University of Washington, Decision 12380 (PSRA, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 26871-U-14 DECISION 12380 - PSRA AMENDED PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

The circumvention (direct dealing) allegations of the second amended complaint do not state a cause of action and are dismissed. As set forth below, the remaining refusal to bargain allegations of the second amended complaint state a cause of action. The University of Washington (employer) must file and serve its answer to the refusal to bargain allegations within 14 days following the date of this decision.

PROCEDURAL BACKGROUND

On November 21, 2014, Teamsters Local 117 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the University of Washington as respondent. On December 11, 2014, a corrected preliminary ruling was issued on the original complaint. The union filed an amended complaint on March 6, 2015, and a second amended complaint on April 2, 2015. The amended complaints were reviewed under WAC 391-45-110,[1] and a deficiency notice issued on June 29, 2015, indicated that it was not possible to conclude a cause of action existed at that time for the direct dealing allegations of the complaints. The union was given a period of 14 days in which to file and serve an amended complaint or face dismissal of the defective allegations. Nothing further has been received from the union.

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[1] At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

The Examiner dismisses the defective allegations of the complaints for failure to state a cause of action and finds a cause of action for the remaining refusal to bargain allegations. The employer must file and serve its answer to the refusal to bargain allegations within 14 days following the date of this decision.

DISCUSSION

Paragraph 31 of the amended complaints contains a reference to direct dealing but does not contain sufficient detail to support an allegation of direct dealing. It is not possible to conclude that a cause of action exists for direct dealing. The amended complaints are missing necessary facts to state a cause of action for direct dealing and those allegations are dismissed.

The type of direct dealing allegation at issue in this complaint involves an employer's written communication to bargaining unit employees about the status of ongoing collective bargaining negotiations. An employer's communication of information to bargaining unit employees about negotiations may be a neutral act and is not by itself an unfair labor practice. In these cases, the Commission specifies that the communication must be truthful, not purposefully misleading, and the same as that offered to the union. *Bellevue School District*, Decision 10198 (EDUC, 2008), *citing Spokane County,* Decision 2793 (PECB, 1987).

The standards adopted by the Commission require employer communications to bargaining unit employees about ongoing bargaining negotiations to be (1) truthful, (2) not purposefully misleading, and (3) the same as that offered to the union. These standards preserve an employer's ability to communicate with its employees and the public, while preventing direct dealing, coercion, and interference in the collective bargaining process. A complainant in an unfair labor practice proceeding has the burden of proof to show that these standards have not been adhered to. *Vancouver School District*, Decision 10561 (EDUC, 2009), *aff'd*, Decision 10561-A (EDUC, 2011).

The amended complaints allege that legal counsel for the employer suggested, in an e-mail to legal counsel for the union, that the employer was engaged in direct dealing because of an alleged

employer perception that there was "a major disconnect between the Teamsters and the troops." The allegation does not describe any facts to indicate that the employer communicated to employees about its bargaining proposals or that any such communication was (1) untruthful, (2) purposefully misleading, or (3) not the same as what the employer had already offered to the union. The amended complaints do not state a cause of action for circumvention or direct dealing and those allegations are dismissed.

NOW, THEREFORE, it is

ORDERED

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

   Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] by:

   1. Making statements in an e-mail implying that future bargaining will be futile.
   2. Failing and/or refusing to meet and bargain for a successor collective bargaining agreement since late February 2015.
   3. Breaching its good faith bargaining obligations by making a regressive contract proposal on February 20, 2015.

2. The employer shall:

   File and serve its answer to the allegations listed in paragraph 1 of this Order, within 14 days following the date of this Order.

   An answer shall:

   a. Specifically admit, deny, or explain each fact alleged in the complaint, 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 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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint concerning employer circumvention (direct dealing) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 20th day of July, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

E. MATTHEW GREER, Examiner

Paragraph 3 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

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DECISION 12380 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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