STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MASON GENERAL HOSPITAL, Complainant, vs. UNITED STAFF NURSES UNION, LOCAL 141, UFCW, Respondent.	)	CASE 12499-U-96-2965 DECISION 5558 - PECB ORDER OF DISMISSAL

On May 17, 1996, Mason General Hospital filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the United Staff Nurses Union, Local 141, UFCW, improperly directed a copies of a letter concerning contract negotiations to members of the employer's board of commissioners.

A preliminary ruling letter issued on May 29, 1996, under WAC 391-45-110,[1] concluded that the complaint failed to state a cause of action. Although communications such as the one at issue in this case may have a purpose of attempting to persuade public officials to a change of position at the bargaining table, such communications were upheld as lawful in Sultan School District, Decision 1930-A (PECB, 1984). 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 which stated a cause of action, or face dismissal of the case.

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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.

The employer filed an amended complaint on June 3, 1996, under cover of a letter which sought to argue distinctions between the situation in Sultan School District, supra, and the present case. That amended complaint is now before the Executive Director for a preliminary ruling under WAC 391-45-110.

Paragraph 1 of the original complaint identified the parties and described the history of their current contract negotiations. The amended complaint expands the introductory materials by providing an estimated number of meetings, naming the employer's negotiators, and naming the mediators who have worked with the parties. While additional details are helpful to understanding the situation, the paragraph still does not set forth any facts on which an unfair labor practice violation could be found.

The operative factual allegation in Paragraph 2 of the original complaint was that copies of a May 13, 1996 letter were sent by the union to the members of the employer's board of commissioners.[2] A copy of the letter was attached to the complaint; it reads:

> As you are aware, the registered nurses have been without a contract for over eighteen months. In an effort to reach an agreement, a mediation session was held on May 3, 1996. At this meeting, the nurses put forward a new compromise proposal for the management negotiating team in an effort to reach a settlement that was a win-win for both parties. We were surprised by the management's rejection of our proposed compromise and their failure to present an alternative compromise proposal on the issues. It is now clear that we are at a point where the Commissioners, as the elected public officials, need to become directly involved in these negotiations. USNU Local 141 UFCW on behalf of the ... registered nurses, formally submits our May 3, 1996 compromise settlement to the Commissioners for their official consideration and approval:
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> [details of proposal omitted]

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[2] The copies were sent to the members of the board of commissioners by certified mail.

> The attached information sheet shows the position of both parties and clearly documents the nurses earnest attempt to compromise. USNU had also indicated through the mediator that it would withdraw its Unfair Labor Practice charge against the Hospital as part of the compromise settlement. With two full days of hearings scheduled for June, it appears that management prefers to spend money to fight its nurses rather than compromise. The Unfair Labor Practice charge could cost the Hospital $20,000 or more with appeals. The failure of the management team to work for a win-win resolution raises serious questions about management's commitment to the principles of QI which the Commissioners have endorsed.
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> In the best interest of the Hospital, the nurses and the community, the Commissioners, as elected officials, need to become directly involved in settling the current labor dispute. We look forward to the Commissioner's formal consideration of this offer. The nurses are prepared to give a formal presentation to the Commissioners as part of their deliberations. Thank you for your time and attention to this request. Please feel free to contact me if the Commissioners have any questions or need any additional information.
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> Respectfully submitted for your consideration, [signature omitted]

Other allegations contained in paragraph 2 of the original statement of facts were more conclusionary (e.g., "Union ... is seeking to restrain and coerce the Employer in their selection of the [sic] bargaining representative"; "bypassing the Commissioners' bargaining representative"; "asking them to bargain directly with the Union"). The amended complaint contains further interpretation of the letter already on file (e.g., "[the union] requested the Hospital's Commissioners become directly involved in negotiations"), but the only new facts added are that the employer's negotiators had previously rejected a union request to make a formal presentation before the board of commissioners.

Paragraph 3 of the original complaint was conclusionary, alleging that the union had refused to bargain. The third paragraph of the amended statement of facts now contains the conclusionary materials previously contained in paragraph 2 (e.g., "restrain and coerce the

employer ... in its selection of bargaining representatives") and adds new conclusionary materials (e.g., "seeks ... to bargain directly with the ... commissioners"; "deny the employer its right to bargain through a designated representative"). The only new factual allegation is that the union has been "repeatedly assured" that the management negotiators have full authority to negotiate a new collective bargaining agreement.

A fourth paragraph in the amended complaint requests consolidation of the employer's charges with a union complaint already set for hearing, and so does not state any claim for relief.

A preliminary ruling must be based on factual allegations contained within the four corners of a statement of facts, and the Executive Director is not at liberty to fill in gaps or make leaps of logic. In this case, it is not possible to conclude from the materials now on file that a cause of action exists.

The union's letter speaks for itself. It was sent to the employer's designated negotiator. On its face, there is no indication that the union was refusing to negotiate with the individuals previously designated by the employer. It does not even suggest, let alone request, exclusion of the two employer negotiators from further participation in the negotiations. There is certainly no threat of a strike or other coercion to enforce the request for involvement by the board of commissioners. The employer's conclusionary statements hypothesizing or interpreting the union's intentions are not supported by any facts external to the union's May 13 letter, and so are not sufficient to warrant a hearing when the letter itself does not provide a basis to conclude that an unfair labor practice violation could be found.

The preliminary ruling letter noted that union officials (like other citizens) have a constitutional right to address their concerns on public business to the elected officials ultimately

responsible for the conduct of a public entity. No authority is cited or found for a proposition that a person's constitutional rights are conditioned on having permission from the appointed or contracted representative of a public official. When the Sultan case was decided, Oregon law prohibited public sector unions from communicating directly with public officials about bargaining matters, but Washington law contained no similar provision. The Commission declined to replicate the Oregon policy by decision in Sultan, and the state of the law in Washington has not changed. Nothing within Chapter 41.56 RCW immunizes any public employee or official, or any contracted representative of a public entity, from having their actions questioned before the responsible elected officials. No unfair labor practice violation could be found on these facts.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above captioned matter is DISMISSED for failure to allege facts on which an unfair labor practice violation could be found.

Dated at Olympia, Washington, this 5th day of June, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

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