

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY LIEUTENANTS)	
AND CAPTAINS ASSOCIATION,)	
)	
Complainant,)	CASE 13893-U-98-3415
)	
vs.)	DECISION 6525 - PECB
)	
SPOKANE COUNTY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

This case is before the Executive Director for further processing under WAC 391-45-110. The complaint is dismissed for failure to state a cause of action for unfair labor practice proceedings before the Commission.

On May 4, 1998, the Spokane County Lieutenants and Captains Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Spokane County (employer) had refused to bargain with the union. The complaints were reviewed for the purpose of making a preliminary ruling under WAC 391-45-110,¹ and deficiency notice issued on July 29, 1998, pointed out several problems which precluded finding a cause of action to exist:

¹ At that 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.

1. The statement of facts filed with the complaint form begins with four numbered paragraphs under a "History" title. They include information relating to bargaining which apparently has been ongoing for some time between the union and employer. A specific time frame is not indicated, however, which makes it difficult to discern whether the complaint (or any part of it) is timely under RCW 41.56-.160. There are some references to behavior which the union views as a refusal to bargain on the part of the employer, but all of that information seemingly relates to the period from June through November of 1996. As it now exists, such information can only be taken as background to timely allegations.
2. A second set of allegations is set forth under a "Most Recent ULP Activity" title. Paragraphs 1 through 3 of that section provide information concerning the assignment of a member of the Commission's staff as mediator in the parties' negotiations while it is alleged that the employer failed to appear at a scheduled meeting, no date for that meeting was provided. It is thus impossible to assess whether that allegation is timely.
3. In an un-numbered paragraph which follows paragraph 3 of the second set, the complaint alleges that the employer brought "new issues" to the bargaining table. A July 18, 1996, meeting is discussed, but it is not clear whether that is the date of the conduct referred to in the first sentence of the paragraph. Any events occurring in 1996 could only, as stated above, be taken as background to timely allegations.
4. In a fourth paragraph under the "Most Recent ULP Activity" title, the complaint alleges that the employer refused to bargain and "began to" discriminate against the members of the bargaining unit on January 9, 1998, by refusing to pay them a 2% pay increase granted to

non-represented employees. No specific facts are supplied to explain the refusal to bargain allegation, and Snohomish County Fire District 3. Decision 4336-A (PECB, 1994) stands for the proposition that an employer is not obligated to extend the wage increases given to unrepresented employees to the employees in a bargaining unit affected by a pending or recently concluded representation proceeding. Without further information, the facts as supplied, would not state a cause of action.

5. In the second and third un-numbered paragraphs under that paragraph 4, the complaint references statements made by the employer "after January, 1998" that allegedly do not "minimally meet its statutory obligations to negotiate and mediate in good faith" and that more recently the respondent has made it clear that it has no intention of negotiating or mediating a collective bargaining agreement" However, the complainant does not provide any facts or context from which an evaluation of such statements could be made. See, WAC 391-45-050. As the Executive Director cannot infer or supply factual data, these statements as provided do not state a cause of action.
6. In a fourth un-numbered paragraph, the complaint recounts a conversation between union and employer representatives concerning the parties' selection of an interest arbitrator. Neither the date of the conversation nor facts sufficient to link such a conversation to an unfair labor practice are provided by the complainant.
7. Finally, the complainant references the fact that the union is not listed on various interoffice employer correspondence. The relevance of such a statement appears only to be as background information, since neither dates nor facts sufficient to support a refusal to bargain allegation are supplied.

The union was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of this complaint.

On August 17, 1998, the Commission received a notice from Barry E. Ryan and Kambra Mellergaard of the law firm of Barry E. Ryan, Attorney at Law, P.S., withdrawing as attorneys of record for the Spokane County Lieutenants and Captains Association. There has been no other response from the union to the deficiency notice.

NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, this 23rd day of December, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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.