STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	)	CASE 11865-U-95-2789 DECISION 5289 - PECB ORDER OF DISMISSAL

On June 26, 1995, Spokane County (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Washington State Council of County and City Employees (WSCCCE) had refused to bargain concerning the impacts or effects of a re-organization in the employer's Public Works Department.

This controversy relates to the employer's merger of its building and planning divisions, with a result of eliminating two bargaining unit positions. It was alleged that the union failed to respond immediately when advised of the employer's actions, that it referred the matter to an elected official, and that it demanded reinstatement of the affected bargaining unit employees as a condition precedent to negotiations on the matter.

A preliminary ruling letter issued pursuant to WAC 391-45-110 on August 22, 1995,[1] noted that the complaint was subject to an

[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.

interpretation that the employer first advised the union of its re-organization after it made and implemented its decision concerning the merger and job elimination. In that context, the employer was advised of several problems which appeared to preclude immediate processing of the complaint as filed:

1. It was noted that it is not unlawful for a union to contact an elected official relative to matters which may also be subject to collective bargaining.

2. Further, it was noted that no unfair labor practice could be established on the part of the union with respect to the asserted failure to come to the bargaining table in a timely manner, if the union was presented a fait accompli on a mandatory subject of collective bargaining.

3. Finally, it was noted that a union is under no duty to bargain from a position prejudiced by an unlawful employer action, so that no unfair labor practice could be established on the part of the union if it was entitled to assert its alleged pre-condition on bargaining.

4. Other possibilities considered as potentially applicable were that the parties were at impasse in bargaining on the matter, or that the union was in danger of waiving its right to bargain if it had received and failed to respond to appropriate notice of an opportunity for bargaining.

The preliminary ruling letter noted that under any of the foregoing eventualities no unfair labor practice on the part of the union could be predicated. The complaint was given 14 days in which to amend its complaint in a manner which would state a cause of action and advised that failure to do so would result in a dismissal of the complaint. No amendment to the complaint was filed.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above captioned matter is hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 4th day of October, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.