

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 1199 NW,)	
)	
Complainant,)	CASE 20892-U-07-5326
)	
vs.)	DECISION 9635 - PECB
)	
KLICKITAT PUBLIC HOSPITAL DISTRICT)	
1,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On January 29, 2007, Service Employees International Union (SEIU), Local 1199 NW (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Klickitat Public Hospital District 1 (employer) as respondent. The complaint was docketed by the Commission as Case 20892-U-07-5326. The allegations of the complaint concern employer interference with employee rights and discrimination in reprisal for protected union activities in violation of RCW 41.56.140(1), by retaliatory actions of management officials, and a unilateral change of the status quo in violation of WAC 391-25-140 through reassignment of billing duties to ward clerks. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 8, 2007, indicated that it was not possible to conclude that a cause of action existed at that

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.

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 March 28, 2007, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The deficiency notice pointed out several defects. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The complaint failed to indicate the dates of any alleged employer misconduct. In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of employer misconduct occurring on or after July 29, 2006.

Two, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

. . . .
(5) Information concerning the parties' relationships, including:

. . . .
c) The parties' contractual relationship, indicating that:

- (i) The parties have never had a contract; or
- (ii) A copy of the current (or most recent) collective bargaining agreement is attached;

. . . .

The complaint failed to include information required by WAC 391-45-050.

Three, the complaint alleged that the employer's actions amount "to a unilateral change in working conditions, and is a violation of WAC 391-25-140" To remedy the alleged unfair labor practices, the complaint "seeks to have the Employer cease and desist from this unilateral change in duties and responsibilities and . . . seeks restoration to the status quo." There is a defect concerning the complaint's requested remedy of restoration of the status quo absent refusal to bargain allegations under RCW 41.56.140(4). Where an interference violation is found, the typical result is a "cease and desist" order. For a discrimination violation, the typical result is an order making the discriminatee employee(s) whole. Where a refusal to bargain violation involving unilateral changes is found, the typical result is a "restore the situation that existed before the unlawful change" order.

Commission rules prohibit a public employer from making changes in mandatory subjects of bargaining while a representation petition is pending:

WAC 391-25-140 NOTICE TO EMPLOYEES--LIMITATIONS ON EMPLOYER ACTIONS.

. . . .

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

The phrase "changes of the status quo" in WAC 391-25-140(2) refers to unilateral changes in mandatory subjects of bargaining. Unilateral changes involve an employer making a decision or taking action to change the wages, hours or working conditions of employees without first having given notice to the union, providing an opportunity for collective bargaining, and bargaining in good faith upon request.

Allegations of a unilateral change by an employer can only be processed under the refusal to bargain provisions of RCW 41.56.140(4). However, the union did not check the box entitled "Employer Refusal to Bargain" on Form U-1, Complaint Charging Unfair Labor Practices. Absent refusal to bargain allegations in the complaint, a cause of action cannot be found at this time for allegations of a unilateral change in working conditions.

Amended Complaint

The amended complaint corrects the second and third defects noted in the deficiency notice. The amended complaint conforms with the provisions of WAC 391-45-050, and the union checked the box on the complaint form alleging employer refusal to bargain.

The amended complaint does not correct the first defect: It does not allege unfair labor practice violations occurring on or after July 29, 2006. The union alleges employer violations occurring in July or early July 2006, when the union claims that the employer

changed the work duties of the ward clerks. The amended complaint does not conform to the requirements of RCW 41.56.160.

NOW, THEREFORE, it is

ORDERED

The amended 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 9th day of April, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.