

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ALLIANCE OF	)	
THEATRICAL STAGE EMPLOYEES,	)	
LOCAL 15,	)	
	)	
Complainant,	)	CASE 15911-U-01-4048
	)	
vs.	)	DECISION 7488 - PRIV
	)	
BROADWAY CENTER FOR THE PERFORMING	)	
ARTS,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
	)	

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The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the International Alliance of Theatrical Stage Employees, Local 15 (union) on July 16, 2001. The complaint alleged that the Broadway Center for the Performing Arts (employer) interfered with employee rights in violation of RCW 41.56.140(1) and refused to bargain in violation of RCW 41.56.140(4), by skimming work previously performed by the production stage manager position, without providing an opportunity for bargaining.

A letter was filed by the employer's attorney on August 6, 2001, questioning why the City of Tacoma was listed as the employer on Commission docket records, as the complaint listed the employer as the Broadway Center for the Performing Arts.

The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on August 10, 2001, indicating that it was not possible to conclude that a cause of action existed at that time.

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<sup>1</sup> 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 deficiency notice stated that a threshold question was presented as to whether the Commission had jurisdiction over the dispute. The statement of facts attached to the complaint indicated that the Broadway Center for the Performing Arts was a public employer "acting on behalf of the City of Tacoma." However, the collective bargaining agreement filed with the complaint listed the employer as the Broadway Center for the Performing Arts, and made no mention of the City of Tacoma. The employer's letter filed on August 6, 2001, indicated that the Center is a non-profit, private corporation.

The deficiency notice stated that the Commission generally lacks jurisdiction over private entities. However, the Commission does assert jurisdiction in private sector labor disputes under Chapter 49.08 RCW if both parties consent to the jurisdiction of the Commission. *Lower Columbia Community Action Council*, Decision 3873 (PRIV, 1991). The deficiency notice concluded that given the employer's assertion that it is a non-profit, private corporation, the union would be given an opportunity to provide documentation that the employer is in fact subject to the jurisdiction of the Commission.

The deficiency notice advised the union that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised the union that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed.

The union filed an amended complaint on August 20, 2001. The union argues that the Broadway Center for the Performing Arts is subject to the Commission's jurisdiction because it meets the definition of a "public employer" under RCW 41.56.030(1). The union relies on the following statutory language:

RCW 41.56.030 DEFINITIONS. As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. . . .

The union asserts that the Broadway Center for the Performing Arts is a "body acting on behalf of [a] public body [City of Tacoma]."

The union presented several exhibits with its amended complaint. Exhibit A contains a job description for the position of "Pantages Center Manager" and "Pantages Center Director." Each job description lists on its title page the "City of Tacoma" and a handwritten notation of "Eli Ashley." The union maintains that Ashley holds a "regular full-time City of Tacoma job." The amended complaint lists Ashley as the current executive director of the Broadway Center for the Performing Arts.

Exhibit B of the amended complaint contains various documents filed by the Broadway Center for the Performing Arts with the Secretary of State office of the State of Washington. Articles of Incorporation were filed on April 24, 1979, for "The Pantages Center" under Chapter 24.03 RCW, the Washington Non-Profit Corporation Act. These articles indicate that the Pantages Theatre building is property of the City of Tacoma. The union emphasizes that the articles of incorporation list one of the purposes of the corporation as "[t]o assist, counsel and advise the City Council of the City of Tacoma . . ." in matters related to the "Pantages Theatre building, so long as the same remains the property of the City of Tacoma." Exhibit B includes an Application for Status as a Public Benefit Nonprofit Corporation filed by the Pantages Center on February 26, 1990. The application indicated that the Pantages Center received IRS tax exempt status under section 501(c)(3) on June 14, 1984.

Exhibit B includes a Certificate of Amendment filed by the Pantages Center on August 23, 1991. The purpose of the amendment was to

change the name of a "Washington Non Profit Corporation" to the Broadway Center for the Performing Arts. Included in Exhibit B is a Nonprofit Corporation Annual Report for 2000 listing Eli Ashley as a director of the corporation.

The amended complaint does not provide sufficient documentation that the employer is subject to the jurisdiction of the Commission. Under WAC 391-45-110, it is assumed that Eli Ashley holds a "regular full-time City of Tacoma job." However, the complaint was not filed on behalf of Ashley but on behalf of the employees covered by the parties' agreement. There is no evidence that such employees are public employees within the meaning of Chapter 41.56 RCW. They are employees of a private, non-profit corporation. In addition, there is no evidence that the Broadway Center for the Performing Arts has consented to the jurisdiction of the Commission under Chapter 49.08 RCW.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29<sup>th</sup> day of August, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

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.