Clark County Public Transportation Benefit Area (C-TRAN), Decision 8489 (PECB, 2004

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RICHARD PRINGLE, Complainant, vs. CLARK COUNTY PUBLIC TRANSPORTATION BENEFIT AREA (C-TRAN,) Respondent.	CASE 17875-U-03-4615 DECISION 8489 – PECB ORDER OF DISMISSAL

On September 29, 2003, Richard Pringle (Pringle) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Clark County Public Transportation Benefit Area (C-TRAN or employer) as respondent. The allegations of the complaint concern 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 breach of its good faith bargaining obligations in conducting negotiations for a collective bargaining agreement covering the period of September 1, 1999, through August 31, 2002, on a perfunctory basis with intent to change undesirable terms after signing of the agreement; by negotiating Memorandum of Understanding (MOU) 00-05, with a date of May 23, 2000, replacing an extra board for coach operators with an "A" and a "B" extra board; by its unilateral change in procedures expanding the "B" extra board after adoption of MOU 00-05 without providing an opportunity for bargaining; and by its termination of Pringle in violation of MOU 00-05 and the parties' agreement.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on February 10, 2004, indicated that it was not possible to conclude that a cause of action existed at that time. Pringle was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On March 2, 2004, Pringle filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The complaint contained several defects. One, the good faith bargaining obligations of Chapter 41.56 RCW are set forth in RCW 41.56.030(4) as follows:

> RCW 41.56.030 DEFINITIONS. As used in this chapter:
>
> . . . .
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> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions
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> . . .

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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 good faith bargaining obligations of RCW 41.56.030(4) can only be enforced by an employee organization or a public employer. Individual employees do not have standing to process allegations concerning breach of a party's good faith bargaining obligations.

Two, unilateral changes involve an employer making a decision or taking action to change the wages, hours or working conditions of employees without first having given notice to the union, providing an opportunity for collective bargaining, and bargaining in good faith upon request. However, the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by an employee organization. Individual employees do not have standing to process refusal to bargain allegations.

The amended complaint addressed defects one and two together, stating as follows:

> The duty to bargain remains an employee to employer and employer to employee obligation. When an employer fails or refuses to bargain they interfere with the employee's right to bargain. Interference, by specific reference, constitutes a violation of employee rights.

The amended complaint cited provisions of the National Labor Relations Act and Chapter 41.56 RCW in support of its argument.

The amended complaint alleges statutory violations of 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). The provisions of RCW 41.56.140(1) and (4) read as follows:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:

> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . . .
>
> (4) To refuse to engage in collective bargaining.

Under RCW 41.56.140(1), it is an unfair labor practice for a public employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. In *Brinnon School District*, Decision 7210-A (PECB, 2001), Commission stated as follows:

> The burden of proving unlawful interference rests with the complaining party. An interference violation will be found when an employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or other employees. *City of Vancouver*, Decision 6732-A (PECB, 1999); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997).

The amended complaint alleges that the employer interfered with Pringle's rights under RCW 41.56.140(1), by its unilateral change in Pringle's wages, hours and working conditions through removing him from a bid position. Allegations of unilateral change do not state a cause of action for an independent interference violation under RCW 41.56.140(1), and can only be processed under the refusal to bargain provisions of RCW 41.56.140(4). Under RCW 41.56.140(4), it is an unfair labor practice for a public employer to refuse to engage in collective bargaining with the exclusive bargaining representative of its employees. Individual employees do not have standing to enforce the bargaining obligations of an employer. The amended complaint failed to cure defects one and two.

Three, the statement of facts attached to the complaint makes numerous references to alleged violations of the parties' collective bargaining agreement and MOU 00-05. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). The amended complaint argues that the holding of *City of Walla Walla*, Decision 104, does not support the conclusion reached in the deficiency notice. *City of Walla Walla*, Decision 104, is a long-standing Commission precedent. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *See Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997). The amended complaint failed to cure defect three.

Four, the Commission is bound by the following provisions of Chapter 41.56 RCW:

> RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. . . .

The complaint contains information concerning events occurring more that six months before the filing of the complaint. Events described in the statement of facts attached to the complaint occurring before March 29, 2003, will be considered merely as background information. The complaint is limited to allegations of employer misconduct occurring on or after March 29, 2003. The amended complaint has been reviewed in light of RCW 41.56.160.

Additional Allegations in Amended Complaint

The amended complaint alleges that the employer's actions violated Pringle's right to due process under the 14th Amendment of the U.S. Constitution. The Public Employment Relations Commission does not have jurisdiction over constitutional claims. Claims concerning an employee's constitutional rights must be pursued before a court.

NOW, THEREFORE, it is

ORDERED

The amended 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 6th day of April, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

MARK S. DOWNING, 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.