Port of Seattle, Decision 6516 (PORT, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9,	)	
Complainant,	)	CASE 13774-U-98-3375
vs.	)	DECISION 6516 - PORT
PORT OF SEATTLE,	)	PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS
Respondent.	)	

On March 11, 1998, the International Longshoremen's and Warehousemen's Union, Local 9 (union), filed an unfair labor practice complaint with the Public Employment Relations Commission, under Chapter 391-45 WAC. The complaint alleged that the Port of Seattle (employer) violated RCW 41.56.140 by refusing to bargain with the union concerning supplemental wage rates applicable to potential rework opportunities for employees represented by the union. The complaint further alleged that the employer violated a settlement agreement dated October 2, 1998, preserving the employer's duty to bargain in good faith for a generally applicable rework rate, specifically special wage rates that might be applicable to Jay Imports' rework, and requiring that the employer bid for Jay Imports' rework services on the basis of the negotiated special wage rates.

A preliminary ruling was issued in the above-captioned matter on November 9, 1995, pursuant to WAC 391-45-110.[1] The parties were

[1] At this stage of the proceedings, all facts alleged in a 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 Commission.

advised that certain problems existed with the complaint, as filed. The complainant was given 14 days in which to file and serve an amended complaint, or face dismissal of the portions of the complaint relating to the enforcement of a settlement agreement dated October 2, 1995. An amended complaint was not filed. The portions of the complaint relating to the enforcement of the settlement agreement are dismissed. The Commission does not remedy violation of agreements between employers and unions. Contract interpretation and remedy of any violation of a contract between a union and an employer must be adjudicated before an arbitrator or the court. City of Walla Walla, Decision 104 (PECB, 1976).

The complaint states a cause of action to the extent that it alleges the employer has failed or refused to bargain with the union on subjects left open for bargaining by the parties' contracts.

NOW, THEREFORE, it is

ORDERED

1. Allegations that the employer violated a settlement agreement with the union are DISMISSED for failure to state a cause of action.

2. Allegations that the employer refused to bargain concerning a wage rate for rework for Local 9 represented employees to be used by the employer for rework services, including rework services desired by Jay Imports, state a cause of action.

The Commission adopted amendments to Chapter 391-45 WAC which now require the filing of an answer in response to a preliminary ruling which finds a cause of action to exist. See, WAC 391-45-110(2).

Cases are reviewed after the answer is filed, to evaluate the propriety of a settlement conference under WAC 391-45-260, priority processing, or other special handling.

PLEASE TAKE NOTICE THAT, the persons or organizations charged with unfair labor practices in these matters (the "respondent") shall:

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

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

3. 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.

Please be advised that Paul T. Schwendiman of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant Chapter 391-45 WAC.

Dated at Olympia, Washington, this 14th day of December, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

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