STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ENUMCLAW POLICE OFFICERS ASSOCIATION,	)	
	)	CASE 10547-U-93-2446
Complainant,	)	
vs.	)	DECISION 4897 - PECB
CITY OF ENUMCLAW,	)	
Respondent.	)	PARTIAL ORDER OF DISMISSAL

On June 28, 1993, Enumclaw Police Officers Association filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Enumclaw had violated Chapter 41.56 RCW in connection with its discipline of bargaining unit member Dale Bradbury. On March 23, 1992, the association had replaced Teamsters Union, Local 882 as exclusive bargaining representative of the employer's police officers.[1] The Teamster contract with the employer had expired on December 31, 1991, and the association executed its first collective bargaining agreement on February 22, 1993.[2]

Specifically, the complaint alleged the employer had disciplined Officer Bradbury during the contract hiatus, then rejected the association's demand for bargaining over both the discipline and a

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[1] City of Enumclaw, Decision 4018 (PECB, 1992).

[2] The purported January 1, 1992 effective date of the association's contract raises several troublesome issues. RCW 41.56.950 permits contracts "concluded after the termination date of the previous collective bargaining agreement between the same parties" (emphasis added) to be retroactively effective. Furthermore, the association was not certified as exclusive bargaining representative until several months after the purported effective date of its first contract.

grievance procedure applicable to Bradbury's discipline. The complaint also alleged the employer's refusal to arbitrate Bradbury's grievance unlawfully changed the past practice.[3]

By a letter dated September 20, 1994, the Executive Director invited the union to file an amended complaint within 14 days that would state a cause of action. No amended complaint has been received. The complaint, as originally filed, is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.[4]

With regard to the allegedly unlawful refusal to arbitrate, the Commission has held that an employer's unilateral change to a past practice must affect at least a substantial number of the bargaining unit members to be unlawful. City of Pasco, Decisions 4197-A and 4198-A (PECB, 1994).[5] In addition, the Commission has held an arbitration clause does not survive contract expiration with regard to grievances arising after the expiration date. City of Yakima, Decision 3880 (PECB, 1991). The allegation with regard to an unlawful change of past practice by refusing to arbitrate Bradbury's grievance fails to state a cause of action.

An employer choosing to discipline a bargaining unit member during a contract hiatus must bargain over any grievance challenging the discipline. Clark County, Decision 3451 (PECB, 1990). The allegations that the employer refused the union's demand to bargain

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[3] The Teamster contract with the employer had included grievance arbitration.

[4] 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 Commission.

[5] See, also, King County, Decision 4258-A (PECB, 1994), and City of Yakima, Decision 3564-A (PECB, 1991).

over a procedure for handling Bradbury's grievance do state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. The allegation that the employer unilaterally changed its past practices by its refusal to arbitrate Bradbury's grievance is DISMISSED for failure to state a cause of action.

2. The allegations regarding the employer's refusal to bargain with the association over a grievance procedure to be used in Bradbury's case state a cause of action. The employer shall:

File and serve its answer to those allegations of the complaint within 21 days following the date of this letter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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.

An answer filed by a respondent shall:

a. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.

b. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.

c. Assert any other affirmative defenses that are claimed to exist in the matter.

The original answer and three copies shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

Issued at Olympia, Washington, this 2nd day of November, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.