

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	
)	CASE 12082-U-95-2846
Complainant,)	
)	
vs.)	DECISION 5429 - PECB
)	
SPOKANE COUNTY,)	PARTIAL ORDER
)	OF DISMISSAL
Respondent.)	
)	
)	

The unfair labor practice charges in the above-captioned matter were originally filed with the Commission on September 8, 1995, among proposed amendments to another case. They were subsequently docketed as a separate case, as indicated above. The complaint was the subject of a preliminary ruling letter issued pursuant to WAC 391-45-110 on December 15, 1995.¹

The complaint was found to state a cause of action for breach by the employer of its "good faith" obligation, based on allegations in paragraphs 3, 4, 5, 6, 8, 9, and 12.

Paragraph 7 of the complaint, along with an unnumbered paragraph that followed, alleged the employer had filed a unit clarification petition in retaliation for the union's refusal to negotiate a permissive subject. The preliminary ruling letter concluded those allegations did not state a cause of action, and allowed the union a period of time in which to file and serve an amended complaint.

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.

In correspondence filed on January 10, 1996, the union alleged the employer and union had reached an agreement on the bargaining unit placement of the positions which became subjects of the employer's unit clarification petition, and that the employer filed the petition without instituting any changes in the job duties or pay of the disputed positions.

Any claim of a breach of the good faith bargaining obligation imposed by Chapter 41.56 RCW necessarily depends on the underlying controversy being among the so-called mandatory subjects of collective bargaining under that statute. As was pointed out in the preliminary ruling letter in this case by reference to one of the Commission's most-cited decisions,

The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. [Footnote cited RCW 41.56.060.] **Unit definition is not a subject for bargaining in the conventional "mandatory/permissive/illegal" sense,** although parties may agree on units. Such agreement does not indicate that the unit is or will continue to be appropriate.

City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 95 Wn.2d 1004 (1981).

Neither party to collective bargaining negotiations is entitled to insist to impasse upon unit concessions as a condition of agreement. Spokane School District, Decision 718 (EDUC, 1979). WAC 391-35-020(2) expressly anticipates the filing of unit clarification petitions during contract negotiations. It is only where parties have completed negotiations and signed a collective bargaining agreement that WAC 391-35-020 protects the parties' agreement for the life of that contract. Absent such an agreement, either party is entitled to pull unit determination issues off the bargaining table at any time, by submitting them to the Commission for determination under RCW 41.56.060 and adjudicative proceeding

under the Administrative Procedure Act, Chapter 34.05 RCW, and Chapter 391-35 WAC.

The negotiations between this employer and union are ongoing, and there is no allegation here of a final agreement which would be a basis to invoke the duration-of-contract" freeze of WAC 391-35-020. The outcome of the unit determination controversy will be decided on its merits, and the "absence of change" arguments advanced by the arguments advanced by the union here could be considered in those proceedings. The employer's action of invoking its right to file a unit clarification petition is not a basis for finding an unfair labor practice cause of action to exist.

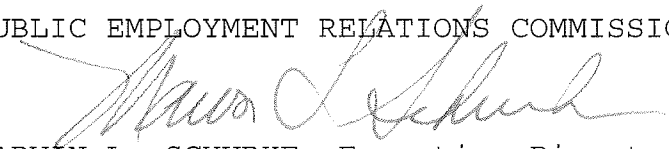
NOW, THEREFORE, it is

ORDERED

1. The allegations concerning a breach of good faith by the filing of a unit clarification petition are dismissed as failing to state a cause of action.
2. Katrina I. Boedecker of the Commission staff is designated as Examiner to conduct further proceedings in this matter, except as specified in paragraph 1 of this order, pursuant to Chapter 391-45 WAC.

Issued at Olympia, Washington, on the 25th day of January, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on that matter unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.