

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE PATROL  
TROOPERS ASSOCIATION,

Complainant,

vs.

WASHINGTON STATE PATROL,

Respondent.

CASE 25007-U-12-6395

DECISION 11452 – PECB

PRELIMINARY RULING,  
DEFERRAL INQUIRY, AND  
ORDER OF PARTIAL DISMISSAL

On July 26, 2012, the Washington State Patrol Troopers Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Patrol (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on August 2, 2012, 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 set forth in the preliminary ruling below. The employer must file and serve its answer to those claims 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.

**Unless the employer requests deferral to arbitration, this case will be consolidated with Case 25000-U-12-6393 under WAC 10-08-085 and assigned to Examiner Emily Martin for further unfair labor practice proceedings.**

### 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: (a) its unilateral changes in (i) not signing the Employer Declaration for Ignition Interlock Device (Declaration), (ii) implementing a policy for disciplining employees in relation to the Declaration; and (b) breach of its good faith bargaining obligations in filing an unfair labor practice complaint rather than proceeding to interest arbitration.

The allegations of the complaint concerning unilateral changes state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice set forth the defects to the complaint concerning the breach of good faith bargaining obligations.

The complaint makes reference to interest arbitration and unfair labor practice cases pending before the Commission: The interest arbitration case involving the employer and union is Case 24975-I-12-0592, and the unfair labor practice case is 25000-U-12-6393. The employer filed the unfair labor practice case under WAC 391-55-265(a) (rule), alleging that the union bargained a non-mandatory subject of bargaining to impasse, namely, the Declaration. Both employers and unions may file complaints under the rule. If a cause of action is found, the rule necessarily precludes proceeding to interest arbitration pending resolution of the unfair labor practice complaint. The employer did not commit an unfair labor practice by filing its complaint in Case 25000-U-12-6393.

NOW, THEREFORE, it is

ORDERED

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

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 in (i) not signing the Employer Declaration for Ignition Interlock Device (Declaration), and (ii) implementing a policy for disciplining employees in relation to the Declaration.

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

Washington State Patrol 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. Specify whether "deferral to arbitration" is requested and, if so:
  - i. Indicate whether a collective bargaining agreement was in effect between the parties at the time of the alleged unilateral change;
  - ii. Identify the contract language requiring final and binding arbitration of grievances;
  - iii. Identify the specific contract language which is claimed to protect the employer conduct alleged to be an unlawful unilateral change;

- iv. Provide information (and copies of documents) concerning any grievance being processed on the matter at issue in this unfair labor practice case; and
  - v. State whether the employer is willing to waive any procedural defenses to arbitration.
- c. 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 the complaint concerning 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 in filing an unfair labor practice complaint rather than proceeding to interest arbitration, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of August, 2012.

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/ ROBERT DUFFIELD

CASE NUMBER: 25007-U-12-06395 FILED: 07/26/2012 FILED BY: PARTY 2  
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COMMENTS:

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