Northshore Utility District (Washington State Council of County and City Employees, Local 1024, Council 2), Decision 10304 (PECB, 2009)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORTHSHORE UTILITY DISTRICT,	)	
	)	
Complainant,	)	CASE 22194-U-09-5665
	)	
vs.	)	DECISION 10304 - PECB
	)	
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1024, COUNCIL 2,	)	PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
Respondent.	)	

On January 8, 2009, Northshore Utility District (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Council of County and City Employees, Local 1024, Council 2 (union) as respondent. The allegations of the complaint concern [1] Union interference with employee rights in violation of RCW 41.56.150(1) and refusal to bargain in violation of RCW 41.56.150(4), by (a) repudiating an agreement on disciplinary action made with the employer, (b) repudiating a provision of the collective bargaining agreement, (c) advising employees that they are at will--contrary to provisions of the collective bargaining agreement, (d) insisting upon a unilateral change to previously agreed upon matters and past practice; and [2] union interference with employee rights in violation of RCW 41.56.150(1), by (a) advising employees that they are at will, and (b) sending an internal union memorandum to employees regarding the 2009 COLA.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on January 21, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. The employer was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint.

On February 11, 2009, the employer filed an amended complaint. The Unfair Labor Practice Manager dismisses the defective allegations of the amended complaint concerning independent interference for failures to state causes of action, and finds causes of action for interference and refusal to bargain allegations of the amended complaint. The union 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 defects to the complaint. One, 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.

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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.

In order to state a cause of action, a complainant must provide a statement of facts in accordance with WAC 391-45-050. Pre-hearing discovery procedures common to civil court proceedings are not available in unfair labor practice cases. Notices of claims are insufficient by themselves to state a cause of action. The statement of facts must set forth in detail the times, dates, places, and participants for each claim presented. The allegations in this case rely in major part on references to exhibits. It is the responsibility of the complainant to set forth its allegations in a clear and concise manner in the statement of facts, not through legal claims referencing exhibits. Finally, the complaint does not contain a statement of the remedy sought by the employer.

Two, in alleging union refusal to bargain, the employer claims that the union violated the collective bargaining agreement or other agreements when it repudiated an agreement with the employer as well as a provision of the collective bargaining agreement, and when the union falsely and illegally advised employees that they are at will, contrary to provisions of the collective bargaining agreement. In addition to failing to include facts required by WAC 391-45-050(2), these allegations appear to be defective as a matter of law. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements or other contractual disputes through the unfair labor practice provisions of Chapter 41.56 RCW. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements or other contractual agreements between parties. The employer must address these issues through arbitration or the courts.

Three, the employer alleges union refusal to bargain by its insisting upon a unilateral change to previously agreed upon matters and past practice. A party to a collective bargaining relationship may insist on changes to agreements between the

parties, but the opposing party is under no obligation to alter its position if it satisfies its own bargaining obligations. Under the facts presented, a claim that the union "insisted" on changes to its agreements with the employer does not indicate a cause of action for refusal to bargain.

Four, the employer alleges independent union interference with employee rights by its telling employees they are at will and sending an internal union memorandum to employees concerning the 2009 COLA. The Commission has no jurisdiction over internal union affairs, including union communications with its members, barring a showing of retaliation for union activities or invidious discrimination based upon such factors as race or gender. Under the limited facts presented here, the unnamed employees offended by either of the union's actions would need to seek redress through internal union procedures or the courts. *See Seattle School District (International Union of Operating Engineers)*, Decision 9135-B (PECB, 2007).

The Amended Complaint

The employer includes a remedy in its amended complaint and cures defects regarding its specific claims of union interference and refusal to bargain. The employer alleges that the union unilaterally repudiated an agreement between the parties concerning resolution of a disciplinary issue involving Kevin Milliken. The employer has stated a cause of action for union interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.150(4).

The employer further alleges that the union's claim that employees are at will in the absence of a collective bargaining agreement is a breach of its duty to bargain in good faith. The employer has stated a second cause of action for union refusal to bargain.

The employer has not repeated its non-specific claims for allegations of the original complaint concerning (a) the union's repudiation of other provisions of the collective bargaining agreement, or (b) insistence upon other unilateral changes to previously agreed upon matters and past practices. The non-specific claims included in the original complaint are considered withdrawn.

The employer has not cured its defective allegations concerning independent union interference with employee rights. It is an unfair labor practice for either an employer or union to interfere with the collective bargaining rights of employees protected under Chapter 41.56 RCW. The employer alleges independent union interference with employee rights in violation of RCW 41.56.150(1), by the union's threat of reprisal or force or promises of benefit concerning unidentified employees' union activities, through (a) telling employees they are at will, and (b) sending an internal union memorandum to employees concerning the 2009 COLA. The employer alleges that such actions were directed at bargaining unit members considering a decertification petition against the union or changing union leadership.

Under WAC 391-45-010, an employer has standing to file an unfair labor practice complaint against a union on behalf of employees. The employer alleges that union representatives were aware that "some employees" were considering a decertification petition or change in union leadership. Statements of facts must comply with WAC 391-45-050(2), which requires information regarding "participants in occurrences." The employer's allegations that unnamed employees were coerced by the union's actions are insufficient to state a cause of action for interference. Although the union's intent in its statements and writings is not at issue, the employer's allegations must indicate union interference with actual, identified employees. The employer's amended complaint

fails to provide the facts required to state a cause of action for independent union interference.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, interference and refusal to bargain allegations of the amended complaint in Case 22194-U-09-5665 state a cause of action, summarized as follows:

> Union interference with employee rights in violation of RCW 41.56.150(1) and refusal to bargain in violation of RCW 41.56.150(4), by (a) its unilateral change to the practice of resolution of discipline for Kevin Milliken, without providing an opportunity for bargaining, and (b) breach of its good faith bargaining obligations regarding negotiations over just cause provisions of the collective bargaining agreement.

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

2. The Washington State Council of County and City Employees, Local 1024, Council 2, shall:

> **File and serve its answer to the allegations listed in paragraphs 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, as set forth in paragraph 1 of this Order, 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 22194-U-09-5665 concerning [1] union interference with employee rights in violation of RCW 41.56.150(1), by threats of reprisal or force or promises of benefit concerning unidentified employees' union activities, through (a) telling employees they are at will, and (b) sending an internal union memorandum to employees concerning the 2009 COLA, are DISMISSED for failures to state causes of action; [2] to the extent that the employer might continue to allege union interference and refusal to bargain by additional claims of (a) the union's repudiating any other provisions of the collective bargaining agreement,

or (b) insisting upon any other unilateral changes to previously agreed upon matters and past practice, those allegations are DISMISSED.

ISSUED at Olympia, Washington, this 20th day of February, 2009.

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.