

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-A - PECB
	)	
NORTHSHORE UTILITY DISTRICT, )	)	AMENDED PRELIMINARY
	)	RULING AND ORDER OF
Respondent. )	)	PARTIAL DISMISSAL
_____ )	)	

On August 27, 2007, the Washington State Council of County and City Employees (union) filed a third amended complaint charging unfair labor practices with the Public Employment Relations Commission. The union filed its amended complaint under Chapter 391-45 WAC, naming the Northshore Utility District (employer) as respondent.

I reviewed the third amended complaint under WAC 391-45-110<sup>1</sup> and issued a deficiency notice on September 20, 2007. The deficiency notice indicated that some of the allegations in the amended complaint stated a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The deficiency notice also indicated that I could not conclude that a cause of action existed for other allegations in the amended complaint. On October 8, 2007, the union replied to the deficiency notice and filed its fourth amended complaint.

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the amended complaint are assumed to be true and provable. The question 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.

DISCUSSION

The September 20, 2007, deficiency notice stated that the third amended complaint appeared to raise five new allegations. First, paragraphs 12 through 16 allege employer interference with employee rights in violation of RCW 41.56.140(1), employer dominance of the union in violation of RCW 41.56.140(2), and employer refusal to bargain in violation of RCW 41.56.140(4), by asserting affirmative defense number five in the employer's answer. Second, paragraphs 17 and 18 appear to represent additional facts related to the allegation of employer refusal to bargain by circumvention of the union in violation of RCW 41.56.140(4), by sending copies of two letters to an employee regarding the employer's inquiry to the union concerning that employee's reclassification.

Third, paragraphs 19 through 22 contain a mixture of two unrelated allegations. Paragraph 19, paragraph 20, the last two lines in paragraph 21, and the last sentence in paragraph 22 allege the employer declined to investigate the distribution of an anonymous anti-union flyer or the defacing of an item posted on the union bulletin board. In addition, the first two lines in paragraph 21 and the first three sentences in paragraph 22 also relate to the circumvention allegation previously found to have stated a cause of action in the Preliminary Ruling and Order of Partial Dismissal in *Northshore Utility District*, Decision 9728 (PECB, June 11, 2007).

Fourth, paragraphs 23 and 24 allege the employer's General Manager made statements that were critical of the union and to the effect that bargaining unit employees could lose their jobs. Fifth, paragraph 25 alleges the employer engaged in bad faith bargaining by raising a new proposal to eliminate the union security provision in the contract eleven months after contract negotiations began.

Fourth Amended Complaint of October 8, 2007

Regarding the first new allegation in paragraphs 12 through 16 of the fourth amended complaint, the union did not provide any new information. The union's response fails to cure the defects raised in the September 20, 2007, deficiency notice.

Regarding the second new allegation in the amended complaint, the union did not provide any new information. Paragraphs 17 and 18 of the fourth amended complaint relate to the circumvention allegation previously found to have stated a cause of action in *Northshore Utility District*.

The union's third new allegation in paragraph 19, paragraph 20, the last two lines in paragraph 21, and the last sentence in paragraph 22 states a cause of action for interference with employee rights in violation of RCW 41.56.140(1) by the employer's unwillingness to investigate the distribution of an anonymous anti-union flyer or the defacing of an item posted on the union bulletin board. In addition, the first two lines in paragraph 21 and the first three sentences in paragraph 22 in the third amended complaint relate to the circumvention allegation previously found to have stated a cause of action in *Northshore Utility District*.

The union's fourth new allegation in paragraphs 23 and 24 states a cause of action for interference with employee rights in violation of RCW 41.56.140(1) when the employer's General Manager made statements that were critical of the union and to the effect that bargaining unit employees could lose their jobs.

The union's fifth new allegation in paragraph 25 states a cause of action for interference with employee rights in violation of RCW 41.56.140(1) by raising a new proposal to eliminate the union

security provision in the contract eleven months after contract negotiations began.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations in the third and fourth amended complaints 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; (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; and (5) by raising a new proposal to eliminate the union security provision in the contract eleven months after contract negotiations began.

Employer interference with employee rights in violation of RCW 41.56.140(1) by: (1) unwillingness to investigate the distribution of an

anonymous anti-union flyer or the defacing of an item posted on the union bulletin board; and (2) making statements that were critical of the union and to the effect that bargaining unit employees could lose their jobs.

2. Northshore Utility District shall:

File and serve its answers to the following new allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order:

- a. 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: (5) by raising a new proposal to eliminate the union security provision in the contract eleven months after contract negotiations began.
- b. Employer interference with employee rights in violation of RCW 41.56.140(1) by: (1) unwillingness to investigate the distribution of an anonymous anti-union flyer or the defacing of an item posted on the union bulletin board; and (2) making statements that were critical of the union and to the effect that bargaining unit employees could lose their jobs.

The employer's answer shall:

- a. Specifically admit, deny or explain each fact alleged in the third and fourth amended complaints found to have stated a cause of action, except if the employer states

it is without knowledge of the fact, that statement will operate as a denial; and

- b. Assert any affirmative defenses the employer claims to exist in the matter.

It would be extremely helpful if the employer used legislative bill drafting format (underlining to show additions, strike-through to show deletions) to amend and re-submit its answer previously filed on June 29, 2007. Using legislative bill drafting format when re-submitting its answer to the amended complaints will not only enable all of us involved in these complex proceedings to rely on a single pleading document but will also allow us to easily locate and understand precisely what has been plead. It would also be extremely helpful if the parties used legislative bill drafting format when submitting any future amended complaints or answers.

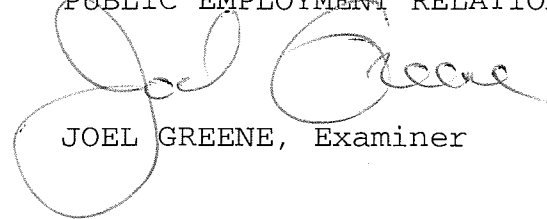
The employer shall file its answer at the Commission's Olympia office. The employer shall serve a copy of its answer on the attorney for the union which filed the amended complaints. The employer shall complete service no later than the day of filing. Except for good cause shown, the employer's failure to file an answer within the time specified, or failure to file an answer to specifically deny or explain a fact alleged in the amended complaints, will be deemed to be an admission that the fact is true as alleged in the amended complaints, and as a waiver of a hearing regarding facts admitted in this manner. WAC 391-45-210.

3. The allegations in paragraphs 12 through 16 of the third and fourth amended complaints alleging employer interference with

employee rights in violation of RCW 41.56.140(1), employer dominance of the union in violation of RCW 41.56.140(2), and employer refusal to bargain in violation of RCW 41.56.140(4), by asserting affirmative defense number five in the employer's answer, are DISMISSED.

ISSUED at Olympia, Washington, this 15<sup>th</sup> day of October, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Handwritten signature of Joel Greene in cursive script, written over the printed name.

JOEL GREENE, Examiner

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.