with the incumbent exclusive bargaining representative of the bargaining unit. The incumbent representative filed refusal to bargain claims against the employer. Shortly after, a new affiliation was certified as the exclusive bargaining representative of the bargaining unit. In that case, the Commission specifically ruled that the incumbent union lost its standing to pursue refusal to bargain charges once the new affiliation was certified as the exclusive bargaining representative.

In the present case, the union is no longer the exclusive bargaining representative of the bargaining unit. Therefore, it lacks standing to pursue a refusal to bargain claim with the employer, and its complaint must be dismissed. As the complaint is dismissed, the issues of timeliness and whether the contracts fall within the purview of management rights need not be addressed.

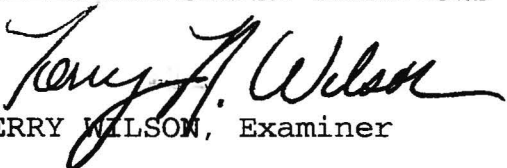
NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 17th day of December, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


TERRY WILSON, Examiner

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.