

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLARK COUNTY CUSTODY)	
OFFICERS' GUILD,)	CASE 12742-U-96-3061
)	
Complainant,)	
)	
vs.)	DECISION 5851 - PECB
)	
CLARK COUNTY,)	
)	
Respondent.)	ORDER OF PARTIAL DISMISSAL
)	
_____)	

A complaint charging unfair labor practices filed with the Public Employment Relations Commission on October 4, 1996, was the subject of a deficiency notice issued on December 24, 1996, pursuant to WAC 391-45-110. An amended complaint filed on January 10, 1997, is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.¹

The dispute concerns the issuance of an oral reprimand which was delivered to a bargaining unit employee on August 9, 1996, based

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.

upon a "Board of Inquiry" procedure. The amended complaint alleges that the reprimand violated the statute in two ways:

By a unilateral change from past practices under which any "Board of Inquiry" procedure always preceded the imposition of discipline; and

By interfering with employee rights and/or discrimination against employees for the use of the grievance procedure, inasmuch as discipline imposed concerning the same subject matter on May 30, 1996, was withdrawn by the employer as the result of a previous grievance.

Assuming all of the facts alleged to be true and provable, it appears that unfair labor practice violations could be found on both the "unilateral change" and "double jeopardy" theories advanced by the union in its amended complaint.

The original complaint had alleged that the grievance was processed under the terms of an expired contract between the employer and a predecessor exclusive bargaining representative while these are negotiating their initial collective bargaining agreement. That gave rise to several concerns which were addressed in the deficiency notice, but were not expressly withdrawn in the amended complaint:

The complaint failed to state a cause of action with respect to an alleged violation of the settlement agreement reached by the parties through the grievance procedure. 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. City of Walla Walla, Decision 104 (PECB, 1976). A settlement is itself a contract, and any dispute concerning its enforcement would be through the grievance procedure or the courts.

The complaint failed to state a cause of action with respect to an alleged violation of the grievance procedure being utilized by the parties. Grievance procedures typically provide for arbitration awards to be "final and binding" on the parties, and typically provide or imply that settlements reached through the grievance procedure will also be final and binding. The Commission does not, however, enforce either the contractual procedures for resolving grievances, contractual agreements to arbitrate, or arbitration awards. Thurston County Communications Board, Decision 103 (PECB, 1976). Any effort to enforce the grievance settlement would need to be pursued in the courts.

NOW, THEREFORE, it is

ORDERED

1. The complaint charging unfair labor practices is partially dismissed, to the extent that it alleges violation of the settlement agreement negotiated by the parties and/or to the extent that it alleges violation of the grievance procedure adopted by the parties for use during their negotiations for an initial collective bargaining agreement.

2. Jack T. Cowan of the Commission staff is designated as Examiner to conduct further proceedings under Chapter 391-45 WAC.
3. PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter (the "respondent") shall, as to the remaining allegations:

**File and serve its answer to the complaint within
21 days following the date of this letter.**

An answer filed by a respondent shall:

1. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.

2. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.

3. Assert any other affirmative defenses that are claimed to exist in the matter.

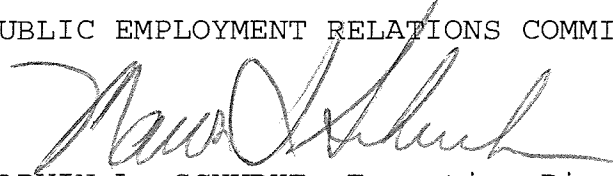
The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of an answer to specifically deny or explain a fact alleged in the complaint,

will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

Issued at Olympia, Washington, this 26th day of February, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written in dark ink.

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.