

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WHATCOM COUNTY DEPUTY SHERIFF'S)	
GUILD,)	
)	
Complainant,)	CASE 15383-U-00-3889
)	
vs. +)	DECISION 7244 - PECB
)	
WHATCOM COUNTY,)	PRELIMINARY RULING
)	AND ORDER OF
Respondent.)	PARTIAL DISMISSAL
)	
)	

On September 14, 2000, the Whatcom County Deputy Sheriff's Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Whatcom County (employer) as the respondent. The complaint was reviewed under WAC 391-45-110,¹ and a letter issued on October 11, 2000, constituted both a deficiency notice as to some allegations and a preliminary ruling as to other allegations. The union was given a period of 21 days in which to file and serve an amended complaint which stated a cause of action as to the insufficient allegations, or face their dismissal.

An amended complaint filed by the union on October 27, 2000, is now before the Executive Director for review under WAC 391-45-110. The complaint is dismissed as to allegations which remain insufficient,

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.

while the allegations which state a cause of action will be referred to an Examiner for further proceedings under Chapter 391-45 WAC.

The Allegations Remaining Insufficient

The deficiency notice characterized paragraphs 1 and 2 of the original complaint as background material, and as insufficient to state an independent cause of action. Those paragraphs are not changed in the amended complaint, and evidence concerning them will only be admissible to establish the general background.

The deficiency notice characterized paragraphs 3 and 4 of the original complaint (which describe the positions of the parties on a "Standard Operating Procedures Manual"), as insufficient for lack of dates. Those paragraphs are not changed in the amended complaint, and evidence concerning them will only be admissible to establish the general background.

The deficiency notice characterized paragraph 6 of the original complaint (which describes a procedural agreement between the parties) as failing to state a cause of action for two reasons:

First, it is inferred that both the agreement and the failure to appear must have occurred before March 14, 2000, which is the earliest date for which this complaint can be considered timely under RCW 41.56.160; second, the Commission does not assert jurisdiction to determine or remedy contract violations through the unfair labor practice provisions of the statute.

That paragraph is not changed in the amended complaint, and is dismissed for failure to state a cause of action.

The deficiency notice characterized paragraph 12 of the original complaint (which alleges that negotiations between the parties "were bogging down") as failing to state a cause of action. That paragraph is not changed in the amended complaint, and is dismissed for failure to state a cause of action.

The deficiency notice characterized paragraphs 14 and 15 of the original complaint (which alleged that the employer made a misleading proposal on March 6, 2000) as untimely. The amended complaint alleges that the union thereafter demanded that the employer make its proposals in "full legislative style", and that the employer refused to make its proposals in that manner. While the making of a misleading proposal would be actionable (as a breach of the "good faith" obligation) on the basis of a timely complaint, these paragraphs are not changed in the amended complaint. They are dismissed for failure to state a cause of action.

The deficiency notice characterized paragraph 16 of the original complaint (which described the union's insistence upon the employer presenting proposals in "full bill-draft format") as insufficient to state a cause of action. At a minimum, the justifications advanced in support of the union's demand depended upon on a finding that the employer actions described in paragraphs 13 through 15 were themselves unlawful, and that defect has not been cured. The amended complaint attempts to rehabilitate the union's demand for "full bill-draft format" by stating that the union reiterated its demand on several occasions during April through July of 2000, but that does not cure the defect. With the caution that parties must present their proposals in a manner which is consistent with the "good faith" obligation, neither the statute nor the Commission's rules prescribe or support any particular format for such proposals. Additionally, the format of proposals

is less aligned with employee wages, hours and working conditions (the so-called "mandatory subjects of bargaining") than with bargaining procedures that are not, themselves, mandatory subjects. See, City of Tukwila, Decision 1975 (PECB, 1984).

The deficiency notice characterized paragraph 17 of the original complaint (which concerned the absence of an economic proposal from the employer) as untimely with regard to events prior to and at the March 6 meeting. Although the paragraph also included a statement that no economic proposal was forthcoming on April 6, the description of April 6 as a day when the parties "met in separate caucuses for an entire day" provided basis to question how or why the employer could be held accountable for failing to make a particular proposal on that day. Additionally, it was pointed out that the duty to bargain imposed by RCW 41.56.030(4) does not require the making of any particular proposal or concession. The amended complaint contains no changes to this paragraph, and it is dismissed for failure to state a cause of action.

The deficiency notice characterized paragraph 18 and the first portion of paragraph 19 (which concern a mediation session held on June 8, 2000) as insufficient to overcome the "no duty to agree" premise usually applied in collective bargaining. The amended complaint contains no changes to these materials, and they are dismissed for failure to state a cause of action.

The deficiency notice characterized the balance of paragraph 19 and paragraph 20 (which concern a mediation session held on July 20, 2000) as insufficient to state a cause of action in light of the statute of limitations and an absence of details. The amended complaint contains changes to paragraph 19, but they amount to vague allegations of stall tactics without details as to the (timely) dates, times and participants in occurrences. The amended

complaint contains changes to paragraph 20, but it also amounts to vague allegations of negligible changes of position and of insistence upon with the withdrawal of unfair labor practice charges as a condition of settlement. In the absence of details as to the (timely) dates, times and participants in occurrences, these paragraphs still fail to state a cause of action.

The deficiency notice characterized paragraphs 23 and 24 (which concern the mediator's actions in regard to the conclusion of the mediation process) as insufficient to state a cause of action against the employer. The amended complaint does not change either of those paragraphs, and they are dismissed herein.

The deficiency notice indicated that, to the extent the union is attempting to bring in matters for which the complaint is untimely, a "course of conduct" allegation in the original complaint failed to state a cause of action. The situation is not changed by a vague allegation that the employer's last proposal was calculated to thwart any desire by the union to make a counterproposal.

The Viable Allegations

Paragraphs 7 through 11 of the original complaint describe the positions of the parties on an indemnification clause discussed by the parties in their current round of negotiations, as well as statements made on that subject by the employer official to bargaining unit employees at meetings held on and after March 14, 2000, where attendance by bargaining unit employees was mandatory. These allegations state a cause of action for failure or refusal of the employer to bargain with the exclusive bargaining representative (circumvention of the union) in violation of RCW 41.56.140(4), and derivative interference with employee rights in violation of RCW 41.56.140(1).

Paragraph 13 was characterized in the deficiency notice as untimely. It concerns the employer's position on a procedure manual during a bargaining session held on March 6, 2000. The amended complaint alleges that the employer continued to insist upon a waiver of union bargaining rights throughout the subsequent negotiations and into interest arbitration. These allegations now state a cause of action for failure or refusal of the employer to bargain with the exclusive bargaining representative after April 27, 2000, in violation of RCW 41.56.140(4), and derivative interference with employee rights in violation of RCW 41.56.140(1).

Paragraphs 21 and 22 allege that the employer made a "late hit" proposal on July 20 with regard to the Standard Operating Procedures Manual, by insisting, as a condition of settlement, upon withdrawal of unfair labor practice charges previously filed by the union. Although additional details have not been forthcoming in response to a suggestion contained in the letter of October 11, 2000, the "withdraw ULP" allegation provides the minimum necessary to state a cause of action for employer refusal to bargain in violation of RCW 41.56.140(4), and derivative interference with employee rights in violation of RCW 41.56.140(1).

NOW, THEREFORE, it is

ORDERED

1. Paragraphs 7 through 11, 13, 21 and 22 of the complaint, as amended, shall be the subject of further proceedings under Chapter 391-45 WAC.
2. Except as provided in paragraph 1 of this Order, all of the other paragraphs of the complaint and amended complaint are dismissed as failing to state a claim for relief available

through unfair labor practice proceedings before the Public Employment Relations Commission, and evidence concerning those matters shall be received only for the purpose of providing background to the allegations listed in paragraph 1 of this Order.

Issued at Olympia, Washington, on the 19th day of December, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director

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.