STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE MANAGEMENT ASSOCIATION, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 128498-U-16 DECISION 12750 - PECB AMENDED PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On October 20, 2016, 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 (employer) as respondent. The complaint was docketed by the Commission as 128498-U-16. On December 8, 2016, the union filed an amended complaint. The allegations in the October 20, 2016, and December 8, 2016, complaints were reviewed under WAC 391-45-110, and the Unfair Labor Practice Manager issued a preliminary ruling on January 5, 2017. The allegations of the October 20, 2016, and December 8, 2016 complaints concern six allegations of employer refusal to bargain in violation of RCW 41.56.140(4). On January 19, 2017, Page A. Garcia was assigned as the examiner to conduct further proceedings under Chapter 391-45 WAC. On January 26, 2017, the employer filed a timely answer to the allegations in the January 5, 2017, preliminary ruling.

The union filed second and third amended complaints on May 16, 2017, and June 2, 2017,[1] respectively, each accompanied by motions to amend its complaint. The Examiner reviewed the

[1] The union's June 2, 2017, motion to amend and third amended complaint erroneously identified the PERC case number as 12733-U-16. The union cured the June 2, 2017, motion to amend and third amended complaint case number error by its subsequent filing on June 6, 2017.

complaints under WAC 391-45-070 and WAC 391-45-110,[2] and granted the union's motions to amend its complaint. A partial deficiency notice issued on June 19, 2017, indicated that it was not possible to conclude that a cause of action existed at that time for two of the unilateral change allegations related to the body worn video policy and the consolidation of the employer's human resources departments. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On June 28, 2017, the union filed a fourth amended complaint which was also reviewed under WAC 391-45-110.[3] The union identifies in Paragraph 22 of its second amended complaint that the employer sent a draft body worn video policy to the union in January 2017, that the union requested to bargain the policy, the policy was not bargained, and that the employer sought and received court approval from Judge Robart for the policy on May 3, 2017. Paragraph 22 of the union's fourth amended complaint adds the facts that Judge Robart accepted briefing from the monitor and the employer regarding the policy's language, and ultimately approved the policy in the form proposed by the employer. The fourth amended complaint also asserts that the employer is bargaining the policy with another union, the Seattle Police Officers Guild, but to date has not bargained it with the complainant.

The union identifies in Paragraph 24 of its second amended complaint that the employer announced plans in March 2017, to consolidate the police department's human resource unit under the employer's human resources department and that the union has a bargaining unit employee affected by the reorganization. Paragraph 24 of the fourth amended complaint adds that in March 2017, the union wrote a letter objecting to the unilateral change and demanding to bargain with the employer about any changes that would impact the bargaining unit employee's terms and

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2 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.

3 Ibid.

conditions of employment. The fourth amended complaint alleges that the employer has not bargained with the union to date.

The fourth amended complaint failed to cure the substantive defects identified in the June 19, 2017, partial deficiency notice for the unilateral change allegations related to the body worn video policy or the consolidation of the employer's human resource departments.

The union's amendments in Paragraph 24 of its fourth amended complaint did, however, state a cause of action for the allegation of breach of good faith bargaining obligations related to the consolidation of the employer's human resources departments.

As detailed in the notice of partial deficiency issued on June 19, 2017, and upon review of the fourth amended complaint, the allegations of the original and second, third, and fourth amended complaints that qualify for further processing concern:

> 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:
>
> 1. Since April 27, 2016, breaching its good faith bargaining obligations by failing to consider the union's proposal on police accountability, make counterproposals or engage in bargaining.
>
> 2. In May 2016, unilaterally submitting recommendations on police accountability reforms to the court for review and approval, without first providing the union with an opportunity to bargain over the proposed changes.
>
> 3. On October 7, 2016, unilaterally filing a draft legislative package on police accountability reforms with the court for review and approval, and stating that the employer would begin its formal legislative process once the court approved the package, without providing the union with an opportunity to bargain over the proposed changes.
>
> 4. Since June 2016, unilaterally implementing training and policy regarding newly created administrative lieutenant positions and transferring non-bargaining unit investigative function work to the administrative lieutenant position, without providing the union with an opportunity to bargain.

5. Since June 2016, unilaterally changing working conditions of the night duty captain position by removing captain's discretion regarding when to physically respond to a scene, without providing the union with an opportunity to bargain.
6. Since June 2016, bargaining in bad faith, engaging in surface bargaining, going back on Memorandums of Agreement reached in bargaining, and otherwise taking actions to frustrate the possibility of reaching a collective bargaining agreement.

7. Unilaterally changing the paid parental leave policy on February 13, 2017, without providing an opportunity for bargaining;

8. Unilaterally changing overtime requirements and caps, and front line supervisory duties in April, 2017, without providing an opportunity for bargaining;

9. Skimming of supervisory bargaining unit work normally performed by supervisory officers to staff May Day in May, 2017, without providing an opportunity for bargaining;

10. Breach of its good faith bargaining obligations including:

    a) Submitting the body worn video policy in or around February, 2017, to Judge Robart for approval under the employer and U.S Department of Justice Settlement Agreement absent bargaining with the union as requested;

    b) Since November 16, 2016, refusing to bargain accountability legislation with the union prior to its February, 2017, submission to city council;

    c) Since November 16, 2016, refusing to revise any successor collective bargaining agreement employer proposals to reflect the employer's February, 2017, accountability legislation submission;

    d) Misleading the union by agreeing to grievance-arbitration provisions for the successor collective bargaining agreement during mediation and submitting language in the accountability legislation to City Council in February, 2017, that was contrary to the agreed upon provisions;

    e) Making a new proposal on May 30, 2017, containing terms contrary to previously tentatively agreed collective bargaining agreement articles; and,

    f) Introducing new terms in the May 30, 2017 proposal never sought by the employer over the course of bargaining for the successor collective bargaining agreement.

    g) Announcing plans in March 2017, to consolidate its human resource departments and failing to bargain with the union after its demand to bargain

over the impact of the terms and conditions of employment for a bargaining unit employee affected by the consolidation.

ISSUES

1. Does a cause of action exist for employer refusal to bargain by making unilateral changes in presenting a body worn video policy to, and receiving approval from, Judge Robart on May 3, 2017, without bargaining with the union after its demand to bargain?

2. Does a cause of action exist for employer refusal to bargain by making unilateral changes to the employer's human resources departments after announcing its plans to consolidate them in March 2017, without bargaining with the union after its demand to bargain?

The Examiner dismisses the two defective unilateral change allegations of the amended complaints against the employer for failure to state a cause of action, and finds causes of action for unilateral changes, skimming, and breaches of good faith bargaining obligations. The employer must file and serve its answer to the amended complaints within 21 days following the date of this Decision.

ANALYSIS

Applicable Legal Standard

Unilateral Changes

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010), *citing Skagit County*, Decision 8746-A (PECB, 2006).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap*

County, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007), *citing King County*, Decision 4893-A (PECB, 1995).

A complainant's prophecy of future events at the preliminary ruling stage of proceedings is insufficient to state a cause of action for a unilateral change. *Kitsap County,* Decision 11610-A (PECB, 2013). In order for a cause of action for a unilateral change to exist, there must have been a change. *Kitsap County,* Decision 11610-A.

Application of Standard

The union identifies in Paragraph 22 of its second amended complaint that the employer sent a draft body worn video policy to the union in January 2017, that the union requested to bargain the policy, the policy was not bargained, and that the employer sought and received court approval from Judge Robart for the policy on May 3, 2017. Paragraph 22 of the union's fourth amended complaint adds the facts that Judge Robart accepted briefing from the monitor and the employer regarding the policy's language, and ultimately approved the policy in the form proposed by the employer. The fourth amended complaint also asserts that the employer is bargaining the policy with another union, the Seattle Police Officers Guild, but to date has not bargained it with the complainant. However, none of the facts in the second, third, or fourth amended complaints allege that the body worn video policy has actually been implemented by the employer.

Similarly, the union identifies in Paragraph 24 of its second amended complaint that the employer announced plans in March 2017, to consolidate the police department's human resource unit under the employer's human resources department and that the union has a bargaining unit employee affected by the reorganization. Paragraph 24 of the fourth amended complaint adds that in March

2017, the union wrote a letter objecting to the unilateral change and demanding to bargain with the employer about any changes that would impact the bargaining unit employee's terms and conditions of employment. The fourth amended complaint alleges that the employer has not bargained with the union to date. However, none of the facts in the second, third, or fourth amended complaints allege that the consolidation of the employer's human resources departments has been implemented.

As an actual change must have occurred in order for a cause of action to exist for a unilateral change allegation, both of these unilateral change allegations are dismissed. *Kitsap County,* Decision 11610-A. The union has not alleged that the body worn video policy has been in fact implemented; nor has the union alleged that the employer has consolidated its police department's human resource unit under the employer's human resources department.

CONCLUSION

Allegations of the second, third, and fourth amended complaints that state causes of action
The allegations of the second, third, and fourth amended complaints concern the same parties and are germane to the subject matter of the original complaint. Allowing the amended complaints will not unduly delay the resolution of this matter.

The allegations of the second amended complaint concerning refusal to bargain by skimming supervisory bargaining unit work, breach of good faith bargaining obligations, and unilateral changes to the paid parental leave policy, overtime, and front line supervisory investigative duties, state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The allegations of the third amended complaint concerning employer breach of good faith bargaining obligations by making a new proposal on May 30, 2017, containing terms contrary to previously tentatively agreed collective bargaining agreement articles and the introduction of new terms never sought by the employer over the course of bargaining for the successor collective

bargaining agreement state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

Assuming for the purposes of this amended preliminary ruling that all of the facts alleged in Paragraph 24 of the fourth amended complaint are true and provable, it appears that an unfair labor practice violation could be found for breach of the employer's good faith bargaining obligations. That paragraph alleges that the employer announced plans in March 2017, to consolidate its human resource departments and failed to bargain with the union after its demand to bargain over the impact of the terms and conditions of employment for a bargaining unit employee affected by the consolidation.

Allegations of the second, third, and fourth amended complaints that fail to state causes of action

The facts asserted in the second, third, and fourth amended complaints do not assert that the employer in fact implemented the body worn video policy or the consolidation of the employer's human resource departments. As such, Paragraphs 22 and 24 of the union's second, third, and fourth amended complaints do not state causes of action for unilateral changes.

ORDER

1. Assuming all of the facts alleged to be true and provable, the refusal to bargain allegations of the original and amended complaints in Case 128498-U-16 state causes 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:

   1. Since April 27, 2016, breaching its good faith bargaining obligations by failing to consider the union's proposal on police accountability, make counterproposals or engage in bargaining.

   2. In May 2016, unilaterally submitting recommendations on police accountability reforms to the court for review and approval, without first providing the union with an opportunity to bargain over the proposed changes.

3. On October 7, 2016, unilaterally filing a draft legislative package on police accountability reforms with the court for review and approval, and stating that the employer would begin its formal legislative process once the court approved the package, without providing the union with an opportunity to bargain over the proposed changes.

4. Since June 2016, unilaterally implementing training and policy regarding newly created administrative lieutenant positions and transferring non-bargaining unit investigative function work to the administrative lieutenant position, without providing the union with an opportunity to bargain.

5. Since June 2016, unilaterally changing working conditions of the night duty captain position by removing captain's discretion regarding when to physically respond to a scene, without providing the union with an opportunity to bargain.

6. Since June 2016, bargaining in bad faith, engaging in surface bargaining, going back on Memorandums of Agreement reached in bargaining, and otherwise taking actions to frustrate the possibility of reaching a collective bargaining agreement.

7. Unilaterally changing the paid parental leave policy on February 13, 2017, without providing an opportunity for bargaining.

8. Unilaterally changing overtime requirements and caps, and front line supervisory duties in April 2017, without providing an opportunity for bargaining.

9. Skimming of supervisory bargaining unit work normally performed by supervisory officers to staff May Day in May 2017, without providing an opportunity for bargaining.

10. Breach of its good faith bargaining obligations including:

    a) Submitting the body worn video policy in or around February 2017, to Judge Robart for approval under the employer and U.S Department of Justice Settlement Agreement absent bargaining with the union as requested;

    b) Since November 16, 2016, refusing to bargain accountability legislation with the union prior to its February 2017, submission to city council;

    c) Since November 16, 2016, refusing to revise any successor collective bargaining agreement employer proposals to reflect the employer's February 2017, accountability legislation submission;

    d) Misleading the union by agreeing to grievance-arbitration provisions for the successor collective bargaining agreement during mediation and submitting

language in the accountability legislation to City Council in February 2017, that was contrary to the agreed upon provisions;

e) Making a new proposal on May 30, 2017, containing terms contrary to previously tentatively agreed collective bargaining agreement articles; and,

f) Introducing new terms in the May 30, 2017, proposal never sought by the employer over the course of bargaining for the successor collective bargaining agreement.

g) Announcing plans in March 2017, to consolidate its human resource departments and failing to bargain with the union after its demand to bargain over the impact of the terms and conditions of employment for a bargaining unit employee affected by the consolidation.

The refusal to bargain allegations of the original and amended complaints indicated in Paragraph 1 of this Order will be the subject of further proceedings under Chapter 391-45 WAC.

2. The employer shall:

File and serve their answers to the allegations stating causes of action in the second, third, and fourth amended complaints listed in Paragraphs 1.7, 1.8, 1.9, and 1.10 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 complaints, as set forth in Paragraphs 1.7, 1.8, 1.9, and 1.10 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.

3. The allegations in Paragraphs 22 and 24 of the second, third, and fourth amended complaints in Case 128498-U-16 concerning employer refusal to bargain in violation of RCW 41.56.140(4), are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 20th day of July, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Page A Garcia

PAGE A. GARCIA, 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.

COLLECTIVE BARGAINING
PERC
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RECORD OF SERVICE - ISSUED 07/20/2017

DECISION 12750 has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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