

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SKAGIT COUNTY,

Complainant,

vs.

INLANDBOATMEN'S UNION OF THE
PACIFIC,

Respondent.

CASE 136682-U-23c

DECISION 13674 - PECB

AMENDED CAUSE OF ACTION
STATEMENT AND
ORDER OF PARTIAL DISMISSAL

Robert H. Lavitt, Attorney at Law, Barnard Iglitzin & Lavitt LLP, for the
Inlandboatmen's Union of the Pacific.

Robert R. Braun Jr., Consultant, Braun Consulting Group for Skagit County.

On May 2, 2023, Skagit County (employer) filed two unfair labor practice complaints against the Inlandboatmen's Union of the Pacific (union). The complaints alleged the union breached its good faith obligation by making regressive "Late Hit" proposals during bargaining, breached its good faith bargaining obligation when the bargaining unit employees engaged in a strike, and breached its good faith bargaining obligation during negotiations with the employer for a successor collective bargaining agreement. The complaints were reviewed under WAC 391-45-110 and consolidated.¹ A deficiency notice issued on May 25, 2023, notified the employer that a cause of action could not be found for the allegations that the union breached its good faith by making regressive "Late Hit" proposals during bargaining and breached its good faith bargaining obligation when the bargaining unit employees engaged in a strike. The employer was given a

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

On June 5, 2023, the employer filed an amended complaint. The allegation claiming the union breached its good faith bargaining obligation when the bargaining unit employees engaged in a strike is dismissed. All other allegations of the amended complaint will be subject to a cause of action statement and forwarded for further proceedings.

BACKGROUND

The employer operates a ferry that provides services to Guemes Island. The union represents the employees who operate that ferry. The employer and union were parties to a collective bargaining agreement that expired on December 31, 2021.

The amended complaint asserts that after months of bargaining with the union, the parties reached an impasse. On March 7, 2023, the employer filed a mediation request with this agency. On March 9, 2023, the union informed the employer it would not engage in the mediation process but continued to demand bargaining to break the impasse.

On March 30, 2023, the union allegedly replied to the PERC mediator by rejecting any mediation session. In that same reply, the union also demanded the employer make additional offers of settlement, make changes to scheduling language, and remedy allegations of CBA violation. According to the complaint, the union's response added a "Late Hit" new demand concerning hours or work that was never previously discussed, as well as replied to the employer with demands for bargaining and demands to add new issues while simultaneously refusing to meet in mediation.

On May 1, 2023, union employees engaged in a strike that caused a complete cessation of ferry operations. The employer asserts that the union has breached its good faith bargaining obligation by engaging in a strike to enforce the union's demands.

ANALYSIS

The employer asserts that the union breached its good faith bargaining obligation when bargaining unit employees engaged in a strike to enforce the union's demands at bargaining. This specific allegation does not qualify for further processing.

The Commission has consistently declined to regulate strikes through the unfair labor practice provisions of the statutes. In *Spokane School District*, Decision 310-B (EDUC, 1978), the Commission reversed a finding of interference regarding employer questionnaires relating directly to a potential strike because such a finding would tend to extend the protection of the collective bargaining laws into matters not protected by the statute. In *Seattle School District*, Decision 629 (EDUC, 1979), the employer's allegation that the teachers' union created an impasse for the purpose of striking was dismissed for failure to state a claim for relief. In *City of Tacoma*, Decision 4444 (PECB, 1993), the employer's allegation that a strike demonstrated bargaining in bad faith because the parties had not reached impasse before the strike began was dismissed as outside of this agency's jurisdiction.

Neither chapter 41.56 RCW nor chapter 41.59 RCW protect the right of public employees to strike. Neither statute contains a clause protecting "concerted activities." To the extent that they exist, any legal prohibition on public employee strikes in the state of Washington are a product of common law as developed through the courts. *Port of Seattle v. International Longshoremen's and Warehousemen's Union*, 52 Wn.2d 317 (1958).

ORDER

1. Assuming all of the facts alleged to be true and provable, the refusal to bargain allegations of the amended complaint state 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)] within six months of the date the complaint was filed, by breaching its good faith

bargaining obligation when the union made a regressive proposal concerning hours of work during bargaining.

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)] within six months of the date the complaint was filed, by breaching its good faith bargaining obligation during negotiations with the employer for a successor collective bargaining agreement.

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

2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the amended complaint, except if the 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 and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the amended complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegation of the complaint and amended complaint concerning the union's breach of its good faith bargaining obligation when the bargaining unit employees engaged in a strike is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of June, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 06/14/2023

DECISION 13674 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 136682-U-23c

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