

City of Seattle, Decision 6034 (PECB, 1997))

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE MANAGEMENT)	
ASSOCIATION,)	
)	
Complainant,)	CASE 13234-U-97-3218
)	
vs.)	DECISION 6034 - PECB
)	
CITY OF SEATTLE,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On June 11, 1997, Seattle Police Management Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Seattle (employer) had refused to bargain in violation of RCW 41.56.140(4). Specifically, the union cites the employer's amendment of its ordinance and revision of its policies and procedures, to provide for citizen observers of proceedings before boards convened to review incidents of discharge of firearms by police officers, including those represented by complainant. The complaint was reviewed for the purpose of making a preliminary ruling under WAC 391-45-110,¹ and a deficiency notice issued on July 9, 1997, gave the union a period of 14 days in which to file and serve an amended complaint, or face dismissal of the case. At the request of union, and without objection from the employer, the period for a response was extended to August 6, 1997. An amended

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.

complaint filed on August 7, 1997, is currently before the Executive Director for a preliminary ruling.²

Mandatory Subject

The original complaint alleged that both the amendments to the ordinance and the revision of policies and procedure were mandatory subjects of bargaining. The actual change was only described in terms of: "Heretofore, such review has been conducted in confidential proceedings by a panel composed entirely of sworn peace officers". The deficiency notice included:

The decision of the Supreme Court of the State of Washington in IAFF Local 1052 v. PERC (City of Richland), 113 Wn.2d 197 (1989) requires the Commission to make case-by-case decisions on disputes concerning mandatory subjects of collective bargaining, but even the most liberal construction of "wages, hours, and working conditions" will require more specification of the terms and conditions affected than is set forth in this complaint. The only facts detailed (i.e., that firearms reviews have been "confidential" in the past, [footnote omitted] and the panels have been composed entirely of sworn peace officers in the past), are not sufficient to detail how the

² A copy of the amended complaint transmitted to the Commission by telefacsimile on August 6, 1997, cannot be regarded as "filed" under the Administrative Procedure Act at RCW 34.05.010(6), WAC 391-08-120, and Island County, Decision 5147-B (PECB, 1995). While the amended complaint was technically filed one day after the allotted time, the case is not being dismissed on that basis at this time. Apart from a question of "substantial compliance", the employer has not noted any objection based on the one-day delay, and a fresh complaint filed on August 7, 1997 would clearly have been timely under RCW 41.56.160 as to a change which is alleged to have been implemented on or about May 28, 1997.

presence of a citizen observer actually affects bargaining unit employees.

The amended complaint contains some materials which arguably, although not necessarily explicitly, address that deficiency:

Paragraph 2.4 of the amended complaint alleges that the parties met and conferred with respect to the proposed role of the citizen observer. WAC 391-45-550 provides, however:

It is the policy of the commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into the dispute between them. The commission deems the determination as to whether a particular subject is mandatory or nonmandatory to be a question of law and fact to be determined by the commission, and which is not subject to waiver by the parties by their action or inaction. **It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject.**

[Emphasis by **bold** supplied.]

Thus, the fact of holding meetings or of having had discussion of a subject does not, however, provide evidence that the subject is a mandatory subject of bargaining.

Paragraph 2.6 of the amended complaint alleges that "participants in the review process may distrust the Citizen Observer to maintain the customary level of confidentiality concerning the investigations and deliberations of the panel", but does not point to any

statutory or other basis for the employees to have an expectation of confidentiality. Clearly, no such basis is found within the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, or in Commission precedent. If anything, the decision in Town of Steilacoom, Decision 5947 (PECB, June 6, 1997) suggests the opposite, citing Cowles Publishing Co. v. Washington State Patrol, 109 Wn.2d 712 (1988) for the proposition that police officer misconduct is not shielded by the "privacy" exception of RCW 42.17.310(1)(b). Thus, the asserted "custom" of confidentiality is not sufficient for this complaint to state a cause of action.

Paragraph 2.6 of the amended complaint goes on to allege that "the observer's presence is likely to inhibit the candid exchange of information in the investigation ... and ... such lack of candor may lead to inaccurate or incomplete factual determinations", but such concerns can only be described as speculative in the absence of actual facts. The premise that the presence of a civilian observer will lead to deceit by participants in the proceedings is totally unsupported, and it cannot be assumed that citizens would lie or equivocate merely because they are not sworn police officers, particularly where many of their actions could be subject to scrutiny by arbitrators, the courts, the news media, or the general public. Moreover, neither the exchange of information nor the determinations are directly tied to employee wages, hours or working conditions.

Internal Inconsistency

The deficiency notice had pointed out an internal inconsistency in the complaint. While it alleged that there had been a unilateral change made without bargaining, supporting documents filed with the complaint indicated there had been an invitation by the employer

for the union to review a draft of the policies and procedures prior to final adoption. Paragraph 2.4 of the amended complaint can also be interpreted as addressing this concern, inasmuch as it clarifies that the parties met and conferred between February 25 and May 28, 1997 (the date of the revision of the policy and procedure manual) without reaching agreement. Thus, the facts alleged in the amended complaint even more clearly indicate that no unfair labor practice violation could be found on a "refusal to meet" or "refusal to discuss" theory. In the absence of factual allegations indicating some breach of the good faith obligation, it appears there may have been only a refusal to agree, which would not state a cause of action under the "neither party shall be compelled to agree" clause of RCW 41.56.030(4) and Walla Walla County, Decision 2932 (PECB, 1988).

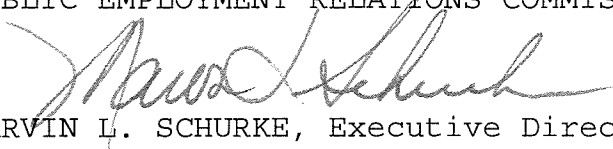
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in this matter is DISMISSED as failing to state a cause of action.

Issued at Olympia, Washington, on the 29th day of August, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.