

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE UNIVERSITY	)	
POLICE GUILD,	)	
	)	
Complainant,	)	CASE 20908-U-07-5330
	)	
vs.	)	DECISION 9614 - PSRA
	)	
WASHINGTON STATE UNIVERSITY,	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
	)	
	)	

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On February 5, 2007, the Washington State University Police Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Washington State University (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on February 12, 2007, 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.

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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.

This Decision dismisses the defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for refusal to bargain allegations of the complaint. The employer must file and serve its answer to the refusal to bargain allegations within 21 days following the date of this Decision.

#### DISCUSSION

The allegations of the complaint concern employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative "interference" in violation of RCW 41.80.110(1)(a)], by its unilateral change in calculation of the overtime rate of pay without providing an opportunity for bargaining, and by breach of its good faith bargaining obligations in changing the overtime rate of pay for a single pay period while an arbitration hearing is pending on that issue.

The deficiency notice indicated that a cause of action did not exist for the allegations of the complaint concerning a unilateral change without providing an opportunity for bargaining. Those allegations are defective. An allegation that an employer has failed to follow established practices on a mandatory subject of bargaining in a specific instance, does not rise to the level of an allegation that the employer has actually changed its practice. *King County*, Decision 4258-A (PECB, 1994); *King County*, Decision 4893-A (PECB, 1995); *City of Burlington*, Decision 5841-A (PECB, 1997); and *Kennewick School District*, Decision 6427-A (PECB, 1998). An isolated variance in practice does not amount to a unilateral change. The change in practice must be one which represents a departure from an established practice.

The complaint seeks as one of its remedies an "Order requiring the University to fully implement the 2005 - 2007 Collective Bargaining Agreement by paying the Officers an overtime rate which includes the value of the 2.9% pay increase . . . ." The object of a remedial order is to place an injured party back in the position it would have occupied if the unfair labor practice had not been committed. The 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 Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997). The typical remedy for a "breach of good faith" violation would not include an order interpreting the parties' collective bargaining agreement.

The deficiency notice stated that the allegations of the complaint concerning breach of the employer's good faith bargaining obligations under RCW 41.80.110(1)(e) appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

NOW, THEREFORE, it is

ORDERED:

1. Assuming all of the facts alleged to be true and provable, the refusal to bargain allegations of the complaint state a cause of action, summarized as follows:

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative "interference" in violation of RCW 41.80.110(1)(a)], by breach of its good faith bargaining obligations in changing the overtime rate of pay for a single pay period while an arbitration hearing is pending on that issue.

The refusal to bargain allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Washington State University 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 refusal to bargain in violation of RCW 41.80.110(1)(e), by its unilateral change in calculation of the overtime rate of pay, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 12<sup>th</sup> day of March, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Field Services Manager

Paragraph 3 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.