

King County, Decision 9075 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Technical Employees Association,)	
)	
Complainant,)	CASE 18277-U-04-4665
)	
vs.)	DECISION 9075 - PECB
)	
King County,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Cline and Associates, by *Christopher J. Casillas*, for the union.

Trish K. Murphy, Labor Negotiator, for the employer.

On March 3, 2004, the Technical Employees Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging King County (employer) committed unfair labor practices in violation of RCW 41.56.140(1) and (4).

The Commission issued a preliminary ruling on April 20, 2004, which summarized the cause of action as circumvention of the union by direct dealing. The employer filed its answer, accompanied by affirmative defenses, on May 12, 2004. Examiner Starr Knutson held a hearing on March 29 and 30, 2005. The parties filed closing briefs on May 31, 2005.

In its closing brief the union expressed that it no longer wished to pursue its charge of circumventing the union by direct dealing with employees in the bargaining unit. However, it asserted the preliminary ruling included a second allegation.

ISSUE

Did the preliminary ruling find a cause of action other than circumventing the union by direct dealing with the employees?

I determine that the preliminary ruling contained a single charge. On that basis and the union's withdrawal of the charge of direct dealing, I dismiss the complaint.

ANALYSIS

The controversy here involves a new bargaining relationship that draws its essence from the merger of the former separate agency METRO into King County between 1994 and 1996. The employer recognized the union in 2001 as the exclusive bargaining representative for "all employees in the Design and Construction section of the Transit Division of the Department of Transportation ("DOT"), excluding supervisors, managers, confidential employees and all other employees of the employer."¹

At the time the complaint was filed, the parties were negotiating their first collective bargaining agreement. Unable to agree, the parties proceeded to interest arbitration on approximately 120 outstanding issues. Prior to the interest arbitration hearing, the parties met and resolved all the issues except one: wages.²

¹ A separate unit of supervisors was also recognized as represented by the union.

² An interest arbitrator decided that issue in January 2005, Case #17685-I-03-0490.

Preliminary Ruling

The preliminary ruling found a cause of action and summarized the allegation as:

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 circumventing the union through direct dealing with employees represented by the union in failing to negotiate the salary range for the classification of local agency affairs administrator.

WAC 391-45-110, which governs preliminary rulings, states the preliminary ruling is a summary of the allegation(s) which state a cause of action. The Commission's procedures put the onus on the complainant to include sufficient facts in its charges to constitute a basis for a hearing or other proceeding. At that stage of processing the complaint, all the facts alleged in it are presumed true and provable. No provision of that rule allows litigation of facts which are not contained in that summary. In *King County*, Decision 6994-B and 6995-B (PECB, 2002), the Commission confined examiners to processing the causes of action found to exist in the preliminary ruling. Further, in *King County* the Commission chose not to address the appeal of an examiner's findings concerning a discrimination violation and an independent interference violation that were not listed in the preliminary ruling. The Commission did address the legal standards related to the causes of action found in the preliminary ruling. In *Lake Washington Technical College*, Decision 4721-A (PECB, 1995), the Commission upheld the examiner's ruling allowing the union's motion to conform its pleadings to the evidence because the second instance was exactly the same nature as the original complaint and employer did not object to the motion.

The Commission opined that if the union desired to pursue a theory not addressed in the preliminary ruling, it needed to file an amended complaint explicitly setting forth those claims, in

accordance with *City of Seattle*, Decision 2772 (PECB, 1987), or should have requested reconsideration of the preliminary ruling. In this case, the union neither amended its complaint nor requested reconsideration of the preliminary ruling.

Rather, in its closing brief the union espouses the rationale that it made *another* "primary legal allegation" in its complaint. The union asserts, in its brief, that the employer "unilaterally altered the existing wage scale through the creation of a new job classification to perform an already existing body of work." That rationale is not supported by the preliminary ruling. The union charged the employer failed to bargain the wage of the local agency affairs administrator (LAAA) and instead dealt directly with the employees on wages.

Conclusion

The preliminary ruling contains a single charge: the employer's circumventing of the union through direct dealing with employees in failing to negotiate the salary of the classification local agency affairs administrator.

The union withdrew its charge of direct dealing, therefore no other cause of action exists.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(1).
2. The Technical Employees Association (union), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all non-supervisory employees in the design and construction section of the Transit Division employed by King County.

3. The preliminary ruling issued on April 20, 2004, under WAC 395-45-110, summarized the cause of action found in the statement of facts filed by the union on March 3, 2004. That summary identified a single cause of action: Circumvention of the union through direct dealing with employees by failing to negotiate the salary of the classification of local agency affairs administrator.
4. The union withdrew its charge of direct dealing in its closing brief.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. On the basis of the foregoing findings of fact paragraphs 3 and 4, no cause of action remains.

ORDER

The unfair labor practice complaint is DISMISSED.

Issued at Olympia, Washington on the 29th day of August, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STARR H. KNUTSON, Examiner

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.