

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF LA CENTER,

Complainant,

vs.

LA CENTER POLICE OFFICERS'
ASSOCIATION,

Respondent.

CASE 25114-U-12-6435

DECISION 11520 - PECB

ORDER OF DISMISSAL

On September 4, 2012, the City of La Center (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the La Center Police Officers' Association, Civil Chapter (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on September 19, 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 in (a) cancelling an arbitration hearing, and (b) delaying the scheduling of a settlement mediation.

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.

Arbitration

The complaint alleges that the union breached its good faith bargaining obligations by cancelling an arbitration hearing set for August 13 and 14, 2012. On the first morning set for the hearing, counsel for the union notified the employer and arbitrator that he was ill. The complaint alleges that the union's counsel did not arrange for another attorney to attend the hearing. The arbitration was cancelled and rescheduled for October 2012.

Arbitration proceedings are functions of contract as specified in the collective bargaining agreement between the parties. Under most circumstances, the Commission does not assert jurisdiction to remedy alleged contract violations through unfair labor practice proceedings. However, meetings involving grievance resolution may be subject to such proceedings if the facts alleged indicate a breach of good faith bargaining obligations.

In the present case, the employer alleges that the union cancelled the arbitration because its counsel was ill the first morning of the hearing and did not provide a substitute advocate. A cause of action could possibly be found upon a showing that the union's counsel was not ill, not so ill he could not have been at the hearing, or that if he were too ill to attend the hearing, he had a duty to provide a substitute qualified to conduct the hearing in case of an emergency.

The employer does not provide information indicating that the union's counsel could have attended the hearing on August 13 and 14. In addition, there is no showing that the parties agreed that they would provide substitutes in cases of emergency. The Unfair Labor Practice Manager declines to find per se cause of action based upon a party not voluntarily making provisions for an emergency substitute counsel in an arbitration hearing.

Settlement mediation

The parties are currently involved in a separate unfair labor practice complaint filed by the union against the employer (Case 24674-U-12-6310) and have agreed to settlement mediation (Case 24852-S-12-0294). The complaint at issue in this ruling arises in part out of the employer's allegation that the union has delayed the settlement mediation in violation of its good faith

bargaining obligations. Although the settlement mediation process is intended to resolve and not foster unfair labor practice complaints, nevertheless the process does involve mediation, and parties have a duty to bargain in good faith.

The complaint states that a settlement mediation meeting has been set for October 30, 2012. The complaint in Case 24674-U-12-6310 was filed on March 21, 2012. On April 10, 2012, the employer told the Examiner that the parties were engaged in settlement talks. At the end of April and in early May the Examiner requested updates on the settlement talks. In May and early June the employer asked for a settlement mediator and requested dates in September or October. The employer alleges that the union's counsel was not responsive during scheduling and did not participate in scheduling discussions until August 22. A settlement mediation date is set for October 30, 2012.

Based upon the employer's request for a settlement mediation meeting in September or October, the date actually set does not show that the union delayed the settlement mediation beyond the employer's requested timeline. Under the present facts, there is no cause of action requiring a determination on whether the union delayed the scheduling of settlement mediation in Case 24674-U-12-6310.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 25114-U-12-6435 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th 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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The attached document identified as: **DECISION 11520 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  / ROBBIE DUFFIELD

CASE NUMBER: 25114-U-12-06435 FILED: 09/04/2012 FILED BY: EMPLOYER
DISPUTE: UN MULTIPLE ULP
BAR UNIT: LAW ENFORCE
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