

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SERVICE AND INDUSTRIAL)	
EMPLOYEES, LOCAL 1239,)	
)	
Complainant,)	CASE 13281-U-97-3236
)	
vs.)	DECISION 6408 - PECB
)	
CITY OF SEATTLE,)	
)	
Respondent.)	ORDER OF
)	PARTIAL DISMISSAL
)	

Joseph Bowen Jeffers III, Business Representative, appeared for the union.

Mark H. Sidran, City Attorney, by Patricia A. Richardson, Assistant City Attorney, appeared for the employer.

On July 2, 1997, Public Service and Industrial Employees, Local 1239, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Seattle had engaged in unfair labor practices with respect to three employees at the Seattle Center. On August 13, 1997, the union amended the complaint. The complaint was reviewed under WAC 391-45-110,¹ and further proceedings before the Commission were deemed warranted as to allegations of:

Employer circumvention of the union, by employer officials separately approaching regu-

¹ At that stage of the proceedings, all 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.

lar part-time employees Gert Gruenwoldt and Lance Nagasawa with proposals that they accept voluntary reductions in classification in order to become full-time employees, and at the same time failing to inform the bargaining unit employees of certain ramifications of the offer made to them.

Other allegations of the complaint, as amended, were found insufficient to state a cause of action, however:

- An allegation that the employer approached employee Patrick Welch with a proposal similar to those made to Gruenwoldt and Nagasawa appeared to be untimely under RCW 41.56.160, since the time referred to appeared to be in 1995 or early 1996.
- An allegation that Gruenwoldt was threatened with loss of work hours and a change of work schedule appeared in the statement of facts, but the box to claim an interference violation was not marked on the complaint form.
- An allegation that Welch was facing a disciplinary demotion, was insufficiently detailed, and the box to claim a discrimination violation was not marked on the complaint form.
- An allegation that the employer had failed to fulfill its end of the bargain unlawfully negotiated with Nagasawa appeared to be a "violation of contract" claim over which the Commission does not assert jurisdiction under City of Walla Walla, Decision 104 (PECB, 1976).

A deficiency notice was issued in the matter on December 22, 1997, giving the union a period of 14 days in which to file and serve an amended complaint regarding the deficient allegations, or face their dismissal as failing to state a cause of action.

The union filed a letter, an amended complaint, and an accompanying statement of facts regarding those allegations on January 21, 1998. The transmittal letter indicated, on its face, that copies had been sent to two employer representatives.

In a letter filed on March 30, 1998, the employer requested that the amended complaint be rejected on the basis that it had not been filed within the 14-day period allowed by the deficiency notice. Review of the case file disclosed, however, that Senior Staff Member Rex L. Lacy had granted the union an extension of the time period established by the deficiency notice, and that the amendment had been filed within the additional period authorized. The employer's motion was thus denied in a letter dated June 16, 1998.

The employer's March 30, 1998 letter also suggested the existence of an issue about whether the amended complaint had ever been properly served,² and that was the basis for a separate directive in the June 16, 1998 letter. The filing and service requirements set forth in WAC 391-08-120 and WAC 391-45-030, as well as Commission decisions dismissing complaints that were not properly served, were noted. The union was directed to provide proof of service of the amended complaint within 14 days following the date of the June 16, 1998 letter, or face dismissal of all allegations identified in the December 22, 1997 deficiency notice as insufficient to state a cause of action.

Nothing further has been heard or received from the union in this matter. Effecting proper service on all parties is a fundamental element of due process and communication. See, e.g., City of Kalama, Decision 6276 (PECB, 1998).

² A footnote in the employer's letter stated: "The amended complaint has never been received."

NOW, THEREFORE, it is

ORDERED

1. The allegations of the second amended complaint in this matter concerning the employer's direct dealing with employee Patrick Welch, the allegations concerning a failure to live up to any agreement with employee Lance Nagasawa, and the allegations concerning threats made to employee Gert Gruenwoldt, are hereby DISMISSED for failure to state a cause of action, in the absence of an amended complaint on which proof of service has been provided, when demanded, under WAC 391-08-120.
2. The allegations concerning the employer's circumvention of the union, by its direct dealing with employees Gert Gruenwoldt and Lance Nagasawa, are found to state a cause of action for further proceedings under Chapter 391-45 WAC.
 - a. PLEASE TAKE NOTICE THAT, 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:

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; and
2. Assert any affirmative defenses that are claimed to exist in the matter.

- b. 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.
- c. Except for good cause shown, a failure to file an answer within the time specified, or the failure 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.
- d. Vincent M. Helm of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. The Examiner will issue a notice of hearing, and any party desiring a change of hearing dates must comply with the procedure set forth in WAC 391-08-180, including making contact to determine the position of the other party prior to presenting the request to the Examiner.

Issued at Olympia, Washington, on the 28th day of August, 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 a notice of appeal is filed with the Commission pursuant to WAC 391-45-350.