STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117, Complainant, vs. PORT OF SEATTLE, Respondent.	CASE 22895-U-09-5841 DECISION 10643 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On December 3, 2009, Teamsters Local 117 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Seattle (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on December 8, 2009, indicated that it was not possible to conclude that a cause of action existed at that time for an allegation of the complaint concerning the employer's hiring of a consultant. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegation. The union did not file an amended complaint, but did submit a letter concerning the defective claim.

The Unfair Labor Practice Manager dismisses the defective allegation of the complaint for failure to state a cause of action and finds causes of action for the remaining allegations. The employer must file and serve its answer within 21 days following the date of this Decision.

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[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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by: (a) its unilateral change in eliminating funded but unfilled Communications Specialist positions within the bargaining unit, without providing an opportunity for bargaining; (b) its unilateral change in hiring a consultant to study the possible outsourcing of Communications Specialist work, without providing an opportunity for bargaining; and (c) circumventing the union through direct dealing with employees represented by the union, in discussing the outsourcing study with bargaining unit members, without notice to the union.

The allegations of the complaint concerning interference and refusal to bargain by eliminating Communications Specialist positions and circumventing the union state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out that the allegation concerning the employer's refusal to bargain in hiring a consultant is defective. The statement of facts does not indicate actual changes to the wages, hours, or working conditions of bargaining unit members by the hiring of the consultant. The employer's use of a consultant to perform a study concerning its operations is a managerial prerogative and is a permissive subject of bargaining.

The Union's Response

On December 21, 2009, the union submitted a letter concerning its allegation regarding employer refusal to bargain in hiring a consultant. The employer stated that even if the allegation of refusal to bargain over hiring the consultant was dismissed, a cause of action should be found for employer interference with employee rights, stating that "the hiring of a consultant to study possible outsourcing and observe bargaining unit employees during the pendency of contract negotiations is a threat to the job security of bargaining unit employees and is therefore interference in violation of RCW 41.56.140(1)."

The union is correct that an interference claim also pertains to this allegation. The deficiency notice should have made clear that the allegation concerns employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in hiring a consultant to study the possible outsourcing of Communications Specialist work, without providing an opportunity for bargaining.

However, the union's letter regarding the consultant does not cure the defect. The allegation does not concern the words or other actions of the consultant, but only whether the mere use of the consultant constitutes an unfair labor practice. The union asks the Commission to find prima facie evidence of interference where an employer hires a consultant to study possible outsourcing and to observe employees during the pendency of contract negotiations. Under this theory, even though hiring a consultant is not a mandatory subject of bargaining, an employer who might hire an outsourcing consultant during an open contract would do so at its peril (although there would be no sound reason to restrict the new rule to open contracts). The adoption of the union's theory would effectively negate Commission precedent regarding consultants. The union will have the opportunity to prove its allegations regarding interference and circumvention under accepted Commission precedent. It has not shown why the Commission should abandon an established ruling and create a new cause of action.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the following allegations state causes of action, summarized as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by:

(a) its unilateral change in eliminating funded but unfilled Communications Specialist positions within the bargaining unit, without providing an opportunity for bargaining; and

(b) circumventing the union through direct dealing with employees represented by the union, in discussing the outsourcing study with bargaining unit members, without notice to the union.

These allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC. The cause of action for interference and circumvention of the union precludes deferral to arbitration.

The Port of Seattle shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

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

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. 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.

2. The allegations of the complaint concerning employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in hiring a consultant to study the possible outsourcing of Communications Specialist work, without providing an opportunity for bargaining, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11th day of January, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.