STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 29, Click here to enter text. Complainant, vs. CITY OF SPOKANE, Click here to enter text. Respondent.	CASE 25343-U-12-6483 DECISION 11626 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On December 13, 2012, the International Association of Firefighters, Local 29 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Spokane (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a partial deficiency notice issued on December 28, 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 union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective portions of the complaint. The union filed an amended complaint on January 14, 2013.

In the Order below, the Unfair Labor Practice Manager dismisses defective allegations of the amended complaint for failure to state causes of action and finds causes of action as set forth in the

[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.

preliminary ruling. The employer must file and serve its answer to the amended complaint within 21 days following the date of this Decision.

DISCUSSION

Deficiency Notice

The deficiency notice dealt with the allegations of the complaint. Those allegations concerned 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 concerning EMS delivery service.

Allegations of the complaint concerning the scope of bargaining relative to equipment staffing state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

In summary, a cause of action is found regarding the union's allegation that the cross-staffing of equipment concerns an issue of employee safety and thus is a mandatory subject of bargaining. There are no causes of action against the employer for unilateral changes, refusal to bargain the effects of cross-staffing, and refusal to provide information on the decision to adopt the cross-staffing plan or the effects of the decision.

No indication of a status quo violation

The union represents an interest arbitration eligible bargaining unit. The collective bargaining agreement between the union and employer apparently expired in 2011. Interest arbitration parties are not subject to the status quo provisions of RCW 41.56.123, but to those of RCW 41.56.470. The agency has no record of current mediation or interest arbitration cases involving these parties. The complaint does not indicate whether the parties are currently bargaining over a successor agreement. While an employer's obligations concerning implementing its proposals are different for interest arbitration and non-interest arbitration units, the complaint does not provide sufficient information about the current contract status to determine whether an alleged status quo violation may apply in this case.

No indication of actual changes

In addition, the complaint does not appear to allege actual unilateral changes, but rather a refusal to bargain over the decision to change the EMS service delivery plan and the decision to implement the cross-staffing plan. It is not clear whether the complaint alleges that those are the same action expressed in two ways, or two separate violations. An employer's expressed intent to implement alleged changes is not actionable in and of itself–actual changes must occur in order to state a cause of action for unilateral changes. *State - Office of the Governor*, Decision 10948-A (PSRA, 2011).

The employer apparently has agreed to effects bargaining

The complaint includes attachments (hereinafter, attached information) that the union refers to and relies on to supplement the statement of facts. The attached information indicates that the employer is neither ignoring the union's demand to bargain nor imposing unreasonable restrictions on bargaining, but rather, that the employer alleges it has no duty to bargain the decision to move to the cross-staffing plan. While the body of the statement of facts does not address whether the employer has offered to bargain the effects of its decision, the attached information indicates that the employer has offered to "bargain any specific effects that you can identify regarding these changes."

The issue is whether the employer has a duty to bargain its decision

As noted, the employer alleges that it has no duty to bargain over its decision involving its use of equipment in the cross-staffing plan. The union alleges that the employer's actions concern equipment staffing that impact employee safety. There are a number of Commission decisions involving firefighter staffing issues, including equipment staffing. *International Association of Fire Fighters Local 1052 v. PERC*, 113 Wn.2d 197, 200 (1989); *Spokane International Airport*, Decision 7889-A (PECB, 2003). Those cases hold that equipment staffing allegedly impacting employee safety may be a mandatory subject of bargaining. Referring this present matter to the interest arbitration process would not necessarily solve the dispute, since the employer's apparent insistence that this is a permissive subject of bargaining could produce an unfair labor practice

complaint by the employer against the union for allegedly bargaining a non-mandatory subject to impasse. WAC 391-55-265(a).

This ruling does not decide whether the employer's decision is or is not a mandatory subject of bargaining, but only if the union has stated a cause of action allowing further unfair labor practice proceedings. The union has provided sufficient facts in accordance with Commission precedent to state a cause of action regarding the employer's alleged duty to bargain over equipment staffing as it pertains to employee safety.

The request for information regarding the decision is tied to the scope of bargaining

The union's allegation concerning the employer's refusal to provide information on its decision hinges on whether the employer has a duty to bargain that decision. The statement of facts alleges only that the employer has refused to provide "certain collective bargaining information." The attached information indicates that the employer agrees that information concerning effects is relevant, but declines to produce information related to its decision. Thus, the attached information does not show that the employer has refused to provide any information on effects or refused to discuss the information request with the union, but shows that the employer draws the line concerning its decision to move to the cross-staffing plan. Until the scope of bargaining issue is settled, a cause of action cannot be found concerning the employer's duty to provide information on its decision.

Amended Complaint

On January 14, 2013, the union filed an amended complaint, along with a letter requesting reconsideration of the preliminary ruling, as provided for in WAC 391-45-110(2)(b). The parties have apparently agreed on a successor collective bargaining agreement. The amended complaint states a cause of action for employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.546.140(1)], by its unilateral change in adopting the cross-staffing plan and changing the EMS delivery service, without providing an opportunity to bargain the decision. The request for reconsideration pointed out the economy in

adjudicating the claim for refusal to provide information relative to the decision, along with the unilateral change allegation.

The amended complaint does not state causes of action for employer refusal to bargain by breach of its good faith bargaining obligations, refusal to bargain over effects, or refusal to provide information on effects. The amended complaint alleges that the employer has implemented the changes; thus, a cause of action for a scope of bargaining claim is not necessary. In addition, the parties' apparent agreement on a successor agreement indicates that a status quo exists on terms and conditions of employment for this interest arbitration eligible unit; a unilateral change claim is more appropriate for this case.

Breach of good faith

It is an unfair labor practice for an employer to refuse to bargain by engaging in conduct or a course of conduct that frustrates the collective bargaining process. The union alleges that the employer made the alleged unilateral change less than two months before implementation, although the employer was aware of its plans for more than six months. There are no facts indicating that the parties had previously negotiated over the issue, and that the employer reneged on an agreement, maintained a pre-determined position without considering the union's proposals, or otherwise engaged in bad faith conduct or a course of conduct over this issue. No cause of action exists for breach of good faith bargaining obligations.

Effects bargaining

The union's main concern in the amended complaint is over the decision, rather than the effects, of the alleged changes. The amended complaint does not contain any information indicating that the union has ever demanded effects bargaining, that the employer has refused to meet and negotiate, or that the employer has engaged in conduct or a course of conduct frustrating collective bargaining over effects. As stated in the deficiency notice, the union has provided information indicating that the employer has agreed to bargain effects. In its request for reconsideration, the union states that the employer's offer on effects bargaining is a "facade," but outside of that

assertion the union provides no facts indicating that it could show at a hearing that effects bargaining would be futile. No cause of action exists relative to effects bargaining.

Information requests

The union also indicates that the employer has offered to provide information relative to effects, but that the employer refuses to provide information regarding the decision. The union's point is well taken that in the interest of administrative economy this matter should be adjudicated along with the unilateral change cause of action regarding the decision. A cause of action exists relative to bargaining over the decision.

Scope of bargaining

The scope of bargaining concerns whether the decision to adopt the cross-staffing plan and change the EMS delivery service is a mandatory subject of bargaining; that issue will be adjudicated through the unilateral change allegation. The union has alleged actual changes and requested restoration of the status quo. A scope of bargaining claim could result only in an order for bargaining, rather than a return to the status quo. A cause of action for a unilateral change is more appropriate, and the addition of a scope of bargaining claim is unnecessary.

Deferral not appropriate

Although a cause of action is given for a unilateral change, the cause of action for refusal to provide information concerns an alleged statutory violation that is not subject to deferral. The Commission does not bifurcate unfair labor practice complaints. This case will not be deferred to arbitration in whole or in part.

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: (a) unilateral change to the EMS delivery service in adopting the cross-staffing plan, without providing the opportunity to bargain the decision; and (b) refusal to provide relevant information requested by the union on the decision.

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

The City of Spokane 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 in Case 25343-U-12-6483 concerning 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: breach of its good faith bargaining obligations; its unilateral change to the EMS delivery service in adopting the cross-staffing plan, without providing an opportunity to bargain the effects; and refusal to provide relevant information requested by the union on the effects, are DISMISSED for failure to state causes of action.

It is not necessary to dismiss the scope of bargaining claim, since that is subsumed into the unilateral change allegation.

Temporary relief

The union has indicated that it intends to file a motion for temporary relief and is directed to the provisions of WAC 391-45-430(3); the employer is directed to the provisions of WAC 391-45-430(4).

ISSUED at Olympia, Washington, this 23rd day of January, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 dismissing defective allegations will be the final order of the agency on unless a notice of appeal is filed with the Commission under WAC 391-45-350.