STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COLUMBIA BASIN IRRIGATION COUNCIL, Complainant, vs. EAST COLUMBIA BASIN IRRIGATION DISTRICT, Respondent.	CASE 23070-U-10-5873 DECISION 10710 - PECB ORDER OF DISMISSAL

On February 25, 2010, the Columbia Basin Irrigation Council (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the East Columbia Basin Irrigation District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on March 3, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On March 10, 2010, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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 its unilateral

[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.

change concerning the heavy equipment operator position, without providing an opportunity for bargaining.

The deficiency notice pointed out the defects to the complaint. The complaint alleges the following:

- On September 10, 2009, the employer notified the union that it intended to "let the heavy equipment operator classification lapse through attrition";
- The union demanded bargaining over the effects of this decision and the employer stated it would do so;
- The union then demanded bargaining over both the decision and effects;
- The employer reiterated that it would bargain the effects, but stated that it would not bargain the decision, characterizing the issue as one concerning staffing.

The union alleges that the employer has a duty to bargain the decision, which the union characterizes as a decision to "eliminate this position and/or the job duties associated with the heavy equipment operator position from the bargaining unit."

It is an unfair labor practice for an employer to unilaterally transfer bargaining unit work, through either skimming or contracting out, without providing the union with an opportunity for bargaining both the decision and effects of the transfer. Here, the heavy equipment operator work belongs to the bargaining unit, and the employer may not lawfully transfer that work without bargaining with the union. However, decisions concerning staffing (other than those involving safety) and the level of services to be provided to the public are within the managerial prerogatives of public employers and are permissible subjects of bargaining. Public employers answer to their constituencies; the Commission cannot supplant the will of citizens and order employers to hire additional employees, fill vacant positions, or maintain specific services.

The complaint does not allege that the employer has made a decision to transfer the work or has actually transferred the work. The employer has stated that it will bargain the effects of its intent to let the classification "lapse through attrition." The complaint does not indicate that the employer has failed to meet and bargain the effects or that the employer has bargained in bad faith over the effects. The complaint apparently was filed because the employer has declined to

bargain its decision not to fill vacant or soon-to-be vacant positions. The complaint does not state a cause of action.

Amended Complaint

As noted above, on September 10, 2009, the employer told the union of its decision to let the heavy equipment operator position lapse through attrition. The union demanded effects bargaining on September 21, 2009. On October 5, 2009, the employer responded to the union's demand and agreed to bargain. On December 15, 2009, the union demanded bargaining over the decision. On December 17, 2009, the employer declined to bargain the decision, but reiterated its willingness to bargain the effects. The amended complaint alleges that the employer has assigned heavy equipment operator work to other employees within the bargaining unit, and that some of those employees are in classifications that are paid at a lower rate than the heavy equipment operator position. The amended complaint claims that the employer has a duty to bargain the decision to eliminate the heavy equipment operator position and reassign the work within the bargaining unit.

A public employer may reorganize the manner in which it chooses to provide services to the public, including the creation and elimination of positions, and changes in duties for existing positions. However, the employer must negotiate any effects of the reorganization, including the wage level of new and changed positions, with the exclusive bargaining representative of affected employees. *International Association of Firefighters, Local 1052 v PERC,* 113 Wn.2d 197 (1989) (*City of Richland,* Dec. 2448-B, 1987); *City of Anacortes,* Decision 6830-A (PECB, 2000).

The employer has apparently reorganized its heavy equipment operating services. The elimination of the heavy equipment operator position is not *per se* evidence of an unfair labor practice. The amended complaint does not allege that the employer has skimmed or contracted out bargaining unit work and thus does not state a cause of action regarding the employer's decision to eliminate the heavy equipment operator position. Although the employer has an acknowledged duty to bargain the effects of its decision, the amended complaint does not allege that the employer has refused to meet and bargain the effects or has bargained in bad faith.

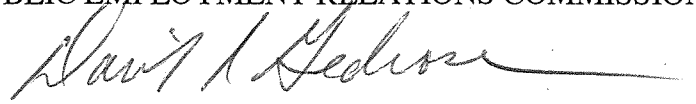
NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 23070-U-10-5873 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 17th day of March, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY/S/ ROBBIE DUFFIELD

CASE NUMBER:	23070-U-10-05873	FILED:	02/25/2010	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	-				
COMMENTS:					

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