

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL LONGSHORE AND	)	
WAREHOUSE UNION, LOCAL 9,	)	
	)	
Complainant,	)	CASE 13740-U-98-3365
	)	
vs.	)	DECISION 7000 - PECB
	)	
PORT OF SEATTLE,	)	SUMMARY JUDGEMENT
	)	
Respondent.	)	
	)	
	)	
	)	

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On February 27, 1998, International Longshore and Warehouse Union, Local 9 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The union alleged that the Port of Seattle (employer) had violated RCW 41.56.140(4), by implementing a "personal leave" policy earlier than had been agreed upon by the parties in collective bargaining negotiations. The complaint was processed under WAC 391-45-110,<sup>1</sup> and a cause of action was found to exist. A preliminary ruling issued on May 13, 1998, directed the employer to file an answer within 21 days following the date of that ruling.

The employer has not filed an answer to the complaint, and the union has filed and served a request that the Examiner issue a summary judgment. The union cites the employer's refusal to provide any explanation for its conduct, and its failure to answer

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<sup>1</sup> At that stage of the proceedings, all of the facts set forth in a complaint are assumed to be true and provable. The question at hand is whether the complaint states a cause of action for unfair labor practice proceedings before the Commission.

as directed in the preliminary ruling. To date, the employer has not provided any information about its conduct as it related to its failure to provide an answer.

### DISCUSSION

Motions for summary judgment are processed under WAC 391-08-230, which states in pertinent part:

A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law.

A motion for summary judgment invites the Examiner to make final determinations on a number of critical issues without the benefit of a full evidentiary hearing and record. The granting of such an order cannot be taken lightly, and should only be done where it is plain that there are no material facts in question.

In the instant case, the union has made a compelling argument that summary judgment should be granted. The employer has never responded, nor has it given any satisfactory explanation for its failure to answer the complaint. The Commission's rules clearly detail the effects of a failure to answer, at WAC 391-45-210. Those effects include:

... admission that the fact[s] [are] true as alleged in the complaint, and as a waiver ... of a hearing as to the facts so admitted.

The Commission must enforce its procedures concerning unfair labor practice complaints and answers consistently, to ensure that it provides a "uniform and impartial" forum for the resolution of such disputes. RCW 41.58.005. The employer in this case ignored the Commission's directions at its own peril, and it must accept the consequences for such actions. Accordingly, the union's motion for summary judgment is being granted, no hearing or further proceedings before the Examiner are necessary, and an order is being entered to remedy the employer's unfair labor practice.<sup>2</sup>

NOW, THEREFORE, it is

ORDERED

1. The motion for summary judgment filed by International Longshore and Warehouse Union, Local 9, against the Port of Seattle in the above-captioned matter is GRANTED.
2. The Port of Seattle, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

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<sup>2</sup> No "restore the status quo" or "give notice and bargain future changes" clauses are being included in the remedial order in this case. Those traditional remedies for unilateral change situations require the employer to restore the wages, hours and working conditions which existed before an unlawful unilateral change (i.e., the "status quo ante"), and to fulfill its collective bargaining obligations before making any change. In this case, however, it only appears the employer jumped the gun by early implementation of an agreed change, so that restoration of the status quo ante would actually deprive the employees of the benefit of the agreed change, and that an existing contract guarantees continuation of the benefit.

## A. CEASE AND DESIST from:

- 1) Unilaterally implementing changes of the wages, hours or working conditions of employees in the bargaining unit represented by International Longshore and Warehouse Union, Local 9.
- 2) In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

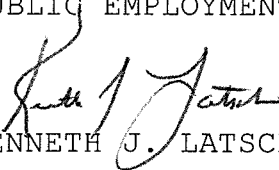
## B. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

- 1) Post, in conspicuous places on the employer's premises where notices to all employee are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.
- 2) Read the notice attached to this order into the record at a regular public meeting of the Port of Seattle, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

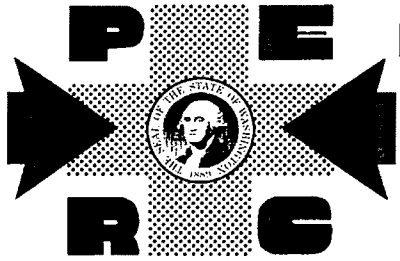
- 3) Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this Order, and at the same time provide the complainant with a signed copy of the notice attached to this Order.
  
- 4) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this Order, as to what steps have been taken to comply with this Order, and at the same time provide the Executive Director with a signed copy of the notice attached to this Order.

Issued at Olympia, Washington, this 15<sup>th</sup> day of March 2000

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
KENNETH J. LATSCH, Examiner

This Order may be appealed  
by filing a Petition for  
Review with the Commission  
pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT unilaterally implement changes in wages, hours or working conditions of employees in the bargaining unit represented by International Longshore and Warehouse Union, Local 9.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: \_\_\_\_\_

PORT OF SEATTLE

BY: \_\_\_\_\_  
Authorized Representative

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.**

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.