

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 2088,

Complainant,

vs.

CITY OF TUKWILA,

Respondent.

CASE 22646-U-09-5791

DECISION 10536 - PECB

PRELIMINARY RULING, DEFERRAL
INQUIRY AND PARTIAL ORDER OF
DISMISSAL

On August 17, 2009, the International Association of Firefighters, Local 2088 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Tukwila (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 21, 2009, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action and finds a cause of action for interference and refusal to bargain (unilateral change) allegations of the complaint. The employer must file and serve its answer within 21 days following the date of this Decision.

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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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its (a) unilateral change in the work schedule of the day shift bargaining unit members working as Fire Prevention Officers, without providing an opportunity for bargaining, and (b) failing or refusing to meet and negotiate with the exclusive bargaining representative of its employees concerning the decision and effects of (i) its failure to give notice of the work schedule change, and (ii) interpretation of the timing of an arbitration demand.

The allegations of the complaint concerning interference and a unilateral change to the work schedule state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out the defects to the remainder of the complaint and noted that remedy request includes requests that are outside the jurisdiction of the Commission.

The complaint alleges that the employer unilaterally changed the work schedule for certain bargaining unit members, without providing an opportunity for bargaining. Work schedules are a mandatory subject of bargaining, and the union has stated a cause of action for employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4). The allegation concerning failure to give notice for the work schedule change is included in the cause of action for a unilateral change (as an alleged fait accompli); it is not a separate unfair labor practice claim.

The complaint further alleges that the employer has failed or refused to bargain over the interpretation of the timing of an arbitration demand. That issue concerns the interpretation of the collective bargaining agreement between the employer and union. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. The Commission acts to interpret collective bargaining

statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. The union must pursue a remedy through arbitration or the courts.

The union checked the box on the complaint form to allege employer discrimination in violation of RCW 41.56.140(1). It is an unfair labor practice for an employer to deprive employees of ascertainable rights, benefits, or status in reprisal for union activities protected by Chapter 41.56 RCW. The complaint does not include facts indicating that the employer's actions were taken in reprisal for protected union activities engaged in by bargaining unit members.

The union's remedy request refers to an action for wages and asks the Commission to award attorney fees and costs. Although Commission precedent provides for an award of attorney fees under certain circumstances, the Commission has no jurisdiction to do so under Chapter 49 RCW. In addition, the remedy request specifically asks for a remedy for the allegation concerning the change in work schedules, but also refers to non-specific allegations, by asking for a return to the status quo for work schedules "among other things," and a cease and desist order regarding the schedule changes and "any other breach of the collective bargaining agreement." The inference taken from the non-specific references in light of the statement of facts is that they refer to the timing of the arbitration demand. As previously stated, the Commission does not remedy violations of collective bargaining agreements through unfair labor practice proceedings.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in the work schedule of the day shift bargaining unit members working as Fire Prevention Officers, without providing an opportunity for bargaining.

These allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. The City of Tukwila shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial.
- b. Specify whether "deferral to arbitration" is requested and, if so:
 - i. Indicate whether a collective bargaining agreement was in effect between the parties at the time of the alleged unilateral change;
 - ii. Identify the contract language requiring final and binding arbitration of grievances;
 - iii. Identify the contract language which is claimed to protect the employer conduct alleged to be an unlawful unilateral change;
 - iv. Provide information (and copies of documents) concerning any grievance being processed on the matter at issue in this unfair labor practice case; and
 - v. State whether the employer is willing to waive any procedural defenses to arbitration.
- c. Assert any other affirmative defenses that are claimed to exist in the matter.

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.

An examiner will be designated to conduct further proceedings in this matter pursuant to Chapter 391-45 WAC. Until an examiner is assigned, all correspondence and motions should be directed to the undersigned.

3. The allegations of the complaint concerning employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), in reprisal for union activities protected by Chapter 41.56 RCW; and interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by failing or refusing to meet and negotiate with the exclusive bargaining representative of its employees concerning the decision and effects of the interpretation of the timing of an arbitration demand, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 16th day of September, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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PUBLIC EMPLOYMENT RELATIONS COMMISSION



BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 22646-U-09-05791 FILED: 08/17/2009 FILED BY: PARTY 2
DISPUTE: ER UNILATERAL
BAR UNIT: FIREFIGHTERS
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF TUKWILA
ATTN: JIM HAGGERTON
6200 SOUTHCENTER BLVD
TUKWILA, WA 98188
Ph1: 206-433-1800

PARTY 2: IAFF LOCAL 2088
ATTN: STEVEN RYDEEN
PO BOX 69104
SEATAC, WA 98168-1104
Ph1: 206-762-9019

REP BY: GEORGE MERKER
MERKER LAW OFFICE
PO BOX 11131
BAINBRIDGE ISLAND, WA 98110
Ph1: 206-915-4200 Ph2: 206-842-8555