STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BELLEVUE POLICE OFFICERS' GUILD, Complainant,	)	CASE 11428-U-94-2680
vs.	)	DECISION 5057 - PECB
CITY OF BELLEVUE, Respondent.	)	PARTIAL ORDER OF DISMISSAL

On November 9, 1994, the Bellevue Police Officers' Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Bellevue (employer) had committed a number of acts in violation of Chapter 41.56 RCW. An amended complaint was filed in the matter on February 6, 1995. A preliminary ruling letter issued by the Executive Director on February 16, 1995, pursuant to WAC 391-45-110,[1] was based on the amended complaint.

The dispute arises in the context of collective bargaining between the parties for a successor contract. In a so-called "first cause of action", the union alleged that the employer's proposals on "employer rights" and "health insurance" contained waivers of union bargaining rights which were not a mandatory subject of bargaining. The union asserted that the employer insisted beyond impasse on the

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[1] At that 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.

inclusion of such waivers in the parties' collective bargaining agreement, and had thereby committed an unfair labor practice.

The preliminary ruling letter cited and relied upon the recent ruling of the Commission in City of Pasco, Decision 4694-A and 4695-A (PECB, 1994), where the Commission ruled that proposed contractual limitations on the rights of bargaining unit employees, such as those contained in management rights clauses, are a mandatory subject of collective bargaining. As such, the reasonability of including such matters in a collective bargaining agreement is left to the interest arbitration process under RCW 41.56.430, et seq., in the absence of agreement between the parties at the bargaining table. Since the language proposed in the instant case appeared to fall into the same arena, it was concluded that there did not appear to be a cause of action for further proceedings on these particular allegations.[2]

The complainant was given a period of 14 days following the date of the preliminary ruling letter in which to file and serve an amended complaint with respect to the allegations regarding insistence to impasse on a non-mandatory subject of bargaining, or face dismissal

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[2] Other allegations of the amended complaint were found to state a cause of action:

A "second cause of action" concerned a breach of good faith, by the employer's action to raise an issue regarding the elimination of certain benefits for LEOFF II employees on September 16, 1994, after the parties had been bargaining for approximately one year;

A "third cause of action" and a "fourth cause of action" concerned unilateral changes and circumvention of the exclusive bargaining representative, by the employer's announcement that it intended to make changes to its employee benefits program and that it intended to use employee "focus groups" to review and discuss those changes, by the employer's failure to respond to several demands to bargain, by the employer's dealing directly with employees on those issues, and by the implementation of changes to the benefits plan on November 1, 1994.

A "fifth cause of action" concerned a course of conduct indicating a lack of good faith.

of those allegations. Nothing further has been heard or received from the complainant.

NOW, THEREFORE, it is

ORDERED

1. The so-called "first cause of action", regarding insistence beyond impasse on inclusion of waivers in a collective bargaining agreement, is hereby DISMISSED for failure to state a cause of action.

2. The matter is remanded to Examiner Martha M. Nicoloff for further proceedings under Chapter 391-45 WAC concerning the remaining allegations of the amended complaint.

PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

File and serve its answer to 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 under City of Yakima, Decision 3564-A (PECB, 1991), and include a copy of the collective bargaining agreement and 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, on the 3rd day of April, 1995.

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.