

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its failure to maintain the status quo during contract negotiations for a newly-certified bargaining unit through refusing to arbitrate a grievance concerning the termination of Donna Manchester, in reprisal for union activities protected by Chapter 41.56 RCW.

Commission docket records indicate that the Guild was certified on February 15, 2005, in Case 18893-E-04-2997, as the exclusive bargaining representative for a bargaining unit of corrections officers, civil deputies, records managers, utility officers, court bailiffs, and sergeants of the sheriff's department. See *Asotin County*, Decision 8873 (PECB, 2005). Unit employees were previously represented by the Washington State Council of County & City Employees (WSCCCE).

The complaint alleged the following relevant facts:

- 1) The employer and WSCCCE were parties to a collective bargaining agreement that expired on December 31, 2004. Section 23.1 of the agreement provided that: "Discipline shall only be for just cause."

- 2) On May 10, 2005, the employer and Guild began contract negotiations for an initial collective bargaining agreement.

- 3) On May 24, 2005, the employer terminated corrections officer Donna Manchester.

4) In May and June, 2005, the Guild attempted to grieve Manchester's termination. The employer refused to allow use of the grievance procedure from the expired WSCCCE agreement, including arbitration, for the termination.

5) On August 15, 2005, an evidentiary hearing was held before the Asotin County Board of Commissioners concerning the termination of Manchester.

6) On August 29, 2005, the Board of Commissioners sustained the termination.

7) On September 19, 2005, the employer and Guild signed their initial collective bargaining agreement.

The deficiency notice found the complaint to be defective. The Guild argued in the complaint that the employer was required to maintain the terms of the expired WSCCCE agreement during contract negotiations with the Guild. The Guild cited the following provision of Chapter 41.56 RCW in support of its position:

RCW 41.56.123 COLLECTIVE BARGAINING AGREEMENTS--EFFECT OF TERMINATION--APPLICATION OF SECTION.
(1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

RCW 41.56.123 applies where an employer and union are negotiating for a successor collective bargaining agreement. RCW 41.56.123

does not apply in circumstances where employees have chosen to change their exclusive bargaining representative.

While RCW 41.56.123 is inapplicable to the complaint, the employer did have status quo obligations to the newly-certified Guild bargaining unit. The employer's obligations were explained in *King County Library System*, Decision 9039 (PECB, 2005) as follows:

A. The parties' collective bargaining obligations:

Once a new bargaining unit is certified, the parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, and employers are prohibited from unilaterally changing mandatory subjects of bargaining except where such changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3501-A (PECB, 1998), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 8*, Decision 3661-A (PECB, 1991); *City of Tacoma*, Decision 4539-A (PECB, 1994). A complainant alleging a "unilateral change" must establish the relevant status quo. *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1989).

B. The relevant status quo:

Where a new bargaining unit is concerned, the relevant status quo is determined as of the date of the filing of the union's Petition for Investigation of a Question Concerning Representation.

The Guild filed its representation petition in Case 18893-E-04-2997 on October 12, 2004. After that date, the employer was prohibited from unilaterally changing mandatory subjects of bargaining except where such changes were made in conformity with its collective bargaining obligation or the terms of a collective bargaining agreement.

The complaint indicated that Manchester was terminated after the Guild was certified as exclusive bargaining representative, but before the Guild and employer signed an initial collective bargaining agreement. The Guild argued that the employer was under a status quo obligation to arbitrate the Guild's grievance alleging that Manchester was terminated without just cause. The employer's status quo obligations cannot be enforced through an arbitration clause of an expired collective bargaining agreement. The Guild can only enforce the employer's status quo obligations, including just cause for discipline, through the courts.

Allegations of Amended Complaint

The amended complaint deletes allegations of the complaint related to the employer's refusal to follow the grievance procedure from the expired WSCCCE agreement concerning the termination of Manchester, and adds allegations that the employer's actions changed the status quo concerning a mandatory subject of bargaining. The amended complaint alleges that the employer failed to follow the status quo "just cause" standard, by not applying the standard to Manchester and by refusing to allow an arbitrator to determine if just cause existed for the termination. The amended complaint seeks reinstatement of Manchester.

An employer violates its collective bargaining obligations under RCW 41.56.030(4) by making changes in mandatory subjects of bargaining without first giving notice to the union, providing an opportunity for collective bargaining, and bargaining in good faith upon request. However, an allegation that an employer has failed to follow established practices on a mandatory subject of bargaining in a specific instance, does not rise to the level of an

allegation that the employer has actually changed its practice. *King County*, Decision 4258-A (PECB, 1994); *King County*, Decision 4893-A (PECB, 1995); *City of Burlington*, Decision 5841-A (PECB, 1997); and *Kennewick School District*, Decision 6427-A (PECB, 1998). An isolated variance in practice does not amount to a unilateral change. The change in practice must be one which represents a departure from an established practice. The unilateral change allegations of the amended complaint concern a specific instance and fail to state a cause of action.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 12th of January, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, 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.