STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LEWIS COUNTY CORRECTIONS GUILD,	)	
	)	
Complainant,	)	CASE 22591-U-09-5777
	)	
vs.	)	DECISION 10511 - PECB
	)	
LEWIS COUNTY,	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
	)	

On July 17, 2009, the Lewis County Corrections Guild (guild) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Lewis County (employer) as respondent. The allegations of the complaint concerned employer interference and discrimination, and interference and refusal to bargain. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on July 24, 2009, indicated that it was not possible to conclude that a cause of action existed at that time for the interference and refusal to bargain allegations of the complaint. The guild was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The deficiency notice indicated that a preliminary ruling would be issued concerning the interference and discrimination allegations. The guild did not file an amended complaint; however, on July 29, 2009, the guild sent a letter which in effect requested reconsideration of the future preliminary ruling.

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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.

The Unfair Labor Practice Manager dismisses the interference and refusal to bargain allegations of the complaint for failure to state a cause of action and finds a cause of action for the interference and discrimination allegations. The employer must file and serve its answer within 21 days following the date of this Decision.

DISCUSSION

The allegations of the complaint concern: [1] Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its written reprimand of Charlotte Garcia (Garcia) 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) its breach of contract regarding the arbitration of grievances, and (b) breach of its good faith bargaining obligations in refusing to arbitrate Garcia's grievance under the terms of an expired collective bargaining agreement.

The allegations of the complaint concerning interference and discrimination against Garcia state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

It is not possible to conclude that a cause of action exists at this time for the refusal to bargain allegations of the complaint. Those aspects of the complaint are defective.

Regarding the breach of contract allegation, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements.

Regarding the breach of good faith allegation, the facts presented do not indicate that a violation could be found. Grievance arbitration clauses do not survive the expiration of collective bargaining

agreements. *Maple Valley Firefighters, Local 3062 v. King County Fire Protection District No. 43,* 135 Wn. App. 749, 145 P.3d 1247 (2006). Even if the collective bargaining agreement in question concerned an expired agreement between the employer and the Guild, the Guild could not enforce the arbitration provisions of that expired contract. For the purposes of this deficiency notice, it is unnecessary to address whether the Guild could enforce the arbitration provisions of the expired Teamsters contract.

Request for Reconsideration

On July 29, 2009, the Guild sent a letter regarding the deficiency notice. The letter stated that the deficiency notice failed to address an allegation of the complaint concerning the employer's repudiation of the just cause standard, and asked for elaboration of the notice's reliance upon *Maple Valley Firefighters.* The Unfair Labor Practice Manager responded by a letter of August 10, 2009. Commission rules do not provide for reconsideration of a deficiency notice; a complainant must file an amended complaint. WAC 391-45-110(1). However, under WAC 391-45-110(2)(b), a complainant may request clarification of a preliminary ruling upon an assertion that the ruling failed to address one or more causes of action advanced in the complaint. The deficiency notice indicated that a preliminary ruling would be issued concerning the allegation of discrimination regarding the Garcia reprimand. Rather than waiting to respond until after the issuance of a preliminary ruling, it was deemed appropriate to address the request.

The request for reconsideration was denied under current law. One aspect of the Guild's position was that the Commission has ruled that if an employer applies a different standard to employee discipline, it has changed the status quo and thus made an unlawful unilateral change to a mandatory subject of bargaining, citing *Asotin County*, Decision 9549-A (PECB, 2007). [The Commission's decision came on appeal from a decision of the Unfair Labor Practice Manager, in *Asotin County*, Decision 9549 (PECB, 2007).] For this reason, the Guild believed a cause of action should be given for allegations concerning employer refusal to bargain in violation of RCW 41.56.140(4), by unilaterally changing the status quo in repudiating the just cause standard. The second aspect of the

Guild's request was for an elaboration of the deficiency notice's reliance upon *Maple Valley Firefighters.* The Guild stated that the Commission's *Asotin County* decision expresses a reluctance to rely on the precedent set forth in *Maple Valley Firefighters*; the Guild appeared to suggest that in light of *Asotin County* the law on grievance arbitration is unsettled.

However, the *Asotin County* cases do not alter the decision of the Court of Appeals regarding the survival of grievance arbitration clauses and do not establish a cause of action for status quo violations concerning grievances in the absence of collective bargaining agreements. In the first *Asotin County* case, the Unfair Labor Practice Manager had dismissed a complaint alleging a unilateral change on the grounds that a specific instance of an alleged change did not indicate a cause of action for a unilateral change to terms and conditions of employment. *Asotin County*, Decision 9549. The Commission reversed and held that a cause of action can be found for a single allegation involving a unilateral change. Because the case concerned both grievance arbitration and an expired contract, the Commission went on to discuss the question of whether grievance arbitration clauses survive the expiration of collective bargaining agreements. The Commission ruled that they do not. *Asotin County,* Decision 9549-A. To summarize, in *Asotin County* the Commission held: (1) that under an existing collective bargaining agreement, a cause of action may be given for a unilateral change allegation if an employer fails even in isolated instances to maintain the status quo concerning mandatory subjects of bargaining, and (2) that if the collective bargaining agreement has expired, so has the grievance arbitration clause. Regardless of whether the Commission has expressed reluctance about relying on the decision in *Maple Valley Firefighters*, that case remains controlling law under the facts in the present case. There was no collective bargaining agreement between the parties when the Garcia grievance arose; thus, there were no contractual provisions for grievance arbitration between Lewis County and the Guild. Following from this conclusion is the absence of a claim for violation of the status quo concerning just cause.

The Guild's request for reconsideration concerning its status quo claim would effectively have *Asotin County* create a new cause of action in direct contrast to *Maple Valley Firefighters.* To accept the Guild's position would mean that when a contract has expired, although a union could not file grievances or unfair labor practice complaints concerning an employer's refusal to arbitrate

grievances, it could nevertheless file unfair labor practice complaints alleging violations of the status quo concerning just cause provisions, thereby attaining the same effect of litigating the grievances. However, in its *Asotin County* decision, the Commission did not intend to circumvent the Court of Appeal's ruling in *Maple Valley Firefighters*. The preliminary ruling issued in this case will conform to the one set forth in the deficiency notice issued on July 24, 2009.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations of the complaint state a cause of action, summarized as follows:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its written reprimand of Charlotte Garcia in reprisal for union activities protected by Chapter 41.56 RCW.

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

2. Lewis 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 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 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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint concerning 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), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of August, 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.