

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FRANKLIN COUNTY,)	
)	
Complainant,)	CASE 14053-U-98-3475
)	
vs.)	DECISION 6530 - PECB
)	
FRANKLIN COUNTY ROAD)	
DEPUTIES GUILD,)	PARTIAL DISMISSAL AND
)	PRELIMINARY RULING FOR
Respondent.)	FURTHER PROCEEDINGS
)	
)	

On July 27, 1998, Franklin County (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Franklin County Road Deputies Guild (union) had violated Chapter 41.56 RCW, in connection with ongoing negotiations between the parties for a successor collective bargaining agreement. The complaint was reviewed by the Executive Director under WAC 391-45-110,¹ and a deficiency notice issued on September 18, 1998, pointed out defects in the complaint as filed. The case is again before the Executive Director under WAC 391-45-110, based on an amended complaint filed by the employer on September 30, 1998.

The deficiency notice characterized paragraph 1, paragraph 2, and the first two sentences of Paragraph 3 in the original complaint as

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 Commission.

only setting forth background to allegations which followed, and they were not taken as stating a cause of action. The employer did not contest that analysis in its response to the deficiency notice.

The deficiency notice pointed out that the complaint was untimely, under RCW 41.56.160, with regard to allegations in Paragraph 3 of the original complaint concerning union conduct prior to a meeting held on January 29, 1998. The amended complaint omitted reference to those events. The remaining allegations in paragraph 3 concern a bargaining session held on January 29, 1998, and subsequent events related thereto. As so amended, the paragraph states a cause of action.

The deficiency notice found fault with Paragraph 4 of the original statement of facts, because it failed to identify the subject matter of new proposals allegedly made by the union at a negotiations meeting held on April 29, 1998. Paragraph 4 of the amended complaint now supplies details which were lacking earlier and, together with the original allegations that the union came to the meeting unprepared, that the union held an excessively-long caucus, that the union presented a completely different and regressive proposal, and that the union brought up numerous matters which had neither been at issue nor addressed during the January 7 and January 29, 1998 mediation sessions, turns this into a "good faith" issue. As so amended, it states a cause of action.

Paragraphs 5 and 6 of the original complaint were earlier found to state a cause of action, as follows:

The alleged failure of Phillips to notify other union leaders would be a matter of interest to the employer once it affected the relations between the employer and union at the bargaining table. The Cline & Emmal firm

is a law firm which represents the union, not a "bargaining representative" within the meaning of Chapter 41.56 RCW. The union could be found guilty of a "refusal to bargain" unfair labor practice if Emmal and/or Phillips came to the bargaining table as loose cannons. Additionally, there is another allegation here of a failure to fulfill commitments made at the bargaining table. These allegations thus state a cause of action for unfair labor practice proceedings before the Commission, and will be forwarded to an Examiner when other problems with this complaint are cleared.

The deficiency notice indicated "substantial doubt" as to whether allegations of "conspiracy" and "political ambitions" in Paragraph 7 of the original complaint would be actionable before the Commission. The amended complaint omitted the references to "conspiracy" and "political ambitions". As so amended, the complaint states a cause of action for breach of good faith by the union in "attempting to railroad the process towards interest arbitration ... based on regressive bargaining, bad faith, deceit, and misrepresentations to the Mediator and the Employer ..."²

The deficiency notice faulted paragraph 8 of the original complaint, to the extent it alleged that employees wrongfully and maliciously made accusations against the union president for "political" purposes, and questioned the employer's legal standing to pursue what appeared to be a matter of internal union affairs. Employers are excluded from internal union affairs by RCW 41.56.140(2). This material remains unclear in the amended

² The deficiency notice mentioned that these allegations being sufficient to warrant a suspension of interest arbitration until the unfair labor practice claims were resolved. However, there has been no certification of issues for interest arbitration as of this time.

complaint, and will thus be the subject of a partial order of dismissal.

The deficiency notice further pointed out that, while Paragraph 8 of the original complaint concerns a mediation session on June 19, 1998, much of this material only set forth facts confirming previous allegations. The amended complaint does not allege anything new. Failure to fulfill commitments made in bargaining would be actionable before the Commission, regardless of the internal politics or electoral politics, but this material continues to appear to merely duplicate alleged breaches of the rubrics of bargaining set forth in previous paragraphs. Similarly, the fact that some or all of Deputy Phillips' actions may have been "self serving" would only be of concern to the Commission to the extent that the new representatives wasted the employer's time by coming to the bargaining table without authorization (i.e., were "loose cannons"), or that their authorized actions placed the union in a "regressive bargaining" stance. This material will thus also be the subject of a partial order of dismissal.

The deficiency notice requested clarification of allegations in Paragraph 8 of the original complaint which concerned union representatives engaging in regressive bargaining by making new proposals for wages and/or signing bonuses, for educational incentive benefits on a percentage basis (where the parties had previously agreed on specific dollar amounts), for longevity benefits on a percentage basis (where the parties had previously agreed on specific dollar amounts) and on compensation for phone calls (which had never previously been discussed in bargaining). Additionally, a co-mingled allegation that the union, "... had also proposed that the Employer carry forward the previous mediation proposal with respect to medical premiums in addition to the

regressive proposals for more in wages and different benefits" was characterized as confusing. The amended complaint continues to allege that union representatives engaged in regressive bargaining with regard to the wages, signing bonus, educational incentive benefits, longevity benefits, and compensation for phone calls, but in a manner which turns this into a good faith issue. As such it states a cause of action.

The deficiency notice had faulted Paragraph 8 of the original complaint, to the extent that it may have been alleging that the conduct of the union lawyer would state an independent cause of action against the lawyer or his law firm. Those allegations are omitted from the amended complaint, and that is viewed as tantamount to withdrawal of that element of the original complaint.

The deficiency notice faulted Paragraph 8 of the original complaint to the extent that it described an employer proposal which was only communicated through the mediator, a union response that it would only vote its own proposal, and then set forth a complex and discursive journey with an allegation that the union has never communicated to management the results of voting "their own proposal", and has not given the employer written notice of what issues (if any) the union voted on. The deficiency notice pointed out that there would be no obligation on the union to "vote" any package or proposal, unless the parties agreed to do so. The amended complaint does not contest that analysis, and there has been no attempt to correct the noted defect, so this material will also be the subject of a partial order of dismissal.

The deficiency notice characterized paragraph 9 of the original complaint as conclusionary, and as not adding any new facts which could be the basis for finding any violation not already alleged.

The amended complaint includes a rewritten Paragraph 9, but it still is replete with conclusionary restatements of the breach of good faith, regressive bargaining, misrepresentation, loose cannon, and surface bargaining issues described above. This material will also be the subject of a partial order of dismissal.

In the original complaint, the employer marked the boxes on the complaint form to allege violations of RCW 41.56.150(1) and (2). The amended complaint does not include such allegations. The omission is viewed as tantamount to withdrawal of those elements of the complaint.

In Appendix "C" of the original complaint, the employer requested that the Commission "issue a blocking charge to any further proceedings regarding the collective bargaining process". The amended complaint does not include such a request. The omission is viewed as tantamount to withdrawal of that element of the complaint.

In the original complaint, the employer requested that the Commission suspend interest arbitration proceedings. The amended complaint did not include such a request, and it would be premature in the absence of any mediator recommendation or certification of issues for interest arbitration under RCW 41.56.450.

In the original complaint, the employer requested "that there be injunctive relief granted as a result of Deputy Roger Phillips' activities, and that he be removed from the bargaining team ... and barred from discussing any proposals with any member of the Guild". The deficiency notice pointed out that temporary relief under WAC 391-45-430 is only considered after processing of the case under WAC 391-45-110 has been completed. The amended complaint requests

"that the employer/complainant be awarded the right to pursue injunctive relief. ..." With the issuance of this Order, the employer may proceed with the filing and service of a motion and supporting affidavits under WAC 391-45-430. If such materials are served upon it, the union will be expected to file and serve responsive materials as specified in that rule, without further prompting from this office.

NOW, THEREFORE, it is

ORDERED

1. A cause of action is found to exist, and further proceedings under Chapter 391-45 WAC are warranted, with respect to the allegations of the amended complaint in a portion of paragraph 3 (concerning union conduct at a meeting held on January 29, 1998), in paragraph 4 (that the union came to a meeting unprepared, held an excessively-long caucus, presented a completely different and regressive proposal, and brought up numerous matters which had neither been at issue nor addressed during the January 7 and January 29, 1998 mediation sessions), in paragraphs 5 and 6 (concerning Emmal and/or Phillips making statements or taking positions at the bargaining table that were not representative of the union's positions, and their failure to fulfill commitments made at the bargaining table), in paragraph 7 (concerning breach of good faith by the union in attempting to railroad the process towards interest arbitration based on regressive bargaining, bad faith, deceit, and misrepresentations to the Mediator and the Employer), and a portion of paragraph 8 (concerning regressive bargaining with regard to the wages, signing bonus, educational incentive benefits, longevity benefits, and compensation for phone calls).

2. The person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

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

An answer filed by a respondent shall:

- a. 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; and
 - b. Assert any affirmative defenses that are claimed to exist in the matter.
 - c. 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.
 - d. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file 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.
3. Examiner Frederick J. Rosenberry is designated to conduct further proceedings on the allegations listed in paragraph 1 of this order.

4. Except as provided in paragraph 1 of this order, all of the other allegations of the complaint and amended complaint are dismissed as failing to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Issued at Olympia, Washington, on the 30th day of December, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 4 of this order will be the final order of the agency on the matters covered thereby, unless a notice of appeal is filed with the Commission under WAC 391-45-350.