

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LA CENTER POLICE OFFICERS'
ASSOCIATION,

Complainant,

vs.

CITY OF LA CENTER,

Respondent.

CASE 23612-U-10-6022

DECISION 10949 - PECB

AMENDED PRELIMINARY RULING
AND ORDER MAKING COMPLAINT
MORE DEFINITE AND DETAILED

On November 1, 2010, the La Center Police Officers' Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of La Center (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a preliminary ruling was issued on November 3, 2010. On November 12, 2010, the employer filed a motion to make the complaint more definite and detailed. By a letter of November 30, 2010, the Unfair Labor Practice Manager directed the union to do so within 14 days. The union did not respond. This order makes the complaint more definite and detailed as described below, and amends the preliminary ruling to more fully reflect the order.

DISCUSSION

On November 3, 2010, the following preliminary ruling was issued in Case 23612-U-10-6022:

[1] Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its unilateral changes to disciplinary procedures, drug and alcohol testing, and tenure, through implementing a policy manual, without providing an opportunity for bargaining;

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.

[2] Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by breach of its good faith bargaining obligations under RCW 41.56.440 and RCW 41.56.470, through implementing the policy manual during mediation and the pendency of interest arbitration proceedings; and

[3] Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made to all bargaining unit members in connection with their union activities, through requiring each of them to sign a form acknowledging receipt of the new policy manual.

On November 12, 2010, the employer filed a motion to make the complaint more definite and detailed under WAC 391-45-250. The motion identified the Case as 23611-U-10-6022, but it was obvious from the context that the motion referred to Case 23612-U-10-6022. The motion requested clarification of the allegation in paragraph 4 of the complaint regarding the policy manual, specifically the following statements: “Many of the proposed changes constitute mandatory subjects of bargaining, including changes to disciplinary procedures, drug and alcohol testing, and tenure. The policy manual changed the status quo regarding numerous mandatory subjects of bargaining.”

Paragraph 1 of the preliminary ruling dealt with that portion of the complaint. The preliminary ruling limited the union’s claims to disciplinary procedures, drug and alcohol testing, and tenure, since those were the only alleged mandatory subjects specifically identified in the complaint. Commission examiners are aware that the issues at hearing are limited to the claims summarized in the preliminary ruling. However, the employer’s motion raised the possibility that this might become a distraction at a hearing, requiring the parties and examiner to discuss the scope of preliminary rulings, rather than focus on the merits of the dispute.

The letter of November 30, 2010, directed the union to file an amended complaint as follows:

Specifically and without qualification identify all of the mandatory subjects that the union claims are at issue regarding the policy manual, without using ambiguous words or phrases, e.g., “many of the proposed changes,” “including changes to,” and “numerous mandatory subjects.”

The letter stated that the preliminary ruling of November 3, 2010, would remain the same if the issues identified were restricted to disciplinary procedures, drug and alcohol testing, and tenure. If the union expanded the list, then those additional items would be added to an amended preliminary ruling. As noted above, the union was directed to file an amended complaint within 14 days, but did not respond.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of complaint state a cause of action as follows:

[1] Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its unilateral change through implementing a new policy manual with changes to disciplinary procedures, drug and alcohol testing, and tenure, without providing an opportunity for bargaining;

[2] Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by breach of its good faith bargaining obligations under RCW 41.56.440 and RCW 41.56.470, through implementing the policy manual during mediation and the pendency of interest arbitration proceedings; and

[3] Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made to all bargaining unit members in connection with their

union activities, through requiring each of them to sign a form acknowledging receipt of the new policy manual.

Those allegations of the second amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

The City of La Center shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 14 days following the date of this Order.

An answer shall:

Specifically admit, deny or explain each fact alleged in the amended complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and assert any other 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 amended 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 of an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

An examiner will be designated to conduct further proceedings in this matter pursuant to Chapter 391-45 WAC. Until an examiner is assigned, all correspondence and motions should be directed to the undersigned.

2. Paragraph 4 of the complaint is amended to read: The policy manual changed the status quo regarding three mandatory subjects of bargaining, specifically, disciplinary procedures, drug and alcohol testing, and tenure.

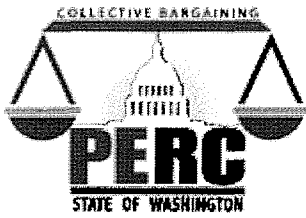
ISSUED at Olympia, Washington, this 28th day of December, 2010.

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Handwritten Signature]
BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 23612-U-10-06022 FILED: 11/01/2010 FILED BY: PARTY 2
DISPUTE: ER UNILATERAL
BAR UNIT: LAW ENFORCE
DETAILS: Policy and Procedures Manual
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