

Port of Pasco, Decision 8919 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF PASCO POLICE	)	
OFFICERS GUILD,	)	
	)	CASE 18931-U-04-4817
Complainant,	)	
	)	DECISION 8919 - PECB
vs.	)	
	)	
PORT OF PASCO,	)	DECISION ON MOTION
	)	TO DEFER CASE
Respondent.	)	TO ARBITRATION
	)	
	)	

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Emmal Skalbania & Vinnedge, by Alex Skalbania, for the union.

The Wesley Group, by Kevin Wesley, Management Consultant, for the employer.

Port of Pasco Police Officers Guild (union) filed the above-captioned complaint of unfair labor practices on October 25, 2004, which it amended on November 29, 2004, and March 7, 2005. According to the complaint, Port of Pasco (employer) operates the Tri-Cities Airport, located in Pasco, Washington, and the union is the exclusive bargaining representative of a group of employees who perform law enforcement/security functions for the Port at the Tri-Cities Airport. The controversy concerns an alleged refusal to provide relevant collective bargaining information and actions taken in reprisal for union activities protected by Chapter 41.56 RCW.

Agency staff issued a preliminary ruling on this matter on March 18, 2005. It found that the complaint described possible employer

interference with employee rights and discrimination in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4).

On April 6, the employer filed its answer to the complaint charging unfair labor practices. On April 11, the employer requested the Examiner to defer the above-captioned matter to arbitration, pursuant to WAC 391-45-110(3). The employer argues that the issues presented in the complaint "are appropriate and ripe for the binding grievance arbitration provision of the parties CBA, not for the jurisdiction of the Public Employment Relations Commission."

#### ISSUE PRESENTED

Whether the amended complaint presents issues that should be resolved in the grievance and arbitration procedures established in the collective bargaining agreement.

#### ANALYSIS

The Commission may defer to arbitration those unfair labor practice complaints that are better addressed in such a forum. WAC 391-45-110(3) reads as follows:

(3)The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by

a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

The possibility of "deferral to arbitration" was first set forth in *City of Richland*, Decision 246 (PECB, 1976). Arising in the context of an alleged unilateral change of working conditions, the examiner wrote, "[t]here is not legislative preference for arbitration on issues other than 'application or interpretation of an existing collective bargaining agreement'. We do not defer to arbitrators on other types of issues." Thus, the Commission does not defer "discrimination" or "retaliation" charges. In *Garfield County*, Decision 7641 (PECB, 2002), the examiner outlined the policy. I will proceed to restate, *ad verbatim*, what the examiner wrote:

In *City of Yakima*, Decision 3564-A (PECB, 1991), the Commission specified certain fundamental factors necessary for deferral, as follows:

- The existence of a collective bargaining agreement;
- Provision for final and binding arbitration in the collective bargaining agreement; and

- Waiver of procedural defenses to processing the matter in the contractual grievance procedure.

The Commission also articulated its perception of deferral as an adjunct to unfair labor practice litigation:

The deferral policy is not a tool by which respondents can avoid determinations as to whether they committed an unfair labor practice. It simply allows the parties an opportunity to utilize their contractual grievance and arbitration procedure to obtain a contract interpretation for consideration by the Commission. It should be obvious that there will be no arbitration award "on the merits" of a grievance if the employer prevails on a procedural defense to arbitration. Only a decision "on the merits" is of interest or use to the Commission "to resolve the pending unfair labor practice" . . . .

At least since Yakima, the Commission has kept "deferred" unfair labor practice complaints open as pending cases on the Commission's docket, and has retained jurisdiction while the related grievance matter is being heard and decided by an arbitrator.

The present case does not meet the requirements for deferral to arbitration. Although the complaint refers to violations of the collective bargaining agreement, it claims that the actions described constitute discrimination and retaliation for union activity. The resulting procedure involves elements not present in an arbitration proceeding. Further, the Personnel Appeals Board is not empowered to address these issues.

#### ORDER

The Examiner DISMISSES the motion to defer to arbitration the above-captioned complaint of unfair labor practices.

Issued at Olympia, Washington, this 27th day of April, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
CARLOS R. CARRIÓN-CRESPO, Examiner