

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES)	
ASSOCIATION,)	CASE NO. 5938-U-85-1103
)	
Complainant,)	DECISION 2396-A - PECB
)	
vs.)	
)	
FORT VANCOUVER REGIONAL LIBRARY,)	DECISION OF COMMISSION
)	
Respondent.)	
)	
)	
)	

Mark S. Lyon, General Counsel, Washington Public Employees Association, filed the petition for review and brief on behalf of the complainant.

Stoel, Rives, Boley, Fraser & Wyse, by David S. Barlow, attorney at law, filed the brief on behalf of the respondent.

A complaint charging unfair labor practices was filed in the above-entitled matter on August 14, 1985. The executive director issued a preliminary ruling on October 4, 1985, pursuant to WAC 391-45-110, referring the entire complaint to an examiner for hearing.

On February 19, 1986, the union filed a motion to amend and a proposed amended complaint. On February 27, 1986, Executive Director Marvin L. Schurke, issued a preliminary ruling on the amended complaint, dismissing certain of the charges on the bases of timeliness and failure to state a cause of action, and referring the remaining charges for hearing along with the charges in the original complaint. The complainant filed a timely petition for review, placing the dismissed issues before the Commission.

FACTS

The complaint charging unfair labor practices in this case was filed with the Public Employment Relations Commission under the authority of RCW 41.56.140:

RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To control, dominate or interfere with a bargaining representative;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) To refuse to engage in collective bargaining.

The Commission processes unfair labor practice complaints under RCW 41.56.160:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS. The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

Acting under authority conferred by WAC 391-45-110, the executive director dismissed paragraph 1.a. of the amended

complaint for failure to state a cause of action under RCW 41.56.140 and for being untimely under RCW 41.56.160. Paragraph 4.c. was dismissed for being untimely. Paragraphs 4.a., 4.b., 7.a. and 7.b. were found to be partially untimely. Paragraph 6.b. was dismissed for failure to state a cause of action. Paragraphs 4, 7 and 8 were considered to be introductory or conclusionary.

The complainant disagrees with the executive director's preliminary ruling and requests that the Commission reinstate the dismissed allegations.

The respondent agrees with the executive director's ruling.

DISCUSSION

To state a cause of action, the charging party must allege specific actions or omissions that, if proven true, would constitute unfair labor practices. Additionally, charges in an amended complaint must either relate to the specific charges set forth in the original complaint or they will be considered new items which carry their own six-month time limit from the time of filing. RCW 41.56.160.

Reviewing the complaint, amended complaint, and the preliminary ruling on the amended complaint in light of the entire record, the Commission finds the executive director's rulings to be correct on all points, except as follows:

Paragraph 1.a. of the amended complaint reads:

- a. Despite notification as early as November, 1984 that WPEA would be replacing

the previous certified collective bargaining agent for bargaining unit employees and that the employees wished to renegotiate substantial portions of their collective bargaining agreement, the Library did not submit any contract proposals to WPEA until March 11, 1985, more than two months after contract negotiations formally commenced. Management's bargaining team was unprepared to negotiate or make concessions on WPEA's proposals at negotiating sessions on February 7 and 21, 1985.

The references in the last sentence of that paragraph to negotiating sessions held on February 7 and 21, 1985 can conceivably fall under paragraph 3 of the original complaint, which stated:

(3) That during the past six months, WPEA has met with this employer 13 times to try to reach an agreement. The employer bargaining style is best characterized by Boulwarism - a "take it or leave it" approach, based upon take-aways from the past contract, and that constitutes surface bargaining at best.

Additionally, paragraph 7.a. of the amended complaint, which reads:

a. Repeatedly renumbering and moving proposed subjects of bargaining from one proposed Article to another making negotiations confusing and lengthy.

can arguably be covered by paragraphs 4 and 5 of the original charges, which stated:

(4) That on July 19, 1985 in mediation with PERC, the employer "summarized" past economic proposals, in response to WPEA proposals, as a bona fide "counter-proposals". In fact, the employer proposals were the same as those submitted to the union months before, but only typed in a different format. The employer offered the "proposals" to the mediator to be delivered to the union as part of the "negotiation" process, when in fact the real intent of the Library was to refuse to bargain and to avoid substantive negotiations.

(5) That on July 19, 1985, after the parties had agreed earlier in the day to proposed Articles 7 and 9, that at 3:50 P.M., the Employer re-submitted those same agreed-to proposals, as part of a "package" to the Union, to get the union to drop 4 other articles, in effect the Management was saying, "We'll give you what we already said we would give you way back when, if you will drop these other things" - when those other things were not a contingency in the union's acceptance of Articles 7 and 9. This is only one sample of the "games" the Library engaged in to avoid good faith bargaining, and to delay the bargaining process.

As to those two points, the Commission expands the already generous liberal construction of the complaints made by the executive director.

NOW, THEREFORE, It is

ORDERED

1. In addition to the matters previously assigned by the Executive Director for hearing, the last sentence of paragraph 1.a. of the amended complaint and paragraph 7.a. of the amended complaint (to the extent, as noted above,

that they relate to allegations timely filed in the original complaint charging unfair labor practices in this case) are referred to the examiner for hearing.

2. Except as modified herein, the executive director's Preliminary Ruling on Amended Complaint, and the dismissal therein of certain charges, is affirmed.

ISSUED at Olympia, Washington, this 2nd day of July, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner