STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ELLENSBURG FIREFIGHTERS ASSOCIATION,	)	
Complainant,	)	CASE 12498-U-96-2964
vs.	)	DECISION 5659 - PECB
CITY OF ELLENSBURG,	)	
Respondent.	)	ORDER OF DISMISSAL

On May 16, 1996, the Ellensburg Firefighters Association filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Ellensburg had refused to bargain in violation of RCW 41.56.140(4). The union alleged, generally, that the parties commenced negotiations over the effects of eliminating a captain position, and that the employer later abandoned those negotiations and asked its civil service commission to fill the captain position. The complaint was reviewed by the Executive Director under WAC 391-45-110,[1] and a letter sent to the parties on June 19, 1996 pointed out several problems with the complaint, as filed. The union was given 14 days to file and serve an amended complaint that stated a cause of action, or face dismissal of its complaint. That period expired without anything further being heard or received from the union on this case.

[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.

DISCUSSION

Form of Statement of Facts

The letter sent to the parties on June 19, 1996, noted that the statement of facts filed in this case is not separated into numbered paragraphs, as required by WAC 391-45-050. Paragraph numbering is highly desirable, because it expedites preliminary rulings and avoids confusion in both the filing of answers and identification of disputed issues, but technical defects can be waived under WAC 391-08-003 in the absence of actual prejudice. The statement of facts in this case is sufficiently intelligible so that the union's failure to cure this defect does not, in and of itself, require dismissal of the complaint.

Jurisdictional Problems

The complaint alleges that the employer violated the parties' collective bargaining agreement. This allegation fails to state a cause of action, and must be dismissed. The letter issued on June 19, 1996 pointed out that the Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.[2]

The complaint alleges the employer's request to fill the captain position violated civil service rules precluding lateral entry. This allegation also fails to state a cause of action, and must be dismissed. The letter issued on June 19, 1996 pointed out that the name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute, and that the Commission is not a court of general jurisdiction even within the

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[2] City of Walla Walla, Decision 104 (PECB, 1976).

field of "employment relations". Rather, the Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees and unions.[3] The Commission has no jurisdiction to entertain a claim that the employer's alleged request to fill a position allegedly violates its civil service rules.[4]

Materials Which May Be "Background Only"

The Commission is directed to remedy only those unfair labor practices occurring within six months before the complaint is filed.[5] The dates of events set forth in a statement of facts are subject to careful scrutiny in the preliminary ruling process. The letter issued on June 19, 1996 notified the union that portions of its statement of facts would be taken as background only, rather than as operative allegations of unfair labor practices, unless the statement of facts was amended to provide additional factual detail. Those included:

* The first paragraph of the statement of facts, which mentions a fire department memo issued on an unspecified date. While that memo allegedly spoke of eliminating a captain position through attrition and assigning added workload to the lieutenant classification, this complaint would not be timely under RCW

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[3] Seattle School District, Decision 4917-A (EDUC, 1995) [no jurisdiction over lawsuit in another state]; Mukilteo School District, Decision 2349 (EDUC, 1986) [no jurisdiction over violations of United States or Washington State constitutions, or of common school provisions in Title 28A RCW].

[4] This is distinguished from allegations that an employer has violated the collective bargaining law through acts of its civil service commission. In those circumstances, the Commission scrutinizes the employer's acts against its obligations under Chapter 41.56 RCW. City of Bellevue, Decision 3156-A (PECB, 1990); City of Yakima v. IAFF Local 469, 117 Wn.2d 655 (1991).

[5] RCW 41.56.160(1).

41.56.160 for any action which occurred prior to November 16, 1995. Thus, it could not be determined whether any cause of action existed with regard to this memo.

* The same paragraph mentions a union demand for negotiations on an unspecified date impliedly prior to December 8, 1995. The letter issued on June 19, 1996, indicated that an amendment providing dates and other factual details was a condition precedent to a conclusion that a cause of action existed as to that demand for bargaining.

An inference that the first paragraph of the statement of facts was merely intended to provide background to later allegations was bolstered by the absence of any remedy request related to an initial failure to give notice or a delay in the onset of bargaining. That conclusion will stand, in the absence of an amendment to the complaint.

Apparent Withdrawal of Proposed Change

The second paragraph of the statement of facts alleged that an "impasse" was reached in April of 1996, after which it appears the employer abandoned its effort to seek a change of practice. The letter issued on June 19, 1996 noted that this paragraph lacked sufficient details to support a conclusion that the employer breached its good faith obligation. In the absence of an amended complaint, this allegation must now be dismissed as failing to state a cause of action.

The second paragraph further alleges that, after declaring an impasse in April of 1996, the employer asked its civil service commission to fill the captain position which the employer had earlier proposed to eliminate. Bargaining on employee wages, hours and working conditions is always from the "status quo". The employer was obligated to notify the union of any proposed change of practice and to provide opportunity for bargaining before making

any change affecting the captain position.[6] The union apparently exercised its option to request bargaining.[7] Numerous decisions finding refusal to bargain violations upon the presentation of a "fait accompli" are premised on the notion that the union should have the opportunity to persuade the employer to abandon or modify a contemplated change before a final decision is made. It would not be a violation of the duty to bargain for the employer to abandon a contemplated change, particularly if that resulted from the union's efforts to persuade the employer through the collective bargaining process. The June 19, 1996 letter informed the union that the statement of facts could bear such an interpretation, and that the employer's abandonment of the proposed change would terminate the occasion for collective bargaining on the subject. In the absence of an amended complaint, this allegation must also be dismissed as failing to state a cause of action.

Finally, the second paragraph of the statement of facts alleges the employer changed the captain position in some unspecified manner. The letter issued on June 19, 1996 informed the union that its statement of facts lacked sufficient detail to indicate what specific changes were effected by the employer. In making a preliminary ruling, the Executive Director must act on what is contained within the four corners of a statement of facts, and is not at liberty to fill in gaps or make leaps of logic. In the

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[6] The basic concept of bargaining in such a situation is supported by City of Hoquiam, Decision 745 (PECB, 1979), where an employer was found guilty of an unfair labor practice when it unilaterally eliminated a captain position in its fire department and transferred the distinguishing functions to lieutenants. See, also, Lake Washington Technical College, Decision 4721-A (PECB, 1995), dealing with downgrade of positions upon attrition.

[7] A failure by the union to make a timely request for bargaining would be a basis for finding a waiver by inaction. Lake Washington Technical College, supra.

absence of an amended complaint, this allegation also fails to state a cause of action.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED.

DATED at Olympia, Washington, this 4th day of September, 1996.

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.