City of Seattle, Decision 12102 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE MANAGEMENT ASSOCIATION, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 26458-U-14-6751 DECISION 12102 - PECB ORDER OF DISMISSAL

On May 7, 2014, the Seattle Police Management Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Seattle as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on May 28, 2014, 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 case.

On June 9, 2014, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative interference in violation of RCW 41.56.140(1)], by its unilateral change to promotion standards for Assistant Chiefs, without providing an opportunity for bargaining the 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.

The union represents Captains and Lieutenants employed by the Seattle Police Department (SPD). The complaint alleges, in summary, that on January 21, 2014, the employer passed an amended ordinance allowing Assistant Chiefs to be appointed from outside the ranks of the SPD, as well as from the ranks of Captains and Lieutenants. The complaint alleges that this action amends Section 4.08.060 of the Seattle Municipal Code, passed in 1978, that restricted promotion above the rank of Captain to Captains and Lieutenants within the SPD.

The complaint alleges that standards for promotion to Assistant Chief are mandatory subjects of bargaining, and that the employer has a duty to bargain both the decision and effects of changes to those standards. The complaint alleges that the employer refused to bargain over the decision to amend the ordinance both prior to and since its adoption.

The complaint states that since 1978 only Captains and Lieutenants currently employed by the SPD and represented by the union have been promoted to Assistant Chief. There is no obvious reference to this in the collective bargaining agreement; the 1978 Ordinance is apparently the sole source of the alleged practice. The union alleges that the amended ordinance has effects on the promotional opportunities of its bargaining unit members, as well as having substantial and material effects on other aspects of their wages, hours, and working conditions.

The passage of an ordinance does not relieve an employer from the duty to bargain over mandatory subjects of bargaining. *See City of Seattle,* Decision 3051-A (PECB, 1989); *City of Seattle,* Decision 9957-A (PECB, 2009). However, the complaint does not indicate that the union has standing to pursue its claim, or that the employer has a duty to bargain over its decision to amend the ordinance.

Standing

In the present case, the employer made a decision regarding its selection and employment of Assistant Chiefs. The union does not represent Assistant Chiefs. The collective bargaining agreement between the union and employer apparently does not address the issue of promotion to Assistant Chief. The complaint does not indicate that the union has standing to bargain over the employer's decision regarding the selection and employment of Assistant Chiefs from outside the ranks of the SPD. *See Kitsap Fire District 7,* Decision 7064-A (PECB, 2001).

Decision bargaining

A public employer does not have an automatic duty to bargain over decisions on how it provides services to the public, although it generally has a duty to bargain over the effects of those decisions. *See International Association of Firefighters, Local 1052 v PERC, (City of Richland,* Decision 2448-B, 1987), 113 Wn.2d 197 (1989). In the present case, a cause of action could possibly exist relative to the employer's duty to bargain over the effects of the amended ordinance, but the union does not appear to allege that the employer has refused to bargain over those effects.

Rather, the gravamen of the complaint appears to be the employer's alleged refusal to bargain over its decision to amend the 1978 Ordinance, as specified in Paragraphs 12 and 17 of the complaint. However, the complaint does not provide sufficient information to indicate that the employer has a duty to bargain with the union over its decision to adopt that portion of the amended ordinance that allows the employer to appoint Assistant Chiefs from outside the ranks of the SPD.

Amended Complaint

The amended complaint substantially restates the allegations of the original complaint. It does not provide new information indicating that the employer has a duty to bargain the decision to amend the 1978 Ordinance regarding the appointment of Assistant Chiefs. The amended complaint makes clear that the amended ordinance has effects on the wages, hours, and working conditions of the Lieutenants and Captains in the bargaining unit; however, the amended complaint reemphasizes that the union's claim concerns whether the employer must bargain the decision to amend the ordinance. The amended complaint does not allege that the employer has refused to bargain the effects.

The amended complaint alleges that the employer's "decision to eliminate the decades' long restriction of promotion to Assistant Chief to members of the SPMA is a substantial reduction in the limited promotional opportunities available to the SPMA's members and a material, adverse change in their working conditions." Amended Complaint, Paragraph 15. The union also provided a letter in support of its amended complaint, arguing that its claim is a "garden variety unilateral change in a mandatory subject of bargaining complaint," and that it should be sent forward to a hearing. The letter states that the Commission has previously found that "unilateral

changes in promotional policies, including promotions outside the complainant union's bargaining unit, state a cause of action." The union cites two Commission cases in support of its argument: *City of Yakima,* Decision 2387-B (PECB, 1986), and *City of Tacoma*, Decision 9287 (PECB, 2006).

In the *City of Yakima*, Decision 2387-B, the union's complaint concerned an alleged unilateral change to the criteria for selecting a fire chief. The Commission did not allow the complaint to proceed to a hearing, but rather upheld the Executive Director's dismissal of the complaint at the preliminary ruling stage, holding that:

> The position of fire chief is intimately associated with carrying out the statutory duties of the City of Yakima concerning its fire department. The hiring and firing of the fire chief will not be subjected to the mandatory bargaining process.

In the *City of Tacoma*, Decision 9287, a preliminary ruling was issued concerning a unilateral change to the type of promotional list used to fill street maintenance supervisor vacancies, which were positions outside the complainant union's bargaining unit. (Another cause of action was given concerning an alleged refusal to provide information, but that claim is not germane to the present case.) In summary, the Examiner ruled that:

> Since standards for promotion to positions outside of the union's bargaining unit are not mandatory subjects of bargaining, the employer did not commit an unfair labor practice when it changed its method of promoting employees to supervisory positions into a bargaining unit not represented by the complaint [sic] union.

Numerous Commission decisions have discussed the duty to bargain. *See, e.g., City of Bellevue,* Decision 11435-A (PECB, 2013). Mandatory subjects of bargaining are conditioned upon the relationship of the subject to wages, hours, and working conditions, and the extent to which the subject lies at the core of entrepreneurial control or is a management prerogative. *City of Bellevue,* Decision 11435-A, *citing International Association of Firefighters, Local 1052 v PERC,* 113 Wn.2d 197, 203 *(City of Richland).*

In the present case, the union argues that the scope of bargaining should be broadly applied to allow a cause of action over the employer's duty to bargain its decision to amend the 1978

Ordinance. As previously noted, the amended complaint makes clear that the decision to amend the Ordinance has effects on bargaining unit members. Had the amended complaint alleged that the union requested bargaining over those effects, but the employer refused to bargain, delayed bargaining, or bargained in bad faith, then it is possible that a cause of action would have been issued for a standard allegation of a unilateral change to wages, hours, and working conditions, without providing an opportunity for bargaining the effects.

However, the issue here is whether the employer's *decision* is a mandatory subject of bargaining. The Examiner's ruling is instructive in *City of Tacoma*, Decision 9287:

> Is the matter of more magnitude to employees in the bargaining unit or to the employer's exercise of entrepreneurial control? I find that setting conditions for promotion to positions outside of the bargaining unit impact managerial prerogative more than bargaining unit employees.

The amended complaint does not indicate that the employer's decision to amend the 1978 Ordinance regarding the appointment of Assistant Chiefs violated Chapter 41.56 RCW.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 26458-U-14-6751 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 24th day of June, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

This 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/ DIANE THOVSEN

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BAR UNIT:	SUPERVISORS				
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