

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL 2545,

Complainant,

vs.

CITY OF KIRKLAND,

Respondent.

CASE 134830-U-22

DECISION 13695 - PECB

ORDER OF DISMISSAL

Alex J. Skalbania, Attorney at Law, Skalbania & Vinnedge, PSC, for the International Association of Fire Fighters Local 2545.

Darcy J. Eilers, Assistant City Attorney, for the City of Kirkland.

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission (PERC) by the International Association of Fire Fighters Local 2545 (IAFF Local 2545) (union) on February 11, 2022. The complaint alleged that the City of Kirkland (employer) refused to bargain in violation of RCW 41.56.140(4), by unilaterally changing employees' working conditions related to the vaccine mandate and religious exemption accommodations, without providing the union an opportunity for bargaining. The complaint was reviewed under WAC 391-45-110.¹ A preliminary ruling and deferral inquiry was issued on February 22, 2022, finding a cause of action to exist and providing the employer with an opportunity to file an answer to the complaint. The employer was asked to specify in its answer whether deferral to arbitration was requested. In an answer filed on March 15, 2022, the employer requested that the complaint be deferred to arbitration.

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 complaint and answer were reviewed under WAC 391-45-110(3). On April 29, 2022, the complaint was deferred to arbitration in a ruling that stated, in pertinent part:

The arbitrator draws authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the agreement. The arbitrator will determine if the employer's conduct was protected, prohibited, or neither protected nor prohibited by the agreement. *Lakehaven Utility District*, Decision 8096 (PECB, 2003); *City of Yakima*, Decision 3564-A. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:

- a. If the arbitrator finds the employer's conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. The union should anticipate dismissal of the unfair labor practice allegation based on the "waiver" conclusion.

On January 3, 2023, the Commission received a copy of an arbitration award of Arbitrator Donna E. Lurie regarding the dispute. The award denied the union's grievance, finding that the employer's actions were protected by the collective bargaining agreement's memorandums of understanding (MOUs).

The award has been reviewed under WAC 391-45-110(3).² Based upon Arbitrator Lurie's ruling, the union's right to bargain on the contested issues was waived by the collective bargaining agreement. *City of Spokane*, Decision 2398 (PECB, 1986). The complaint must be dismissed.

² The review is related to the determination of whether the employer's actions were protected, prohibited, or neither protected nor prohibited. Any additional issues jointly presented by the parties to the arbitrator are not before PERC. To the extent additional allegations were included in the analysis, PERC is not bound by the analysis.

ORDER

The complaint charging unfair labor practices in case 134830-U-22 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of July, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


EMILY K. WHITNEY, Unfair Labor Practice Administrator

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 07/18/2023

DECISION 13695 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 134830-U-22

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