STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION, LOCAL 587, Complainant, vs. KING COUNTY, Respondent.	)	CASE 17396-U-03-4510 DECISION 8373 - PECB ORDER OF DISMISSAL

On April 3, 2003, Amalgamated Transit Union, Local 587 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on December 29, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On January 20, 2004, the union filed an amended complaint. After review of the amended complaint, the Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

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[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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by breach of its good faith bargaining obligations in refusing to bargain regarding the decision to create a part-time position for Nancy Nowlin. The complaint alleged that after Nowlin requested reasonable accommodation for a disability, the employer accommodated Nowlin by reducing her weekly work hours. The complaint alleged that despite the union's objection that part-time positions were prohibited by article 17, section 3(A) of the parties' collective bargaining agreement, the employer created a part-time position for Nowlin.

The complaint alleged that as "the parties are subject to the provisions of RCW 41.56.492," the employer "was obligated to maintain the status quo or proceed to interest arbitration." The complaint involves "employees of a public passenger transportation system" under RCW 41.56.492. Such employees are subject to interest arbitration procedures under Chapter 41.56 RCW which contain the following provisions:

> RCW 41.56.470 UNIFORMED PERSONNEL -- ARBITRATION PANEL -- RIGHTS OF PARTIES. During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under chapter 131, Laws of 1973.

RCW 41.56.470 prohibits unilateral changes by a public employer in "wages, hours and other conditions of employment," or mandatory subjects of bargaining, for employees subject to interest arbitration procedures under RCW 41.56.492.

In contrast to mandatory subjects of bargaining, permissive subjects of bargaining are matters considered remote from "wages, hours and other conditions of employment," or subjects which are regarded as prerogatives of employers or of unions. RCW 41.56.470 does not prohibit unilateral changes in permissive subjects of bargaining by a public employer. Commission decisions have held that the creation of positions by a public employer is a permissive subject of bargaining. *Lakewood School District*, Decision 755-A (PECB, 1980); *City of Mercer Island*, Decision 1026-A (PECB, 1981); *Evergreen School District*, Decision 3954 (PECB, 1991); *City of Tacoma*, Decision 6601 (PECB, 1999); and *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001). However, a public employer must negotiate any effects of creating a new position, including the wage level of the position, with the exclusive bargaining representative of affected employees.

The deficiency notice indicated that the complaint failed to state a cause of action as the employer's decision to create a part-time position was a permissive subject of bargaining, and the complaint did not allege that the employer failed to bargain the effects of its decision.

The amended complaint reasserts the union's claim that the employer violated article 17, section 3(A) of the parties' agreement by unilaterally creating a part-time position for Nowlin. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *See Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*,

Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997). In addition, the Commission does not have jurisdiction concerning reasonable accommodation for an injury or allegations of discrimination based on disability.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of March, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Unfair Labor Practice Manager

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.