

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL 2545,)	
)	CASE 12586-U-96-2994
Complainant,)	DECISION 5712 - PECB
)	
vs.)	CASE 12592-U-96-2996
)	DECISION 5713 - PECB
CITY OF KIRKLAND,)	
)	
Respondent.)	PARTIAL ORDER OF DISMISSAL
)	
)	

On July 3, 1996, International Association of Fire Fighters, Local 2545 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Kirkland (employer) had violated RCW 41.56.140.¹ On July 10, 1996, the union filed a second complaint charging unfair labor practices with the Commission, alleging that the employer had committed additional violations of RCW 41.56.140.²

The first allegation in each case asserted that the employer had refused to bargain, by making unilateral changes in working conditions. Specifically, the union alleged in the first case that the employer changed the practice concerning holiday buy back pay; the union alleged in the second case that the employer changed the working conditions concerning return to work under extended leaves, health and safety, training while on leave, vacation leave and promotion. Numerous decisions of the Commission, the National Labor Relations Board and the courts have found "refusal to

¹ Case 12586-U-96-2994.

² Case 12592-U-96-2996.

bargain" violations where employers have made unilateral changes in the wages, hours and working conditions of bargaining unit employees, without first giving notice to the exclusive representative and bargaining, upon request.

The second allegation in each case was that the employer made the above-noted unilateral changes in retaliation for the union's filing of safety complaints with the Washington State Department of Labor and Industries (L&I). That agency administers the Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW.

The complaints were considered for the purpose of making preliminary rulings under WAC 391-45-110.³ While the unilateral change allegation in each case was found to state a cause of action, a deficiency notice issued on September 18, 1996, found that neither complaint stated a cause of action with respect to the claimed retaliation for filing safety complaints with L&I. Chapter 49.17 RCW contains its own provisions to prohibit discrimination against employees who file safety complaints under WISHA, and its own procedures for determining allegations of such discrimination through proceedings before L&I. RCW 49.17.160.

The complainant was given 14 days following the date of the deficiency notice in which to file and serve amended complaints which stated a cause of action on the alleged retaliation, or face dismissal of those allegations. Nothing further has been heard or received from the complainant, and the specified time period has expired.

³ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

NOW, THEREFORE, it is

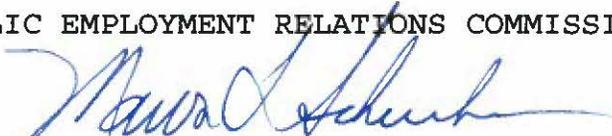
ORDERED

1. The allegations in each of the above-captioned cases regarding the retaliation by the employer for filing safety complaints with L&I are DISMISSED for failure to state claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.
2. William A. Lang of the Commission staff is designated as Examiner to conduct further proceedings concerning the allegation in each case regarding the employer's unilateral changes in working conditions.
3. Pursuant to WAC 391-45-110(2), the City of Kirkland shall:
File and serve its answer to the complaint within 21 days following the date of this order.
 - a. An answer filed by the respondent shall:
 - i. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.
 - ii. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.
 - iii. Assert any other affirmative defenses that are claimed to exist in the matter.
 - b. The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

- c. Except for good cause shown, a failure to file an answer within the time specified, or the failure of an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and, as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

ISSUED at Olympia, Washington, on the 1st day of November, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.