

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	
COUNCIL 2,)	
)	
Complainant,)	CASE 21575-U-08-5500
)	
vs.)	DECISION 10042 - PECB
)	
WAHKIAKUM COUNTY,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
)	

On March 6, 2008, the Washington State Council of County and City Employees, Council 2 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Wahkiakum County (employer) as respondent. The complaint was docketed by the Commission as Case 21575-U-08-5500. The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), refusal to bargain in violation of RCW 41.56.140(4), and "Other" unfair labor practices.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 20, 2008, indicated that it was not possible to conclude that a cause of action existed at that time concerning allegations of "Other" unfair labor practices. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

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.

On April 7, 2008, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses allegations of the amended complaint concerning "Other" unfair labor practices and finds causes of action for employer interference, discrimination, and refusal to bargain, as set forth below in the preliminary ruling. The employer must file and serve its answer to the amended complaint within 21 days following the date of this decision.

DISCUSSION

The deficiency notice pointed out the defect to the complaint.

Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. Complaints must conform to WAC 391-45-050.

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.

(3) A statement of the remedy sought by the complainant.

(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

The union does not identify the "other" alleged unfair labor practices as specified in WAC 391-45-050(2), (3), and (6).

Amended Complaint

In its amended complaint, the union cites RCW 41.56.140(4) and reiterates the allegation from its complaint that the "Other" unfair labor practice concerns employer refusal to bargain by skimming bargaining unit work to non-represented employees. A cause of action concerning employer skimming of bargaining unit

work applies to allegations that the employer has transferred work to employees of the same employer who are outside of the existing bargaining unit. There is no distinction between employees who are represented by a union or not represented by a union.

The deficiency notice indicated that a preliminary ruling ultimately would be issued to include a cause of action for employer skimming of bargaining unit work in violation of RCW 41.56.140(4). The preliminary ruling in the present order includes a cause of action for skimming that applies to the union's allegation that the employer transferred work previously done by the eight bargaining unit members in question to its other employees, regardless of whether they were represented by a union. No cause of action exists for a second skimming allegation concerning "Other" violations, expressed by the union as employer skimming of "bargaining unit work to non-represented Wahkiakum County Employees."

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the amended complaint in Case 21575-U-08-5500 state a cause of action, summarized as follows:

[1] Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by (a) granting merit and COLA increases to non-union and management employees while laying off or reducing the hours of eight full-time employees represented by the union (bargaining unit employees), in reprisal for union activities protected by Chapter 41.56 RCW, and (b) laying off or reducing the

hours of the aforementioned eight full-time bargaining unit employees, while not laying off or reducing the hours of part-time non-bargaining unit employees, in reprisal for union activities protected by Chapter 41.56 RCW; [2] 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 (a) refusal to provide relevant information requested by the union concerning bargaining over the layoffs and their impacts, (b) skimming work previously performed by the aforementioned eight bargaining unit employees, without providing the opportunity for bargaining, and (c) breach of its good faith bargaining obligations in refusing to bargain layoff alternatives or impacts.

The interference, discrimination, and refusal to bargain allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Wahkiakum County shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the amended complaint, except if a 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 with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the amended complaint in Case 21575-U-08-5500 concerning "Other" unfair labor practices, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of April, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.