Kitsap County, Decision 5773 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY & CITY EMPLOYEES, AFSCME, LOCAL 138,	)	
Complainant,	)	CASE 12568-U-96-2988
vs.	)	DECISION 5773 - PECB
KITSAP COUNTY,	)	
Respondent.	)	ORDER OF PARTIAL DISMISSAL

The complaint charging unfair labor practices was filed with the Public Employment Relations Commission on June 26, 1996. The union addressed two specific situations in its original complaint: One in the county treasurer's office; and a second in the county assessor's office. A letter issued by the agency on September 12, 1996, resulted in the filing, thereafter, of required copies of documents.

A deficiency notice issued on November 13, 1996, pursuant to WAC 391-45-110,[1] found that some of the allegations failed to state a cause of action. An amended complaint filed on November 27, 1996, is now before the Executive Director under WAC 391-45-110.

The allegations with respect to the treasurer's office may be summarized in the following manner:

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[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.

* A reorganization in the office allegedly resulted in changing and/or eliminating duties which had historically been performed by employees in the bargaining unit represented by the union.

* On December 12, 1995, the employer allegedly advised Data Control Analyst Mike Ryan, a bargaining unit employee who worked in the treasurer's office, that he would be laid off effective December 31, 1995.

* Ryan's duties were allegedly transferred to both non-bargaining unit personnel and to other bargaining unit personnel, without notice and bargaining.[2]

* The employer allegedly asked the union to negotiate on April 10, 1996, concerning new classifications to be created pursuant to the reorganization of the treasurer's office. Enclosed with this correspondence was a detailed description of the proposed reorganization, all or part of which was implemented effective with the layoff of Ryan on December 31, 1995.

Assuming for purposes of a preliminary ruling that all of the facts alleged in the complaint are true and provable, it appears that unfair labor practice violations could be established with respect to the layoff of Mike Ryan and the reassignment of bargaining unit employee's job duties without notice to or negotiations with the union, as well as for skimming of bargaining unit work by transfer of Ryan's duties to non-bargaining unit employees. The belated

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[2] The union alleges that it requested bargaining of effects on December 21, 1995, and that the employer responded that meetings already held by the parties constituted the bargaining requested by the union. The union alleges that it made another written request on February 8, 1996, for bargaining on the impacts of the layoffs, and that the employer responded on April 9, 1996, with a demand for the specifics as to what the union desired to negotiate concerning the impact of the Ryan layoff. The union alleges that it responded to that inquiry by indicating that it wished to bargain the transfer of Ryan's duties to non-bargaining unit employees and the reorganization of the treasurer's office.

offer to bargain made by the employer after presenting the union with a fait accompli would not negate a prior refusal to bargain. The union's allegation that it was unaware, until it processed the grievance filed on behalf of Ryan, of data generated by the treasurer's office between August and November of 1995, is sufficient to warrant a hearing on a claim that might otherwise be foreclosed by the six month period of limitations contained in RCW 41.56.160.

The allegations with respect to the assessor's office may be summarized in the following manner:

* The employer allegedly notified Michelle Nelson, a bargaining unit employee working as a cadastral technician in the assessor's office, that her hours of work would be reduced from 40 to 26 per week.

* This notice was allegedly provided on the same date that Ryan was notified of his layoff, and budget constraints were given as the reason for the employer action.

In the original complaint, the union indicated a grievance had been filed concerning the reduction in hours of work. The deficiency notice pointed out that the statement of facts did not allege the reduction of Nelson's work hours was accompanied by any transfer of work to other bargaining unit employees, or by any skimming of bargaining unit work. Other than the circumstance of dates, there were no facts suggesting "discrimination" against employees for engaging in protected activities.[3]

The union was provided a period of 14 days in which to file and serve an amended complaint which corrected the noted deficiencies, or face dismissal of the insufficient allegations. The union

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[3] The Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic.

responded with the amended complaint that was filed on November 27, 1996.

The only substantive change in the factual allegations of the amended complaint from those previously submitted was that no grievance was filed with respect to the reduction in hours of work for the employee in the assessor's office. The union asserted an alternate theory, to the effect that the employer's refusal to bargain the impact of the reduction in work hours prevented the union from exploring alternative funding sources to avoid the reduction in work hours. The complainant further maintains that, unless the employer is required to bargain the impact of the reduction in work hours, it will never know whether the action taken was for the reasons stated or because of animus on the part of the employer. The amended complaint states that the union was not aware of any skimming of bargaining unit work in connection with the reduction in work hours.

The amended complaint advanced some new lines of argument, but provided no additional facts to support the original allegations of the complaint. Arguments do not, however, substitute for facts constituting a cause of action. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). Inasmuch as "skimming" is a statutory violation, rather than a contractual violation, the absence of "skimming" certainly would not justify a failure to file a timely grievance on potential contractual claims. Contrary to the union's statement that it had no way of testing the truth or falsity of the employer's stated reasons without "bargaining", enforcement of any layoff/recall rights arising from the parties' contract would have to come through the grievance and arbitration machinery of the contract itself. The amended complaint thus does not cure the

deficiencies noted with respect to the allegations concerning the reduction in work hours.

NOW THEREFORE, it is

ORDERED

1. Vincent M. Helm of the Commission staff is designated as Examiner, to conduct further proceedings under Chapter 391-45 WAC on the allegations concerning transfers of bargaining unit work in connection with the reorganization within the office of the county treasurer.

PLEASE TAKE NOTICE THAT, the Kitsap County shall:

File and serve its answer to the complaint within 21 days following the date of this order.

An answer filed by a respondent shall:

1. 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.

2. 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.

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

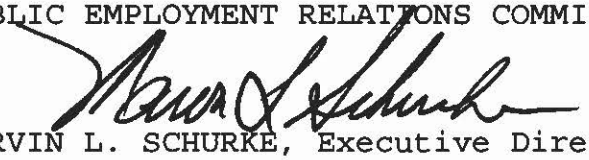
The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

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.

2. The allegations of the complaint and amended complaint with regard to the reduction of work hours of Michelle Nelson are dismissed as failing to state a cause of action.

Dated at Olympia, Washington, this 18th day of December, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order will be the final order of the agency on those matters unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.