City of Ridgefield, Decision 10602-A (PECB, 2010)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF RIDGEFIELD, Complainant, vs. RIDGEFIELD POLICE OFFICERS' ASSOCIATION, Respondent.	CASE 22751-U-09-5816 DECISION 10602-A - PECB ORDER FOR FURTHER PROCEEDINGS

Emmal Skalbania & Vinnedge, PSC, by *Patrick A. Emmal,* Attorney at Law, for the union.

Davis Grimm Payne & Marra, by *Eileen M. Lawrence,* Attorney at Law, for the employer.

On September 29, 2009, the City of Ridgefield (employer) filed an unfair labor practice complaint alleging that the Ridgefield Police Officers' Association (union) committed an unfair labor practice in violation of Chapter 41.56 RCW. On October 12, 2009, the employer amended its complaint. The employer's complaint alleged that the union committed an unfair labor practice when the union membership failed to ratify a tentative agreement despite the fact that the employer and union had a reached a settlement agreement.

On October 13, 2009, Unfair Labor Practice Manager David I. Gedrose issued a deficiency notice indicating that it was not possible to conclude that the employer's amended complaint stated a cause of action that could be redressed by this state's labor laws, and provided the employer with a 21 day period to amend its complaint. On November 2, 2009, the employer filed a second amended complaint. The Unfair Labor Practice Manager dismissed the

employer's original and amended complaints on the basis that they failed to state a cause of action.[1] The employer now appeals that decision.

ISSUE PRESENTED

The only issue before this Commission is whether the employer's original and amended complaints state a cause of action that can be redressed by Chapter 41.56 RCW.

For the reasons set forth below, we reverse the Unfair Labor Practice Manager's decision dismissing the employer's complaint. The employer's second amended complaint does in fact state a "refusal to bargain" cause of action that should be forwarded to an evidentiary hearing. Accordingly, we issue the appropriate preliminary ruling and remand this case for further processing.[2]

DISCUSSION

We begin our analysis with an admonishment. In its brief on appeal, the employer alleged that the Unfair Labor Practice Manager "sided with the [union], making certain that [the union] would not be held accountable for [its] gross violation of the applicable rules of bargaining." Employer's Brief at 2. This Commission's reading of the employer's statement directly calls into question this agency's impartiality. While parties are free to document their disagreement with the orders issued by agency staff, unsubstantiated attacks upon either our or agency staff's impartiality are not well taken. *See, e.g., King County*, Decision 8630-A (PECB, 2005)(ad Hominem attacks upon opposing parties are not persuasive).

The employer's second amended complaint is not a model of clarity. Not only did the employer fail to utilize the unfair labor practice form that this agency provides on its website, the employer

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1 *City of Ridgefield*, Decision 10602 (PECB, 2009).

2 Because we are reviewing an order of dismissal issued at the preliminary ruling stage of case processing under WAC 391-45-110, we are confined to the assumption uniformly applied in that process: All of the facts alleged in the complaint are assumed to be true and provable. *Whatcom County*, Decision 8246-A (PECB, 2004).

treated its original and amended complaints as legal briefs, the complaint only minimally complies with "clear and concise" requirements of WAC 391-45-050.[3] Nevertheless, our review of the second amended complaint under WAC 391-45-110, as well as the precedents of this Commission, demonstrates that, if proven, the employer alleges facts that may constitute an unfair labor practice.

In *Naches School District*, Decision 2516-A (EDUC, 1987), a bargaining representative was found to have committed an unfair labor practice when it refused to sign a collective bargaining agreement, even though certain terms of the agreement had already gone into effect. In *Shoreline School District*, Decision 9336-A (PECB, 2009), an employer committed an unfair labor practice when an employer representative recommended that the ratifying board not adopt the negotiated agreement even though the employer's behavior during negotiations gave the bargaining representative a reasonable expectation that the employer would in fact support adoption of the agreement. These and similar precedents are applicable to both employers and exclusive bargaining representatives.

Here, the employer alleges that the union failed to sign a collective bargaining agreement after the terms of the agreement had already been implemented. The complaint also alleges that because the majority of the union's membership was involved in the negotiation process, the employer had a reasonable expectation that the negotiated agreement would be supported. Finally, the complaint alleges that the union insisted that the employer withdraw its unfair labor practice complaint as a condition of agreement. These allegations, as pled by the employer, may constitute an unfair labor practice, if proven.

NOW, THEREFORE, it is

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[3] Although a failure to utilize the agency's filing forms is not fatal to any case, parties are strongly encouraged to use the appropriate form. All agency forms can be found at www.perc.wa.gov.

ORDERED

1. The Order of Dismissal issued by Unfair Labor Practice Manager David I. Gedrose is REVERSED.

2. Assuming all the facts alleged in the union's second amended complaint are true and provable, the allegations stated in the complaint are found to state a cause of action, as summarized as follows:

> Union refusal to bargain in violation of RCW 41.56.150(4) by (a) refusing to engage in negotiations; (b) refusing to sign an implemented tentative agreement; (c) failing to support a negotiated tentative agreement prior to a union membership vote; (d) insisting to impasse upon withdrawal of an unfair labor practice as a condition of signing a collective bargaining agreement.

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

3. The Ridgefield Police Officers' Association shall:

> File and serve its answer to the allegations listed in paragraph 2 of this Order within 21 days following the date of this Order.

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. 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.

b. Assert any other affirmative defenses that are claimed to exist in the matter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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.

An examiner will be designated to conduct further proceedings in this matter pursuant to Chapter 391-45 WAC. Until an examiner is assigned, all correspondence and motions should be directed to the Executive Director.

ISSUED at Olympia, Washington, this 18th day of June, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY/S/ ROBBIE DUFFIELD

CASE NUMBER:	22751-U-09-05816	FILED:	09/29/2009	FILED BY:	EMPLOYER
DISPUTE:	UN GOOD FAITH				
BAR UNIT:	LAW ENFORCE				
DETAILS:	Police				
COMMENTS:					

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