

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 763,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 25289-U-12-6472

DECISION 11597 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On November 15, 2012, Teamsters Local 763 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 28, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint. The union filed an amended complaint on December 7, 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 the allegations of the amended complaint set forth in the preliminary ruling below. The employer must file and serve its answer to the amended complaint within 21 days following the date of this Decision.

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 its actions

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.

concerning compensatory time use policy, repudiating the collective bargaining agreement, and unilateral changes to working conditions.

The deficiency notice pointed out the defects to the complaint.

RCW 41.56.160(1) provides for a six-month statute of limitations concerning alleged unfair labor practices. The complaint was filed on November 15, 2012, provides background information for events prior to May 15, 2012, alleges changes to the compensatory time use policy on or after May 23, 2012, and alleges that the employer has declined to meet and negotiate over the changes. The complaint further alleges that a grievance was filed over unilateral changes to working conditions and violations of the collective bargaining agreement, and that the employer requested an extension of the grievance procedure deadlines. The union alleges that the employer has repudiated the collective bargaining agreement and unilaterally changed working conditions.

WAC 391-45-050(2)(rule) requires complaints to contain clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences.

Compensatory time use policy

It is not clear if the union is alleging that the employer has refused to meet and negotiate over the alleged changes to the compensatory time use policy, or if the union is alleging unilateral changes to the compensatory time use policy, without providing an opportunity for bargaining. The alleged changes to the compensatory time use policy are not identified.

Unilateral changes to working conditions

The union alleges that the employer has unilaterally changed working conditions and cites a grievance filed to that effect on June 29, 2012. The working conditions and associated unilateral changes are not identified, nor is there information on the times, dates, places, and participants regarding the grievance.

Breach of contract

The union alleges that the employer has breached the collective bargaining agreement by failing to participate in Labor Management Committee (LMC) meetings over the compensatory time use policy. The union also states that the June 29 grievance concerns alleged violations of the collective bargaining agreement, but the violations are not identified. Finally, the union appears to allege that the employer breached the contract by requesting an extension of grievance procedure deadlines.

Conclusion

The union must identify the alleged changes to the compensatory time use policy and clarify whether it seeks an order requiring the employer to meet and negotiate over the alleged changes, or is alleging a unilateral change violation. Further, if the union seeks a remedy for alleged unilateral changes to working conditions related to the June 29 grievance, it must provide the required information under the rule.

Finally, any allegations that the employer breached the collective bargaining agreement (in relation to the June 29 grievance, by failing to follow the LMC procedure, and in seeking to extend grievance timelines) must be submitted to arbitration or the courts for redress. The Commission does not assert jurisdiction to interpret collective bargaining agreements and remedy breach of contract violations through unfair labor practice proceedings. *City of Walla Walla*, Decision 104 (PECB, 1976).

Amended Complaint

The amended complaint provides sufficient information to conclude that the union alleges that the employer made a *fait accompli* unilateral change to the compensatory time use policy on May 23, 2012. The amended complaint states a cause of action for employer unilateral change to the compensatory time use policy, without providing an opportunity for bargaining, in violation of RCW 41.56.140(4).

The amended complaint restates the union's allegations that the employer refused to meet and negotiate over the compensatory time use policy and thus failed to follow the LMC procedure, and repeats the breach of contract allegations concerning the June 29 grievance and the employer seeking to extend grievance timelines. As stated in the deficiency notice, the Commission does not have jurisdiction regarding those claims. The union had the opportunity to withdraw the breach of contract claims and allege a statutory violation concerning the employer's alleged refusal to meet and negotiate with the union over the compensatory time use policy. The union declined to do so: For example, the amended complaint reiterates the claim made in the complaint that the employer "repudiated" the collective bargaining agreement by its failure to respond to the union's request for an LMC meeting over the compensatory time use policy. All claims of the amended complaint other than the unilateral change allegation will be dismissed.

The amended complaint does not identify or mention alleged violations of working conditions other than the compensatory time use policy, and those unidentified allegations are considered withdrawn.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the following allegations of the amended 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 change to the compensatory time use policy, without providing an opportunity for bargaining.

Those allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC. A deferral to arbitration inquiry will be issued under WAC 391-45-110(3).

King County 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;
- 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; and
- 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 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 in Case 25289-U-12-6472, concerning breach of the collective bargaining agreement for the employer's actions regarding the Labor Management Committee and the grievance of June 29, 2012, including requesting extension of grievance timelines, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 ordering dismissal of defective allegations 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: /S/ ROBBIE DUFFIELD

CASE NUMBER: 25289-U-12-06472 FILED: 11/15/2012 FILED BY: PARTY 2
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