

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY )	
AND CITY EMPLOYEES, )	
)	
Complainant, )	CASE 20967-U-07-5350
)	
vs. )	DECISION 9728 - PECB
)	
NORTHSHORE UTILITY DISTRICT, )	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent. )	DISMISSAL
)	

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On March 14, 2007, the Washington State Council of County and City Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Northshore Utility District (employer) as respondent. The complaint was docketed by the Commission as Case 20967-U-07-5350. The allegations of the complaint concern employer interference with employee rights and discrimination in reprisal for union activities in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing charges in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by: breach of its good faith duty to bargain by making an opening proposal on an "accept or reject" basis with no negotiation, introducing 76 new issues at the fourth bargaining session, and circumvention of the union by directly issuing bargaining updates to bargaining unit members. The interference and discrimination claims are directly and exclusively related to the allegations concerning the employer's breach of its good faith bargaining obligations.

The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on April 27, 2007, indicated that the allegations of the complaint concerning interference, discrimination, and refusal to bargain state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The deficiency notice stated that it was not possible to conclude that a cause of action exists for the allegations concerning domination or assistance of a union and discrimination for filing charges.

On May 17, 2007, the union filed a letter regarding its claim of employer discrimination for filing charges. This letter is considered as an amended complaint. On May 25, 2007, the union filed a formal amended complaint, re-alleging employer interference and discrimination, employer discrimination for filing charges, and employer refusal to bargain, but did not re-allege employer domination or assistance of a union.

#### DISCUSSION

The deficiency notice pointed out that the complaint has two defects. One, in relation to allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." *City of Anacortes*, Decision 6863 (PECB, 1999).

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<sup>1</sup> 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.

Two, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the union has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

First Amended Complaint of May 17, 2007

The union attempts to cure the second defect detailed in the deficiency notice by alleging that it gave notice to the employer of an intent to file an unfair labor practice charge, and that the employer's alleged violations were, in part, responses to the union's notice. Neither Commission rules nor precedent provide for equating notice of intent to file an unfair labor practice complaint with the actual filing of a complaint. The amended complaint fails to state a cause of action for employer discrimination for filing charges.

Second Amended Complaint of May 25, 2007

The union does not re-allege a claim of employer domination or assistance of a union either on the complaint form or in the statement of facts attached to the amended complaint. This allegation is considered withdrawn.

The statement of facts alleges a new violation unrelated to the facts alleged in the complaint or first amended complaint. The allegation concerns employer refusal to bargain in violation of RCW 41.56.140(4) by circumvention of the union, where the employer sent two letters to the union regarding the reclassification of an employee and also sent copies of the letters to the employee.

WAC 391-45-070 states the following regarding amendments:

(2) Motions to amend complaints shall be subject to the following limitations:

(a) Prior to the appointment of an examiner, amendment shall be freely allowed upon motion to the agency official responsible for making preliminary rulings under WAC 391-45-110.

The Unfair Labor Practice Manager allows the amendment with the proviso that the union states two unrelated claims regarding circumvention.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the complaint and amended complaint of May 25, 2007, in Case 20967-U-07-5350 state a cause of action, summarized as follows:

Employer interference with employee rights and discrimination in reprisal for union activities in violation of RCW 41.56.140(1), and refusal to bargain in violation of RCW 41.56.140(4), by: breach of its good faith duty to bargain by (1) making an opening proposal on an "accept or reject" basis with no negotiation, (2) introducing 76 new issues at the fourth bargaining session, (3) circumvention of the union by directly issuing bargaining updates to bargaining unit members, and (4) circumvention of the union by sending copies of two letters to an

employee regarding the employer's inquiry to the union concerning that employee's reclassification.

2. Northshore Utility District shall:

File and serve its answers 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 and amended complaint of May 25, 2007 (amended 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 and amended 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 and amended complaint, will be deemed to be an admission that the fact is true as alleged in the complaint and amended complaint, and as

a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint and amended complaints in Case 20967-U-07-5350 concerning employer assistance or domination of a union and employer discrimination for filing charges are DISMISSED.

ISSUED at Olympia, Washington, this 11<sup>th</sup> day of June, 2007.

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.

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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## RECORD OF SERVICE - ISSUED 06/11/2007

The attached document identified as: **DECISION 9728 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: /S/ ROBBIE LUFFIELD

CASE NUMBER: 20967-U-07-05350 FILED: 03/14/2007 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: ALL EMPLOYEES  
DETAILS: -  
COMMENTS:

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