

City of Seattle, Decision 11055 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCALS 27 AND 2898,

Complainants,

vs.

CITY OF SEATTLE,

Respondent.

CASE 23161-U-10-5897  
DECISION 11055 - PECB

CASE 23162-U-10-5898  
DECISION 11056 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Michael A. Duchemin*, Attorney at Law, for the union.

Seattle City Attorney Peter S. Holmes, by *Paul Olsen*, Assistant City Attorney,  
for the employer.

On April 14, 2010, the International Association of Fire Fighters, Local 27, and the International Association of Fire Fighters, Local 2898 (union) filed unfair labor practice complaints against the City of Seattle (employer). The complaints were docketed as separate cases, but were consolidated for hearing under WAC 391-08-085 as they both alleged the employer refused to bargain by refusing to provide relevant information requested by the unions and contained the same facts. Preliminary rulings were issued finding causes of action. Examiner Christy Yoshitomi conducted a hearing on August 3, 2010, and the parties subsequently filed post-hearing briefs.

ISSUE

Did the employer refuse to provide information, relevant to the collective bargaining process, requested by the union?

The Examiner rules that the employer did not commit an unfair labor practice because the union did not request the information in a collective bargaining context.

### LEGAL STANDARDS

RCW 41.56.030(4) defines “collective bargaining” as the duty “to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions . . . .” The duty to bargain is enforced on employers through RCW 41.56.140(4), and through unfair labor practice proceedings under RCW 41.56.160 and Chapter 391-45 WAC. Where an unfair labor practice is alleged, the complainant is responsible for the presentation of its case and has the burden of proof. The complainant must demonstrate that the facts occurred as alleged and that those facts constituted an unfair labor practice. WAC 391-45-270(1)(a).

A party to a collective bargaining agreement has the duty to provide relevant information requested by the other party necessary to perform its collective bargaining responsibilities. *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992). *City of Bremerton*, Decision 5079 (PECB, 1993) specifies five factors that must be met from the party requesting the information. Those factors are:

1. The request must be clear.
2. The information must be requested for use in the collective bargaining context.
3. The information must relate to the union’s performance of obligations arising from its status of exclusive bargaining representative.
4. The union must have a genuine need for the requested information.
5. The duty to provide information requires an employer to articulate and negotiate with the union over any objections it has to producing the requested information.

If the receiving party does not believe the request is relevant to collective bargaining activities or perceives a particular request as unclear, it is obligated to timely communicate its concerns to the requesting party. *Seattle School District*, Decision 9628-A (PECB, 2008); *Pasco School District*, Decision 5384-A (PECB, 1996). Relevant information extends not only to information that is useful and relevant to the collective bargaining process, but also encompasses information necessary for the administration of the collective bargaining agreement. *City of Bellevue*, Decision 4324-A (PECB, 1994). An employer is not obligated to comply with a union's request for information when its only justification is to fulfill its responsibilities as a collective bargaining representative. There must be more than abstract or potential relevance. The burden is on the union to show the relevance and inform the employer of the basis for the request. *Pasco School District*, Decision 5384-A (PECB, 1996). In evaluating information requests, the Commission and the courts consider whether the requested information appears reasonably necessary for the performance of the union's function as a bargaining representative. *City of Bellevue*, Decision 4324-A (PECB, 1994).

### ANALYSIS

The employer has routinely administered employees' disability pay and service credits, since at least 2008, under Chapters 41.04 and Chapter 41.26 RCW. In addition to disability pay, fire fighters receive supplemental pay when on disability status under Seattle Municipal Code 4.44.020. This Municipal Code applies to all employees of the employer including fire fighters. Employees of the employer receive a total of 80 percent of their regular pay when out on disability and do not receive full monthly service credits towards their pension benefits. In 2008, the union learned that fire fighters in other jurisdictions were receiving 100 percent of their normal pay and also receiving full monthly credits towards their pension benefits allegedly under State law. In 2008, the union brought this to the employer's attention stating that "it has come to the union's attention that the city may not be providing their members with certain compensation and retirement benefit rights as required by Washington State's Disability leave supplement for firefighters, pursuant to RCW 41.04.500." In September 2008, the union again stated that its concern was with the employer's application of RCW 41.04.500 and RCW 41.26.470(3).

Although background information, the union's requests from 2008 up to October 14, 2009, were clearly not made in a collective bargaining context. The union clearly was seeking the requested information because it believed that the employer was violating State law regarding fire fighter disability supplements under Chapters 41.04 and 41.26 RCW. It did not request this information to evaluate or prepare for bargaining, nor did it include any proposals or raise any issues regarding this topic at the negotiating table during the 2009 negotiations.

Although no proposals or issues were brought to the negotiating table previously, on October 15, 2009, the union requested that the employer meet with the union. The union wanted to see if the parties could come to an agreement on how employee's would be paid and provided service credits under RCW 41.04.500 and RCW 41.26.470(3), as well as develop a standard form for employees to sign and attach to the self-insured accident report form. In this request, the union stated that it was asking for the information "under the authority of Chapter 41.56 RCW," but no further explanation of how this came under Chapter 41.56 RCW was provided. On October 19, 2009, the employer responded by saying it would need some time to gather the information. Subsequently, the parties agreed to meet on November 20, 2009 to discuss this issue.

The union followed up to the November meeting in a February 12, 2010 letter stating that "during this meeting, we discussed, amongst other things, [the union's] proposals to have the City inform their bargaining unit members of their Fire Fighter Supplement rights at the same time they fill out a [self insured accident report form] for work related injuries and illnesses, and to do so via a 'Notice of Fire Fighter Supplement Benefits' form and a related form entitled 'Request To Receive Fire Fighter Supplement.' " The request further states that "in order to allow the unions to evaluate the merits and potential content of their proposals related to notification and election of employee's rights to receive Fire Fighter Supplement proposals and to otherwise ensure that their members are being properly compensated under the terms of the Fire Fighter Supplement statutes," the union was requesting the following:

1. The method and means used to determine payments and the names of the employees who are involved in the process.
2. The elements included in the amount of the 80% compensation.

3. The elements of compensation that are included in the amount of the “wages” to which the percentages in RCW 51.32.060 are applied.
4. The names of the bargaining unit members who were off work due to an injury or illness for the past three years as well as the amount they were paid and the how their amounts of compensation were determined.
5. The fire fighters listed in four above who did not receive service credits for that time.
6. The fire fighters listed in four above who received service credits and an explanation if it was because they requested them.

The discussion in October 2009, which evolved into a written request in February 2010, was made to ensure bargaining unit members were being compensated correctly under Chapters 41.04 and 41.26 RCW and was not in a collective bargaining context to bargain over supplemental pay. Although the union states it was making the request under Chapter 41.56 RCW, it did not provide an explanation of how this request came under Chapter 41.56 RCW. The request was repeatedly made for the purpose of learning how the employer was applying Chapters 41.04 and 41.26 RCW and to see if the employer was incorrectly applying these laws to the bargaining unit members.

On March 10, 2010, the employer provided a spreadsheet giving the names and disability pay for the previous two-and-a-half years, and included a description of its computation methods. The employer referred the union to the DRS for information on service credits.

On March 10, 2010, the union responded that the spreadsheet was incomplete; that the employer, not DRS, should provide the information requested; and again requested for three years, not two-and-a-half, of information and the names of employees involved in compensation work. In this letter, the union stated that “this information is important and relevant to the Unions’ proposal that a process exist wherein each member can be informed of his or her rights under the Fire Fighter Supplement.” It reiterated that it was requesting this information under the authority of Chapter 41.56 RCW, but it was clear that the union wanted to understand if the employer was correctly applying Chapters 41.04 and 41.26 RCW to the bargaining unit. The union never claimed that it was requesting this information to prepare for bargaining in contract

negotiations. Instead, it repeated the necessity of the information to evaluate if the employer was adhering to State law.

The union was requesting the information to show that employees had not been receiving disability pay and service credits at the same rate as other jurisdictions under Chapters 41.04 and 41.26 RCW. This is not a contractual matter, as there is no contract language on this issue. The union failed to raise the issue as a subject of bargaining in contract negotiations, nor did it file a grievance that the employer was violating the contract. The Commission's jurisdiction is restricted to violations of collective bargaining statutes. The Commission has no jurisdiction over other Washington State statutes, nor the authority to interpret or require information to be produced under Chapter 41.04 and 41.26 RCW.

On April 8, 2010, the employer sent a letter to the union stating that it did not believe that the union's requests pertaining to comparable jurisdictions and those collective bargaining agreements were relevant to collective bargaining. The employer objected to some union requests, but offered to reconsider its position if the union could explain the relevance of the requests to collective bargaining. It offered to further discuss those matters with the union and to meet with the union over any problems. However, instead of presenting a collective bargaining reason for its request, the union filed this complaint six days later.

The union failed to prove that between October 14, 2009, and April 14, 2010, the employer refused to provide relevant information for purposes related to collective bargaining in violation of RCW 41.56.140(4); thus, the employer also did not derivatively interfere with employee rights in violation of RCW 41.56.140(1).

#### FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(13).
2. The International Association of Fire Fighters, Locals 27 and 2898, are bargaining representatives within the meaning of RCW 41.56.030(2).

3. The City of Seattle and International Association of Fire Fighters, Local 27 and 2898 are parties to a collective bargaining agreement extending from January 1, 2009 through December 31, 2011.
4. On October 15, 2009, the union requested information from the employer as to how it was providing disability pay and service credits under Chapters 41.04 and 41.26 RCW.
5. On November 20, 2009, the parties met to discuss issues raised in the October 15, 2009 request. The union sent a letter to the employer on February 12, 2010, stating the results of that meeting and requesting information.
6. The union pursued its request for information to evaluate if the employer was adhering to Chapter 41.04 and 41.26 RCW.
7. The union did not request the information in a manner related to collective bargaining under Chapter 41.56 RCW. The union did not request the information for purposes of preparing for contract negotiations, to investigate possible contract violations, or evaluate proposals for future negotiations.
8. The employer objected to some union requests, but offered to reconsider its position if the union could explain the relevance of the requests to collective bargaining.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.
2. The union failed to prove that the employer refused to bargain in violation of RCW 41.56.140(4) or committed derivative interference in violation of RCW 41.56.140(1), by failing to provide relevant information requested by the union on mandatory subjects of bargaining.

ORDER

The unfair labor practice complaints in Cases 23161-U-10-5897 and 23162-U-10-5989 are DISMISSED on their merits.

ISSUED at Olympia, Washington, this 6th day of May, 2011.

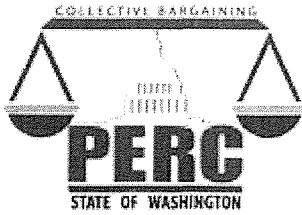
PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTY L. YOSHITOMI, Examiner

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: *[Signature]* / ROBBIE DUFFIELD

CASE NUMBER: 23161-U-10-05897 FILED: 04/14/2010 FILED BY: PARTY 2

DISPUTE: ER PROVIDE INFO

BAR UNIT: SUPERVISORS

DETAILS: IAFF 2898  
Failure to provide information and documents to the union

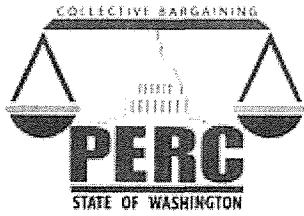
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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

BY /s/ ROBBIE DUFFIELD

CASE NUMBER: 23162-U-10-05898 FILED: 04/14/2010 FILED BY: PARTY 2  
DISPUTE: ER PROVIDE INFO  
BAR UNIT: FIREFIGHTERS  
DETAILS: IAFF 27  
Failure to provide information and documents to union  
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