Seattle Housing Authority, Decision 5907 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 8,	)	
Complainant,	)	CASE 12800-U-96-3078
vs.	)	DECISION 5907 - PECB
SEATTLE HOUSING AUTHORITY,	)	
Respondent.	)	ORDER OF PARTIAL DISMISSAL

The complaint charging unfair labor practices filed in the above-captioned matter on November 4, 1996 alleged employer interference with employee rights, discrimination, and refusal to provide information during the parties' negotiations for their first collective bargaining agreement. The Executive Director issued a deficiency notice on February 4, 1997, under WAC 391-45-110,[1] pointing out certain defects with the complaint, as filed. The complainant was given 14 days in which to file and serve an amended complaint, or face dismissal of two of three allegations for failure to state a cause of action.

[1] 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.

Employer Interference with Employee Rights

Local 8 alleged that the employer interfered with employee rights in September of 1996, by voting to grant its unrepresented employees a 3% wage increase,[2] while granting only a 2.75% wage increase to employees represented by the union. Local 8 contended that granting a lower wage increase to union-represented employees was a departure from the past practice of granting annual salary adjustments in the same amount to both represented and non-represented employees. The complaint did not indicate, however, if the employer and Local 8 had negotiated this matter.

The deficiency notice pointed out a fundamental question as to why the employer was granting any pay increase to bargaining unit employees. Once employees exercise their statutory right to select an exclusive bargaining representative, an employer is prohibited from taking unilateral action in regard to the wages, hours, and working conditions of those employees, and has an obligation to maintain the status quo except where it has fulfilled its obligations under the collective bargaining statute. See, Franklin County, Decision 1890 (PECB, 1984), which involved an employer granting employees a wage increase during a time when negotiations for a collective bargaining agreement had not been completed. See, also, City of Tukwila, Decision 2434-A (PECB, 1987); City of

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[2] The complaint alleged that the Seattle Housing Authority Board of Commissioners voted to grant the increase in a Special Meeting held on September 25, 1966. The complaint did not indicate if or when the increase was actually implemented.

Yakima, Decision 3564-A (PECB, 1990); Snohomish County Fire District 3, Decision 4335-A (PECB, 1994).

There were no allegations in the complaint which show that the employer was under any compulsion to grant any "cost of living" increase to its employees in 1996. The wages of bargaining unit employees became a subject for collective bargaining, and the employer's status quo obligations commenced, as soon as the union became the exclusive bargaining representative of the employees involved here. Once organized, the employees must look to negotiations between their union and the employer for any and all wage increases, not to any further unilateral actions by the employer.

An employer which desires to change the wages, hours, or working conditions of its represented employees must give notice to the exclusive bargaining representative of those employees, must provide an opportunity for bargaining prior to implementing the change, and must bargain in good faith if requested to do so. An employer which implements a change in wages, hours, or conditions of employment unilaterally (i.e., without having fulfilled its bargaining obligation) commits a "refusal to bargain" unfair labor practice under RCW 41.56.140(4). Wages are clearly a mandatory subject of bargaining, whether called "cost of living" or by some other term, and the employer would place itself in peril by unilaterally granting any wage increase. While the circumstances alleged in this complaint inherently involve a change from the status quo which the employer was legally obligated to maintain, the union does not appear to complain about unilateral action.

Rather, the union only accuses the employer of interfering with employee rights.

An employer is entitled to act unilaterally with regard to employees who are not represented for the purposes of collective bargaining. An exclusive bargaining representative only has bargaining rights concerning the wages, hours, and working conditions of employees within the bargaining unit that it represents, and has no basis to either bargain for or complain about what is done for or to persons outside its bargaining unit. In the absence of an amendment, this allegation fails to state a cause of action.

Employer Discrimination

The complainant alleged that the employer ordered three union activists to subject themselves to polygraph examinations under threat of adverse action on or about June 19, 1996, while not subjecting similarly-situated employees who were not union activists to the same treatment. Further the complaint alleged that the employer, through its consultant (the Kearns Agency), interrogated the three union activists about the union, a pending grievance, and other working conditions.

While discrimination against employees for union activity is clearly unlawful under RCW 41.56.140(1), the deficiency notice pointed out that clarification of the complaint was needed before a cause of action could be found to exist in this case. The statement of facts referred to a number of employees who were

identified as union activists, but further identified one of them as a union shop steward who had filed a "grievance" concerning "multiple contract violations" which was advanced to an "arbitration" process, but was settled prior to arbitration. Since other allegations of the complaint indicated that the employer and union were still negotiating their first contract, a question arose as to whether the alleged discriminatee was a member of the bargaining unit represented by the union or a member of some other bargaining unit. The complaint went on to list other individuals as union activists and/or shop stewards who had filed grievances against the employer.[3] In light of the recent certification of this bargaining unit, the ongoing negotiations for a first contract, and the absence of a current bargaining agreement that contains a grievance procedure, it was unclear as to whether these employees were within the bargaining unit represented by Local 8. The union was advised that it needed to clarify its legal standing to complain on behalf of the first three alleged victims of discrimination, and to clarify the bargaining unit status of all of the union activists mentioned in the complaint. In the absence of an amendment, this allegation fails to state a cause of action.

Refusal to Provide Information

The complaint alleged that the employer failed to bargain in good faith on and after September 25, 1996, by refusing to provide the

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[3] It was not clear whether the complaint was charging the employer with discrimination against the employees in the latter group, or their situations were merely set forth for illustrative purposes.

results of a classification and compensation study that the parties had agreed would be undertaken in connection with the wage negotiations for their initial collective bargaining agreement.

It is well-established that an employer must provide the exclusive bargaining representative of its employees, upon request, with information needed for the purposes of collective bargaining or contract administration. Assuming that all of the facts regarding this refusal to provide information are true and provable, it appeared that an unfair labor practice violation could be found on this allegation.

NOW, THEREFORE, it is

ORDERED

1. The allegations regarding employer interference with employee rights in relation to wage increases provided to employees outside of the bargaining unit are hereby DISMISSED.

2. The allegations regarding employer discrimination against union activists are hereby DISMISSED.

3. The allegations regarding the employer's refusal to provide the results of a classification and compensation study that the parties had agreed would be undertaken in connection with the wage negotiations for their initial collective bargaining

agreement state a cause of action for further proceedings under Chapter 391-45 WAC.

a. The employer shall file and serve its answer to the complaint within 21 days following the date of this letter.

An answer filed by a respondent shall:

a. 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; and

b. Assert any affirmative defenses that are claimed to exist in the matter.

The original answer and three copies 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. 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.

b. Kathleen O. Erskine of the Commission staff is assigned as Examiner to conduct further proceedings in this matter

pursuant to Chapter 391-45 WAC. In order to comply with time limitations imposed by the Administrative Procedure Act, Chapter 34.05 RCW, the Examiner will be issuing a notice of hearing in the near future. A party which desires to obtain a continuance of a hearing or other deadline established by the the Examiner must comply with the procedure set forth in WAC 10-08-090, including making contact to determine the position of the other party(-ies) prior to presenting the request to the Examiner.

Issued at Olympia, Washington, this 9th day of May, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 2 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.