

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 760,)	
)	
Complainant,)	CASE 12272-U-96-2894
)	
vs.)	DECISION 5463 - PECB
)	
CITY OF OMAK,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

On January 16, 1996, Teamsters Union, Local 760 filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Omak had violated RCW 41.56.140. A preliminary ruling issued on February 16, 1996, pursuant to WAC 391-45-110,¹ found a cause of action to exist and invited the employer to file an answer to the complaint. Local 760 filed a disclaimer of the bargaining unit on March 5, 1996, in connection with a related representation proceeding. The matter is again before the Executive Director under WAC 391-45-110, based on the filing of the disclaimer.

BACKGROUND

Teamsters Union, Local 760 had been the exclusive bargaining representative of a unit comprised of approximately 10 full-time and regular part-time police officers employed by the City of Omak

¹ At this stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

(employer). That bargaining relationship had been in existence for an unspecified period of time.²

In its statement of facts filed in this unfair labor practice proceeding, Local 760 alleged that it filed a grievance on November 22, 1995, and that later demanded arbitration of that grievance. Local 760 then alleged that the chief of the Omak Police Department implemented a number of unilateral changes upon learning of one or both of those filings. The alleged changes included elimination of a K-9 patrol program affecting the employee involved in the grievance, removal of the sniper rifle from the only certified sniper officer, and revocation of a policy which had authorized police officers to take their patrol vehicles home.³ Local 760 further alleged that it informed the employer that it wished to bargain over the vehicle policy issue on December 12, 1995, and that it asked that the vehicle policy not be changed until it had been negotiated. Finally, Local 760 alleged that the employer took the position, in a letter dated December 27, 1995, that it would rescind the vehicle policy regardless of the union's request to bargain.

On February 7, 1996, the Omak Police Guild filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking to replace Local 760 as exclusive bargaining representative of the employees involved.⁴ Although the correlation between the cases did not occur immediately, this unfair labor practice case was eventually identified as a "blocking charge" warranting suspension of the representation case

² The answer filed by the employer in this matter on March 11, 1996, enclosed a copy of a collective bargaining agreement between the employer and Local 760 for the period from January 1 through December 31, 1995.

³ The complaint alleged that the vehicle policy had been in effect since 1992.

⁴ Case 12315-E-96-2053.

proceedings under WAC 391-25-370.⁵ Local 760 did not exercise its option to file a request to proceed under WAC 391-25-370, which would have waived the misconduct alleged in the unfair labor practice case as a basis for election objections.

On March 5, 1996, Local 760 filed a letter with the Commission in which it disclaimed any further interest of representing the employees of the Omak Police Department.⁶

DISCUSSION

Upon the recognition or certification of an exclusive bargaining representative, Chapter 41.56 RCW obligates the employer to maintain the wages, hours and working conditions of its union-represented employees unless it has first satisfied its bargaining obligations under the statute. Numerous cases have found unfair labor practice violations where employers have implemented "unilateral changes" without first giving notice to the union and then bargaining, upon request, to an agreement or impasse. A "unilateral change" is a variant of the "refusal to bargain" conduct prohibited by RCW 41.56.140(4), and necessarily arises out of a bargaining relationship.

⁵ A union which has filed unfair labor practice charges alleging that it has been prejudiced by past unlawful conduct on the part of the employer is entitled to have those charges disposed of one way or the other before it faces an election in which the employees have the opportunity to decertify the union or select another exclusive bargaining representative.

⁶ Although it has no direct bearing on Local 760, or on the disposition of the unfair labor practice charges in this matter, it is noted that the Omak Police Guild filed its own complaint charging unfair labor practices on March 11, 1996. Case 12378-U-96-2937. The complaint filed by the Omak Police Guild appears to deal with some of the same allegations as the above-captioned matter, but no preliminary ruling has been issued on that complaint.

The customary remedy in a "unilateral change" case is to restore the status quo ante, and to order the employer to fulfill its bargaining obligations toward the exclusive bargaining representative of its employees. Such an order is necessarily premised on the continued existence of the bargaining relationship.

In this case, the "unilateral change / refusal to bargain" charges grew out of the bargaining relationship between Local 760 and the City of Omak. The employer and Local 760 would properly have shut down their negotiations upon the filing of the representation petition,⁷ but their relationship would normally have remained in existence until a certification was issued in the representation case, and could have continued indefinitely if Local 760 remained the exclusive bargaining representative of the employees. That bargaining relationship was terminated, however, when Local 760 disclaimed its status as the exclusive bargaining representative of the employees.

This situation closely parallels Clover Park School District, Decision 692 (EDUC, 1979), where an exclusive bargaining representative went through with an election after having filed unfair labor practice charges, and lost the election. The Commission held in Clover Park that the union's status as exclusive bargaining representative was a pre-requisite to obtaining a "refusal to bargain" finding in its favor, and the unfair labor practice charges there were dismissed. See, also, Vancouver School District, Decisions 2575, 2575-A (PECB, 1987), where the Commission reiterated that the loss of status as exclusive bargaining representative precludes the assertion of any collective bargaining rights which existed prior to the loss of status, including unfair labor practice charges in that case.

⁷ See, Yelm School District, Decision 704-A (PECB, 1980), where the Commission held that an employer and incumbent union properly avoid controversial involvement with the employees affected by a representation petition.

In the instant case, the "unilateral change" unfair labor practice charges filed by Local 760 no longer state a cause of action after Local 760 disclaimed its status as the exclusive representative of the employees involved. The complaint in this case must, therefore, be dismissed.

FINDINGS OF FACT

1. The City of Omak is a "public employer" within the meaning of RCW 41.56.030(1).
2. Teamsters Union, Local 760, a bargaining representative within the meaning of RCW 41.56.030(3), was the exclusive bargaining representative of certain employees of the City of Omak.
3. On January 16, 1996, Local 760 filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the employer had refused to bargain in violation of RCW 41.56.140(4), in connection with certain unilateral changes affecting the wages, hours and working conditions of employees in the bargaining unit represented by Local 760.
4. On February 7, 1996, the Omak Police Guild filed a petition for investigation of a question concerning representation, seeking to replace Teamsters Local 760 as the exclusive bargaining representative of police officers employed by the City of Omak.
5. In a preliminary ruling issued on February 16, 1996, pursuant to WAC 391-45-110, the unfair labor practice charges filed by Local 760 were found to state a cause of action.

6. On March 5, 1996, Local 760 filed a letter with the Commission in which it disclaimed any further interest in representing the full-time and regular part-time employees of the Omak Police Department.

CONCLUSIONS OF LAW

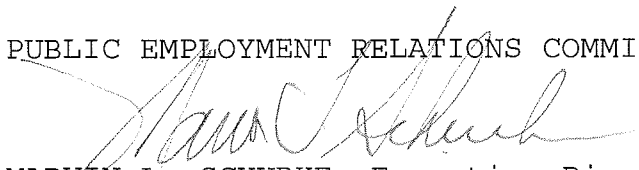
1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56.
2. The "refusal to bargain" allegations in this unfair labor practice case arose out of the status of Local 760 as the exclusive bargaining representative of the bargaining unit involved under RCW 41.56.090, and no longer state a cause of action under RCW 41.56.140(4) upon the termination of that bargaining relationship.

ORDER

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED.

DATED at Olympia, Washington, this 12th day of March, 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.