

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLARK COUNTY,

Complainant,

vs.

CLARK COUNTY DEPUTY SHERIFFS'
GUILD,

Respondent.

CASE 24796-U-12-6333

DECISION 11412 - PECB

ORDER OF DISMISSAL

On May 11, 2012, Clark County (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Clark County Deputy Sheriffs' Guild as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 21, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. The employer was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

The employer has not filed any further information. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern union refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)], by breach of its good faith bargaining obligations regarding Article 19.6. The employer alleges regressive bargaining by the union's proposal to alter the 70/30 allocation of overtime or extra duty assignments for reserve deputies, alleging that the union had not made this proposal at any time in 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.

The deficiency notice pointed out the defects to the complaint.

The employer alleges that the union has violated the collective bargaining obligations imposed by RCW 41.56.030(4) in making the following proposal: “Overtime or extra duty assignments may only be worked by members of the Guild in the classifications needed to work the overtime or extra duty assignments.” [Hereinafter, new proposal.]

This is a case of first impression in applying WAC 391-55-265(2)(a) to the present unfair labor practice complaint. Prior to the filing of this case, the employer filed an unfair labor practice complaint against the union in Case 24074-U-11-6157, alleging that the union had unlawfully insisted to impasse on Article 19.6, which was alleged to be a non-mandatory subject of bargaining. On June 30, 2011, the Executive Director suspended Article 19 from the interest arbitration proceedings. On April 20, 2012, a Decision was issued in Case 24074-U-11-6157, *Clark County (Clark County Deputy Sheriffs’ Guild)*, Decision 11346 (PECB, 2012). Examiner Lisa Hartrich found that the union had a bargained permissive subject to impasse, because the union’s proposal concerned non-bargaining unit members (the reserve deputies).

However, in the present case the union’s new proposal refers only to bargaining unit members. The employer’s objection is that this new proposal constitutes bad faith bargaining, and the union should not be allowed to advance it to arbitration pending resolution of the current unfair labor practice complaint. The employer does not allege that it is a permissive subject of bargaining.

WAC 391-55-265(2)(a) (rule) states in pertinent part that “the party advancing the proposal shall only be permitted to advance such modified proposals as are in compliance with the remedial order in the unfair labor practice proceedings.” Any modified proposal under the rule will be new by definition and thus could be considered regressive, but unless the union has the opportunity to make a modified proposal, the rule becomes meaningless. Unless modifications are facially out of compliance with a remedial order, the Commission will then give wide latitude. The complaint in Case 24796-U-12-6333 is deficient because it conflicts with the intent of WAC 391-55-265(2)(a) in providing for modified proposals in response to remedial orders. Article

19.6 remains suspended from interest arbitration, but the union may lawfully request to bargain its new proposal.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 24796-U-12-6333 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of July, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written in a cursive style.

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: ROBBIE DUFFIELD

CASE NUMBER: 24796-U-12-06333 FILED: 05/11/2012 FILED BY: EMPLOYER
DISPUTE: UN GOOD FAITH
BAR UNIT: LAW ENFORCE
DETAILS: -
COMMENTS:

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