Olympic Community College (Washington Public Employees Association), Decision 11478 (PSRA, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

OLYMPIC COMMUNITY COLLEGE, Complainant, vs. WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	CASE 25049-U-12-6413 DECISION 11478 - PSRA PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On August 7, 2012, Olympic Community College (Employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Public Employees Association (Union) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a notice of partial deficiency issued on August 23, 2012, indicated that it was not possible to conclude that a cause of action existed at that time for certain allegations of the complaint. The Employer was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations.

The Employer filed an amended complaint on September 12, 2012. The Unfair Labor Practice Manager dismisses defective allegations of the amended complaint for failure to state a cause of action, and finds a cause of action for those allegations of the amended complaint set forth below in the preliminary ruling. The Union must file and serve its answer to the amended complaint within 21 days following the date of this Decision.

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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.

DISCUSSION

The allegations of the complaint concern union interference in violation of RCW 41.80.110(2)(a), and refusal to bargain in violation of RCW 41.80.110(2)(d) [and if so, derivative interference in violation of RCW 41.80.110(2)(a)], by attempting to sever the relationship between the coalition of colleges and the Labor Relations Division.

The allegations of the complaint concerning interference state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The deficiency notice pointed out the defects to the complaint concerning the refusal to bargain (and derivative interference) allegations.

The Employer checked the box on the complaint form for "union refusal to bargain," and cited the statute for that claim in the statement of facts. It is an unfair labor practice in violation of RCW 41.80.110(2)(d) for an employee organization to refuse to bargain collectively with an employer by failing to meet and negotiate with the union, breaching its good faith bargaining obligations (the previous two claims require the element of a demand to bargain by the employer), refusing to provide information, and making unilateral changes. The statement of facts does not provide information supporting any of those causes of action. Rather, the statement of facts alleges that the Union attempted to "interfere with or have the coalition of colleges severe [sic] their relationship with the Labor Relations Division."

It is an unfair labor practice in violation of RCW 41.80.110(2)(a) for an employee organization to make threats of reprisal or force or promises of benefit to affect the employer's selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. Although the Employer did not check the "union interference" boxes on the complaint forms or cite the pertinent statute, the statement of facts specifically alleges interference and provides information sufficient to state a cause of action for union interference involving the employer. However, the refusal to bargain claim renders the complaints partially defective. The Employer should either withdraw that claim or provide information sufficient to state a cause of action for union refusal to bargain.

Amended Complaint

The Employer filed an amended complaint on September 12, 2012, and indicated on the amended complaint form an alleged violation for "union interference with employer rights." The Employer re-alleges "union refusal to bargain." There are no additional facts in the amended complaint supporting a cause of action for union refusal to bargain, but the Employer provides the following legal theories supporting that claim:

- The Union committed a violation by "demanding to renegotiate after negotiations were concluded and its members had ratified the CBA, failed or refused to bargain collectively and in good faith and committed an unfair labor practice under RCW 41.80.110(2)(d)";

- The Union committed a violation by "seeking to disavow a contract undertaken, by approaching the employer directly to overturn that provision and encouraging its members to seek to overturn the contracted for obligation by direct dealing with the college presidents, breached its good faith bargaining obligations and committed an unfair labor practice under RCW 41.80.110(2)(d)"; and

- The Union by "blatantly attempting to interfere with or restrain the employer from choosing its bargaining representative or attempting to have the coalition of colleges sever their relationship with LRD, committed unfair labor practices under RCW 41.80.110(2)(a)&(d)."

In its remedy request, the Employer cites four Commission cases in support of its refusal to bargain claims: *Kiona Benton School District,* Decision 4312 (PECB, 1993); *City of Milton*, Decisions 4512 and 4513 (PECB, 1993); *Island County*, Decision 857 (PECB, 1980); and *Mason County,* Decision 2307-A (PECB, 1985). The cited cases involved disputes arising after the parties had reached agreements at the bargaining table and the unions had ratified the agreements, but prior to final execution by the employers. In summary, the employers either refused to execute the agreements or attempted to change terms of the agreements before signing them. Refusal to bargain violations were found against those employers because they rejected agreements or terms of agreements already reached at the bargaining table. Those cases present

facts distinct from the Employer's allegation in the present case. Here, the Union is not refusing to ratify a collective bargaining agreement and/or withholding ratification unless the employer changes terms previously agreed to in bargaining. The Employer alleges that the Union's actions came long after the contract was executed; thus, the Union has no ability to alter or attempt to force alteration of the terms of the agreement.

The Employer cites one Commission case in support of its interference claim: *Fort Vancouver Regional Library,* Decision 2350-D (PECB, 1989) [the cause of action in *Fort Vancouver Regional Library* was for union refusal to bargain in violation of RCW 41.56.150(4)]. In *Fort Vancouver Regional Library,* a dispute arose when the union and employer were actively engaged in negotiations over a collective bargaining agreement. The union was found in violation of its good faith bargaining obligations by seeking the removal of the employer's designated bargainers from their bargaining responsibilities and/or their employment.

A common theme in the aforementioned cases cited by the Employer is that the parties were in negotiations or at the ratification stage of negotiations when the violations occurred. That is not the situation here. The Employer's refusal to bargain allegations must be evaluated according to the facts presented in the amended complaint. The Employer is not alleging that the Union refused to provide information or made a unilateral change to the collective bargaining agreement. Thus, in the present case a cause of action for refusal to bargain would be limited to possible claims for the Union refusing to meet and negotiate with the employer, or a breach of the Union's good faith bargaining obligations. A cause of action for refusal to meet and negotiate applies when a request to bargain has been made, but when little or no bargaining has occurred. There are no facts in the amended complaint showing that the Employer requested bargaining and that the Union refused to meet and negotiate with the Employer or imposed unreasonable terms on meetings.

The remaining possible cause of action would be for the Union's breach of its good faith bargaining obligations. The elements for a cause of action for a union's breach of good faith bargaining obligations are: (1) the union is the exclusive bargaining representative of the

employees involved; (2) the employer requested negotiations on a collective bargaining agreement or some mandatory subject of bargaining; and (3) the union engaged in specific conduct and/or a course of conduct designed to frustrate the collective bargaining process.

The Employer alleges that the Union has engaged in conduct designed to frustrate the collective bargaining process, indicating that bargaining is in progress. A request to bargain in this situation is not limited to a party's initiative in beginning bargaining, but includes the party's engagement in bargaining, even if the other party made the initial request to bargain: The key is whether the parties are currently engaged in the give and take of collective bargaining. *See Fort Vancouver Regional Library,* Decision 2350-D, *citing Southern California Pipe Trades*, 120 NLRB 249 (1958) ("presumably no 'refusal to bargain' charged advanced because conduct did not take place in context of actual collective bargaining negotiations").

In the present case, although the facts underlying the Employer's claims could hypothetically indicate Union conduct or a course of conduct frustrating collective bargaining, the Employer must show that it is or was actually in bargaining with the Union when the alleged conduct occurred. For example, if the Union used its objections to the 2012-2013 agreement to allegedly frustrate bargaining for a successor agreement, a cause of action for refusal to bargain could apply. However, there is no evidence of that in the amended complaint; rather, the Employer emphatically denies that it is currently engaged in bargaining with the Union over the 2012-2013 agreement, making clear its position that as of September 1, 2011, the contract in question was signed and sealed and is not open for discussion. The absence of current bargaining precludes the Union from engaging in conduct that prevents the parties from reaching an agreement: The Union cannot frustrate bargaining that does not exist.

The Employer suggests three new factors for refusal to bargain causes of action: (1) the Union demands to renegotiate a contract after negotiations are concluded and its members have ratified the CBA; (2) the Union seeks to disavow a contract undertaken, by approaching the employer directly to overturn that provision and encouraging its members to seek to overturn the contracted for obligation by direct dealing with the employer; and (3) the Union attempts to interfere with or

restrain an employer from choosing its bargaining representative, or attempts to have the employer sever its relationship with its bargaining representative.

Those are legal claims, not new facts, and they do not state causes of action within Commission policy or precedent. The Employer is advocating causes of action for breach of good faith bargaining obligations outside of actual bargaining. The elements for a breach of good faith bargaining obligations are the same for complaints by both employers and unions, and any revision of Commission policy and case law would apply to employers as well as unions. The employer seeks causes of action outside the authority exercised in this ruling. The Employer has stated a claim for independent interference, but the refusal to bargain (and derivative interference) claims remain defective and must be dismissed.

NOW, THEREFORE, it is

ORDERED

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

> Union interference in violation of RCW 41.80.110(2)(a), by threats of reprisal or force or promises of benefit regarding the Employer's choice of its bargaining representative or attempting to sever the relationship between the coalition of colleges and the Labor Relations Division.

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

The Washington Public Employees Association 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 amended complaint, as set forth in Paragraph 1 of this Order, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

b. 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the amended complaint concerning refusal to bargain in violation of RCW 41.80.110(2)(d) [and if so, derivative interference in violation of RCW 41. 80.110(2)(a)], are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 26th day of September, 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

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY/S/ ROBBIE DUFFIELD

CASE NUMBER:	25049-U-12-06413	FILED:	08/07/2012	FILED BY:	EMPLOYER
DISPUTE:	UN GOOD FAITH				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Non-Supervisory				
COMMENTS:					

EMPLOYER: C COL DIST 3 - OLYMPIC
ATTN: DAVID MITCHELL
1600 CHESTER AVE
BREMERTON, WA 98337-1699
Ph1: 360-475-7100

REP BY: RICK HALL
STATE - FINANCIAL MGMT
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5540

REP BY: ANDREW L LOGERWELL
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
Olympia, WA 98504-0145
Ph1: 360-664-4167

PARTY 2: WA PUBLIC EMPLOYEES ASSN
ATTN: DAVE SCHIEL
140 PERCIVAL ST NW
OLYMPIA, WA 98502-5438
Ph1: 360-943-1121 Ph2: 360-927-4805