

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EVERETT HOUSING AUTHORITY,

Complainant,

vs.

TEAMSTERS LOCAL 38,

Respondent.

CASE 127687-U-15

DECISION 12506 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On October 27, 2015, the Everett Housing Authority (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Teamsters Local 38 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 10, 2015, indicated that it was not possible to conclude a cause of action existed at that time for some 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. Nothing further has been received from the employer.

The allegations of the complaint concern:

1. Union refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)] since August 11, 2015, by breaching its good faith bargaining obligations, engaging in surface bargaining or regressive bargaining with regard to the employer's decision to eliminate maintenance lead positions and the effects on bargaining unit employees, and misrepresenting the employer's bargaining positions with regard to elimination of maintenance lead positions.
2. Union refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)] since August 11, 2015, by violating the parties' negotiated ground rules about communications to constituents during contract bargaining.

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 allegations concerning bad faith bargaining state a cause of action under WAC 391-45-110(2) and qualify for further unfair labor practice proceedings before the Commission. The respondent must file and serve its answer within 21 days following the date of this decision. The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning violations of the parties' negotiated ground rules for failure to state a cause of action.

DISCUSSION

No Jurisdiction to Enforce Parties' Negotiated Ground Rules

The Commission does not have jurisdiction over allegations concerning violations of ground rules. The Commission has long held agreements made by parties on ground rules to guide their negotiations become contracts, like any other agreement they reach in collective bargaining, and that any remedy for alleged violations of agreed-upon ground rules must be sought through any applicable contractual procedures (e.g., grievance arbitration) or through the courts. The Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statutes it administers. *City of Walla Walla*, Decision 104 (PECB, 1976); *City of Sumner*, Decision 6210 (PECB, 1998).

Complaints alleging that an employer or union refused to bargain in good faith by violating agreed-upon ground rules are dismissed on the basis that the Commission has no jurisdiction over the private contract and that the parties should seek redress in a superior court. *See City of Clarkston*, Decision 3135 (PECB, 1989), *Lakehaven Utility District*, Decision 7392 (PECB, 2001), and *Community Transit*, Decision 7446 (PECB, 2001).

CONCLUSION

The Commission does not have jurisdiction to enforce the parties' negotiated ground rules for bargaining. The allegations concerning union violations of the parties' negotiated ground rules are dismissed for failure to state a cause of action.

The complaint states a cause of action for union refusal to bargain by breaching its good faith bargaining obligations, engaging in surface bargaining or regressive bargaining, and misrepresenting the employer's bargaining positions. The respondent must file and serve its answer within 21 days following the date of this decision.

ORDER

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

Union refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)] since August 11, 2015, by breaching its good faith bargaining obligations, engaging in surface bargaining or regressive bargaining with regard to the employer's decision to eliminate maintenance lead positions and the effects on bargaining unit employees, and misrepresenting the employer's bargaining positions with regard to elimination of maintenance lead positions.

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

The respondent 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 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 union refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)] since August 11, 2015, by violating the parties' negotiated ground rules about communications to constituents during contract bargaining are **DISMISSED** for failure to state a cause of action.

ISSUED at Olympia, Washington, this 15th day of December, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

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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RECORD OF SERVICE - ISSUED 12/15/2015

DECISION 12506 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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CASE NUMBER: 127687-U-15

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