STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| TEAMSTERS LOCAL 763, Complainant, | ) | CASE 19393-U-05-4924 |
| vs. | ) | DECISION 9540 - PECB |
| SNOHOMISH COUNTY, Respondent. | ) | AMENDED PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL |

On April 1, 2005, Teamsters Local 763 (Teamsters/union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Snohomish County (employer) as respondent.[1] The union is the exclusive bargaining representative for a unit of law enforcement support services employees. The complaint was reviewed under WAC 391-45-110,[2] and a preliminary ruling issued on June 2, 2005,

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[1] The union filed the complaint along with a motion to amend, after the opening of an evidentiary hearing in another unfair labor practice proceeding between the employer and union. See Case 17883-U-03-4616. The examiner in that proceeding denied the proposed amendment, so the complaint was docketed by the Commission as a new case under WAC 391-45-070(3).

[2] 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.

summarized the allegations of the complaint found to state a cause of action as follows:

> 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 skimming of bargaining unit work previously performed by judicial service officers on or about January 1, 2005, and by breach of its good faith bargaining obligations in refusing to schedule meeting dates for negotiations concerning such transfer of unit work.

On June 10, 2005, the union filed a motion to amend the preliminary ruling. The motion requested four modifications to the preliminary ruling:

> 1) Adding the phrase "without first bargaining to good faith impasse" to the skimming allegations;
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> 2) Adding a cause of action for "combining interest arbitration employees/work with non-interest arbitration employees/work";
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> 3) Adding a cause of action for "refusing to recognize Teamsters 763 as the exclusive bargaining representative of the JSO [judicial service officer] employees and/or their work"; and
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> 4) Adding a cause of action for "unilaterally changing the scope and/or definition of the bargaining unit."

The union's motion asserted that the complaint not only referenced skimming and refusal to meet/bargain allegations, but also that the employer unilaterally changed the definition and/or scope of the bargaining unit. The union contended that the complaint contained facts indicating that the employer combined interest arbitration eligible employees/work with non-interest arbitration employ-

ees/work, and did not bargain to good faith impasse before implementation.

On June 23, 2005, the employer filed its answer to the complaint.

On October 10, 2005, the employer filed a response to the union's motion to amend the preliminary ruling. The employer disputed whether the complaint supported the additional causes of action sought by the union. The employer explained that the complaint concerned the layoff of four judicial service officers and transfer of their work to another bargaining unit. The employer viewed those charges as skimming allegations, and not allegations supporting the union's legal theory of a change in scope of the Teamsters bargaining unit.

The employer saw the union's theory about combining interest arbitration eligible employees with non-interest arbitration eligible employees as a recap of the union's change in scope of bargaining unit theory. As to the union's theory that the employer refused to recognize the union as the exclusive bargaining representative of judicial service officers and/or their work, the employer indicated that it had entered into a collective bargaining agreement with the union covering those employees. Although the employer believed that the preliminary ruling fairly summarized the skimming allegations of the complaint, it did not object to the union's request to add the phrase "without first bargaining to good faith impasse" to the preliminary ruling.

On October 20, 2005, the union filed a reply to the employer's response. The reply stated that "[T]he facts necessary for a skimming charge overlap with the facts necessary for a scope

charge. Consequently, if there are facts sufficient for a skimming charge, there will be facts sufficient for a scope charge."

On December 1, 2005, a deficiency notice was issued by the Unfair Labor Practice Manager, in response to the union's motion to amend the preliminary ruling. In relation to the union's first requested amendment, the deficiency notice indicated that the preliminary ruling would be amended as requested. The deficiency notice identified defects with the union's second, third and fourth requested amendments to the preliminary ruling, and stated that it was not possible to conclude that a cause of action existed at that time for those requested amendments. 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.

On December 2, 2005, an examiner issued a decision in a related unfair labor practice proceeding between the employer and union (Case 17883-U-03-4616 referenced in footnote 1). *Snohomish County*, Decision 9180 (PECB, 2005). The preliminary ruling issued on February 25, 2004, for the complaint in that proceeding stated as follows:

> 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 skimming of bargaining unit work previously performed by judicial service officers, without providing an opportunity for bargaining.

The examiner in Decision 9180 was presented with three issues:

> Issue 1: Did the county have a duty to bargain over the decision to transfer work performed by Judicial Service Officers (JSOs) to another bargaining unit?

Issue 2: If a duty to bargain existed, did the employer violate RCW 41.56.140(4) and (1) by failing to bargain to impasse over the decision to transfer the JSO work to another unit?

Issue 3: Does the employer have a valid affirmative defense of waiver by inaction?

The examiner reached the following conclusions in Decision 9180:

> [T]he employer did have a duty to bargain with the union over the decision to transfer work from the support services unit to the deputy sheriffs bargaining unit. However, the employer did not commit an unfair labor practice because it provided adequate notice to the union before it transferred the work, provided an opportunity to bargain, and bargained to impasse. In addition, there cannot be an unfair labor practice violation because the union waived its right to bargain by its own inaction.

The union's complaint was dismissed by the examiner in Decision 9180.

On December 19, 2005, the union filed an amended complaint in response to the December 1 deficiency notice issued in Case 19393-U-05-4924. The amended complaint has been reviewed under WAC 391-45-110. The Unfair Labor Practice Manager dismisses defective allegations of the amended complaint for failure to state a cause of action, and finds a cause of action for interference and refusal to bargain allegations of the amended complaint.

DISCUSSION

The December 1 deficiency notice identified defects with the union's second, third, and fourth requested amendments to the preliminary ruling.

In relation to the second requested amendment of adding a cause of action for combining interest arbitration employees/work with non-interest arbitration employees/work, the deficiency notice referenced the following Commission rule:

> WAC 391-35-310 EMPLOYEES ELIGIBLE FOR INTEREST ARBITRATION. Due to the separate impasse resolution procedures established for them, employees occupying positions eligible for interest arbitration shall not be included in bargaining units which include employees who are not eligible for interest arbitration.

WAC 391-35-310 is a Commission rule covering unit clarification proceedings. A unit clarification petition may be filed by an employer or union seeking a ruling on the proper unit placement of certain positions or classifications. Unit clarification issues are not determined in unfair labor practice proceedings.

In relation to the third requested amendment of adding a cause of action for refusing to recognize the Teamsters as the exclusive bargaining representative of the judicial service officer employees and/or their work, the deficiency notice stated that the complaint alleged that work previously performed by judicial service officers had been transferred to civil deputy employees in another bargaining unit. If the Teamsters prevail on their unfair labor practice complaint, it is likely that the unit work that has allegedly been skimmed from their bargaining unit will be returned to the unit.

In relation to the fourth requested amendment of adding a cause of action for unilaterally changing the scope and/or definition of the bargaining unit, the deficiency notice indicated that the complaint

did not support a cause of action for a change in the scope of the bargaining unit. Bargaining unit work is defined as work that has historically been performed by bargaining unit employees. Once an employer assigns unit employees to perform a certain body of work, that work attaches to the unit and becomes bargaining unit work. *City of Tacoma*, Decision 6601 (PECB, 1999). A public employer must bargain the transfer of bargaining unit work to employees outside of the unit. *South Kitsap School District*, Decision 472 (PECB, 1978). A skimming cause of action involves allegations that an employer has transferred bargaining unit work to non-unit employees of the same employer. A change in scope of bargaining unit cause of action involves allegations that an employer has transferred unit work, as well as employees, to another bargaining unit of the same employer.

The complaint alleges that civil deputy employees in another bargaining unit are performing work previously performed by judicial service officers in the Teamsters bargaining unit. The complaint does not allege that judicial service officer employees were transferred from the Teamsters bargaining unit to the deputy sheriff bargaining unit. The allegations of the complaint concern transfer of unit work, and not a change in the scope of the bargaining unit.

## Allegations in Amended Complaint

The factual allegations of the December 19 amended complaint are similar to those contained in the original complaint. The amended complaint alleges that as of January 1, 2005, no employees in the Teamsters bargaining unit were performing judicial service officer

duties. Those duties were instead being performed by civil deputies in the deputy sheriff unit.

The amended complaint confuses appropriate bargaining unit concepts with transfer of unit work principles. The Commission has exclusive jurisdiction under RCW 41.56.060 to determine what classifications or positions will be grouped together to form an appropriate bargaining unit. Questions concerning the scope of a bargaining unit are determined by the Commission under representation rules in Chapter 391-25 WAC, or unit clarification rules in Chapter 391-35 WAC. Disputes concerning the transfer of unit work are determined by the Commission under unfair labor practice rules in Chapter 391-45 WAC.

In *Lakewood School District*, Decision 755 (PECB, 1979), the complainant union prosecuted its unfair labor practice case on two theories: unilateral alteration of the scope of the bargaining unit, and transfer of unit work. The Examiner rejected the "scope of unit" theory, holding that the employer did not commit an unfair labor practice violation by creating new positions outside of the bargaining unit. In relation to the union's transfer of unit work theory, the Examiner ruled that the employer committed an unfair labor practice violation by skimming of unit work without fulfilling its duty to bargain.

The amended complaint fails to cure the defects identified in the December 1 deficiency notice for the union's second, third, and fourth requested amendments to the preliminary ruling. Those allegations do not state a cause of action.

The amended complaint deleted factual allegations related to breach of the employer's good faith bargaining obligations in refusing to schedule meeting dates for negotiations concerning the transfer of unit work. Those allegations have been removed from the June 2 preliminary ruling summarizing the allegations of the complaint found to state a cause of action.

NOW, THEREFORE, it is

ORDERED

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

> 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 skimming of bargaining unit work previously performed by judicial service officers on or about January 1, 2005, without first bargaining to good faith impasse.

These allegations will be the subject of further proceedings under Chapter 391-45 WAC.

2. The allegations of the amended complaint concerning combining interest arbitration-eligible employees and/or work with non-interest arbitration-eligible employees and/or work, refusing to recognize the Teamsters as the exclusive bargaining representative of the judicial service officer employees and/or their work, and unilaterally changing the scope and/or

definition of the bargaining unit, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 3rd day of January, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Unfair Labor Practice Manager

Paragraph 2 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.