

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 77,)	
)	
Complainant,)	CASE 22508-U-09-5750
)	
vs.)	DECISION 10475 - PECB
)	
CITY OF McCLEARY,)	
)	
Respondent.)	ORDER OF DISMISSAL

On June 1, 2009, the International Brotherhood of Electrical Workers, Local 77 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of McCleary (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 12, 2009, 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.

The union has not filed any further information. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern 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), by its

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.

unilateral change in not granting annual wage increases to bargaining unit members, while granting wage increases to employees not represented by the union, without providing an opportunity for bargaining.

The deficiency notice pointed out the defects to the complaint. When a representation petition is filed with the Commission, the employer must maintain the status quo regarding mandatory subjects of bargaining, including wages. The duty to maintain the status quo continues until the union and employer bargain a change to the status quo. The status quo may be either general or dynamic. A general status quo describes terms and conditions of employment at the time the representation petition is filed. The dynamic status quo rule recognizes that the status quo may not always be static. Regarding the wage increases at issue here, the dynamic status quo may depend upon whether the wage increases are based upon scheduled, routine, or non-discretionary changes, e.g., step increases. Where such factors exist, the dynamic status quo may require the employer to implement wage increases that were set in motion prior to the union filing a representation petition. See *Val Vue Sewer District*, Decision 8963 (PECB, 2004); *City of Seattle*, Decision 9938-A, 9939-A (PECB, 2009).

On the other hand, neither a general nor a dynamic status quo concerning wage increases is established solely through appeal to an historic practice, where the employer has given annual cost of living increases to employees. Newly represented employees may take such increases for granted; however, that does not necessarily establish a status quo. Employees represented by a union generally must look to negotiations between their union and employer for wage increases, not to further unilateral action by the employer. See *Cowlitz County*, Decision 7007 (PECB, 2000); *King County Library System*, Decision 9039 (PECB, 2005).

A complaint alleging a unilateral change must establish the relevant status quo. The complaint in this case appears to rely on

historic employer practices for the basis of the allegations, rather than on facts indicating that the employer has altered either a general or a dynamic status quo. Under the facts presented, the complaint does not state a cause of action for further unfair labor practice proceedings.


NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 22508-U-09-5750 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of July, 2009.

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.