

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COWLITZ COUNTY DEPUTY
SHERIFFS' GUILD,

Complainant,

vs.

COWLITZ COUNTY,

Respondent.

CASE 23831-U-11-6083

DECISION 11515 - PECB

ORDER OF DISMISSAL

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the Cowlitz County Deputy Sheriffs' Guild (union) on March 2, 2011, and amended on March 21, 2011. The amended complaint alleged that Cowlitz County (employer) refused 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 location and duration of forced assignments for court security positions, without providing an opportunity for bargaining. The employer and union were parties to a collective bargaining agreement.

The amended complaint was reviewed under WAC 391-45-110.¹ A preliminary ruling and deferral inquiry was issued on March 23, 2011, finding a cause of action to exist and providing the employer with an opportunity to file an answer to the complaint. The employer was asked to specify in its answer whether it requested deferral to arbitration. In an answer filed on May 19, 2011, the employer requested deferral, alleging that Article 2 of the collective bargaining agreement protected its actions.

The amended complaint and answer were reviewed under WAC 391-45-110(3). On June 22, 2011, the amended complaint was deferred to arbitration in a ruling that stated, in pertinent part:

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.

4. The parties are to supply the Commission with a copy of any arbitration award resulting from the arbitration proceedings. The Commission reviews the arbitration award to determine its effect, if any, on this unfair labor practice case. The arbitrator draws his or her authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the contract. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:
 - a. If the arbitrator finds the employer's conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. It would logically follow that the union's right to bargain the matter will have been waived by the language of the collective bargaining agreement, and the union should anticipate dismissal of the unfair labor practice allegation based on the "waiver" conclusion.
 - b. If the arbitrator finds the employer's conduct was prohibited by the collective bargaining agreement, the arbitrator will need to remedy the contract violation. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, and the union should anticipate dismissal of the unfair labor practice allegation on a subject that is merely a contract dispute.
 - c. If the arbitrator finds the employer's conduct was neither protected nor prohibited by the collective bargaining agreement, the Commission will resume the processing of the unfair labor practice case, and will accept the arbitrator's determination as conclusive on any "waiver by contract" defenses which might be asserted by the employer.

The union objected to deferral to arbitration, stating that the issue in the case had little or no relation to the contract grievance process, and that the most likely outcome of the arbitration hearing would be a finding that the employer's conduct was neither prohibited nor protected by the collective bargaining agreement.

Under WAC 391-45-110(3) (rule), employers have the option of requesting that unfair labor practice complaints be deferred to arbitration where the sole cause of action is a unilateral change to mandatory subjects of bargaining. Deferral is a discretionary action by the Commission, and deferral will be ordered where an arbitrator can assist the unfair labor practice process by either validating or clearing away contractual waiver defenses. Unions filing complaints that solely allege unilateral changes should anticipate a deferral inquiry and possible deferral depending upon the employer's choice under the rule. The majority of complaints alleging unilateral changes are

deferred to arbitration if the employer requests deferral and alleges a facially valid contractual defense. The deferral inquiry does not include an evaluation of the merits of the defense; that determination is made by the arbitrator.

The amended complaint in the present case alleged an employer unilateral change without bargaining, under an existing collective bargaining agreement. The amended complaint did not provide facts showing that statutory violations were at issue, or that the collective bargaining agreement was not applicable. There were no indications in the amended complaint or in the employer's answer that this case could fall into the category of the employer's conduct being neither prohibited nor protected by the collective bargaining agreement. Deferral to arbitration was appropriate.

On October 11, 2012, the Commission received a copy of the arbitration award of Arbitrator Janet Gaunt. The award was reviewed under WAC 391-45-110(3). The Arbitrator denied the union's grievance, finding that the employer's actions were permitted by Article 2 of the collective bargaining agreement; thus, the union waived its right to bargain the disputed issue [see 4(a) above]. *City of Spokane*, Decision 2398 (PECB, 1986). The amended complaint must be dismissed.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 23831-U-11-6083 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 12th day of October, 2012.

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


E. J. / ROBBIE BUFFIELD

CASE NUMBER: 23831-U-11-06083 FILED: 03/02/2011 FILED BY: PARTY 2
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