

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF  
COUNTY AND CITY EMPLOYEES,  
AFSCME COUNCIL 2, LOCAL 120,

Complainant,

vs.

CITY OF TACOMA,

Respondent.

CASE 23943-U-11-6122

DECISION 11076 - PECB

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

On April 25, 2011, the Washington State Council of County and City Employees, AFSCME Council 2, Local 120 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Tacoma (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on April 28, 2011, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for the allegations of the complaint set forth in Paragraph 1 of the Order. The employer must file and serve its answer within 21 days following the date of this Decision.

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<sup>1</sup> 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 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 to the status quo during negotiations regarding the Business Analyst bargaining unit, without providing an opportunity for bargaining; skimming of Business Analyst 3 and Application Developer Systems Analyst work, without providing an opportunity for bargaining; its unilateral change in giving pay increases to the Business Analyst 3 and Application Developer Systems Analyst positions, without providing an opportunity for bargaining; circumventing the union through direct dealing with an employee represented by the union, when it negotiated with an employee in one of the two disputed positions, without notice to or participation by the union; breach of its good faith bargaining obligations in its negotiations regarding the Business Analyst bargaining unit; and employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit, in undermining the union through its aforementioned actions.

The deficiency notice pointed out the defect to the complaint: The complaint failed to state a cause of action concerning the allegations of circumvention of the union (and derivative interference). The complaint alleges that the employer engaged in direct dealing with the incumbent in one of the two disputed positions and states that the other position was unfilled at the time of the alleged direct dealing; however, the complaint fails to identify the position, including the name of the employee involved. The complaint also fails to identify the other times, dates, places and participants in the occurrence (the alleged circumvention). WAC 391-45-050(2).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the following allegations of the complaint state a cause of action, summarized 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:
- (a) its unilateral change to the status quo during negotiations regarding the Business Analyst bargaining unit, without providing an opportunity for bargaining;
  - (b) skimming of Business Analyst 3 and Application Developer Systems Analyst work, without providing an opportunity for bargaining;
  - (c) its unilateral change in giving pay increases to the Business Analyst 3 and Application Developer Systems Analyst positions, without providing an opportunity for bargaining;
  - (d) breach of its good faith bargaining obligations in its negotiations regarding the Business Analyst bargaining unit; and
- [2] Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit; in undermining the union through the employer's actions as summarized in this preliminary ruling.

Those allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC. Although the preliminary ruling contains causes of action for unilateral changes, the allegations of breach of good faith bargaining allegations and independent interference concern statutory violations and are not deferrable. The Commission does not bifurcate unfair labor practice complaints. This case will not be deferred to arbitration in whole or in part.

The City of Tacoma 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 employer refusal to bargain in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)], by circumventing the union through direct dealing with an employee represented by the union, without notice to or participation by the union, are DISMISSED.

ISSUED at Olympia, Washington, this 26th day of May, 2011.

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

  
BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 23943-U-11-06122 FILED: 04/25/2011 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: TECHNICAL  
DETAILS: -  
COMMENTS:

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