STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 286, Complainant, vs. TACOMA SCHOOL DISTRICT, Respondent.	CASE 24269-U-11-6219 DECISION 11210 - PECB ORDER OF DISMISSAL

On September 23, 2011, the International Union of Operating Engineers, Local 286 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Tacoma School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on September 27, 2011, 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 October 18, 2011, 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 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 on September 21, 2011, without providing an opportunity for bargaining.

The deficiency notice pointed out the defects to the complaint.

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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.

The Commission does not assert jurisdiction to remedy alleged violations of collective bargaining agreements through unfair labor practice proceedings. The union alleges that the employer made a unilateral change to the wages of bargaining unit members by not letting them work on September 21, 2011, and not paying them for that day. Unilateral change allegations most often pertain to past practices involving matters restricted to specific issues of wages, hours, and working conditions. Here, the union alleges, without further explanation, that the employer breached the foundation of the parties' contract by denying bargaining unit members the ability to work, as well as their wages. This is more like a contract dispute than a unilateral change case. The union indicates that it has filed a grievance on the matter under contractual grievance procedures. Based upon the limited information supplied by the union, that venue appears to be the more appropriate one for this claim.

Amended Complaint

The amended complaint adds the following allegations and information:

- The employer also denied bargaining unit members work and pay on September 22, 2011;
- The employer refused to allow at least one employee to use vacation leave on September 21 and 22 [the employee is not named as required by WAC 391-45-050(2)];
- Article III, Section 8.9 of the contract applies to school closures due to inclement weather, natural disasters, or other emergencies;
- The collective bargaining agreement, including Article III, Section 8.9, does not specifically address strikes or work stoppages, and the employer's action relative to denying vacation leave shows that the employer did not believe the aforementioned contractual provision applied; and
- The unilateral change was to employee work hours.

This dispute apparently concerns employer actions relative to school closure during a teachers' strike on September 21 and 22, 2011.

The amended complaint form is unsigned (as was the original complaint). WAC 391-45-050(4). The union attached a letter consisting of argument to the amended complaint and amended statement of facts, but this type of information is not germane to amended complaints filed in

response to deficiency notices. The additional facts provided by the union only reinforce the original ruling that this dispute is at its heart a contractual matter between the union and the employer. The amended complaint alleges on the one hand that the employer made a unilateral change to the use of vacation time, but then alleges that the contract provision providing for vacation leave does not apply to the strike. The amended complaint apparently withdraws the allegation over a unilateral change to wages, and replaces it with an allegation of a unilateral change to employee work hours.

However, the actual issue here is the duty of the employer relative to wages, hours, and working conditions for the bargaining unit of Bus Drivers, when school is cancelled because of a strike or work stoppage (hereinafter, strike). The union alleges that the contract is silent concerning strikes. Yet, the amended complaint states–and the contract language affirms–that emergencies are included in the contractual section on school closures (Article III, Section 8.9). This presents a question of contract interpretation: Does an emergency include a strike? As stated, the Commission declines to intervene in contract disputes. *City of Walla Walla,* Decision 104 (PECB, 1976). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County,* Decision 607-A (PECB, 1979); *City of Seattle,* Decision 3470-A (PECB, 1990); *Bremerton School District,* Decision 5722-A (PECB, 1997).

Whether the allegations concern wages, hours of work, or both, the dispute remains a contractual matter appropriately addressed through the grievance and arbitration provisions of the collective bargaining agreement. An arbitrator should decide whether the collective bargaining agreement applies to strikes.

Regarding vacation leave, the union's position is unclear. The allegation concerning denial of vacation leave for at least one employee does not necessarily lead to the conclusion that the employer rejected the application of Article III, Section 8.9 to the strike, but could indicate a claim that the employer breached that portion of the contract, if the employer relied on that portion of the contract to protect its actions. In any case, it is not clear from the amended complaint that the union intended to allege a unilateral change to vacation leave for only one employee, when the context of the amended complaint states that the employer did not allow "employees" to use

vacation leave and refers to a unilateral change to the "hours of employees." Other than the reference to "at least one [unidentified] employee," there is no claim or information given concerning whether the employer refused use of accrued vacation time for all bargaining unit members who requested it. In addition, a unilateral change claim would apply only if the contract language encompasses strikes, or if a past practice exists concerning the use of vacation leave during strikes. Yet, if the collective bargaining agreement does not address strikes, as maintained by the union, there could be no unilateral change to the contract language, and there could be no unilateral change to past practice, since there is apparently no past practice regarding use of vacation leave during strikes.

Finally, a preliminary ruling solely regarding a unilateral change allegation made against an employer would include a deferral to arbitration option under WAC 391-45-110(3). The majority of unilateral change claims are deferred to arbitration and resolved under the grievance and arbitration provisions of the parties' collective bargaining agreements. Here, the union has not stated a claim for a unilateral change in violation of RCW 41.56.140(4); because the Commission does not have jurisdiction, the union should seek relief under the terms of the collective bargaining agreement.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 24269-U-11-6219 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 25th day of October, 2011.

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:	24269-U-11-06219	FILED:	09/23/2011	FILED BY:	PARTY 2
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BAR UNIT:	DRIVERS				
DETAILS:	Bus Drivers				
COMMENTS:					

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