King Fire District 36 (International Association of Fire Fighters, Local 2950), Decision 11302 (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING FIRE DISTRICT 36, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 2950, Respondent.	CASE 24046-U-11-6150 DECISION 11302 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Summit Law Group, by *Sofia Mabee,* Attorney at Law, for the employer.

Michael Duchemin, Attorney at Law, for the union.

On June 15, 2011, King Fire District 36 (employer) filed an unfair labor practice complaint with the Public Employment Relations Commission alleging the International Association of Fire Fighters Local 2950 (union) refused to bargain in violation of RCW 41.56.140 by failing to provide requested information to the employer. The union filed an answer on July 13, 2011, which included a counterclaim. On July 20, 2011, the union amended its answer to drop the counterclaim. On September 21, 2011, Examiner Emily Martin held an evidentiary hearing. On November 29, 2011, both parties filed post-hearing briefs.

ISSUE

1. Did the union refuse to bargain when it failed to timely provide documents in response to the employer's request for information?

The union breached its duty to bargain in good faith and refused to bargain when it was unreasonably late in providing the employer with a document related to a pending grievance thereby violating RCW 41.56.150(4) and (1).

LEGAL STANDARDS

Under RCW 41.56.030(4), the parties have an obligation to negotiate in good faith. Under both federal and state law, this duty to bargain includes a duty to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd, City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). The obligation extends not only to information that is useful and relevant to the collective bargaining process, but also encompasses information necessary to the administration of the parties' collective bargaining agreement. *King County*, Decision 6772-A (PECB, 1999).

A party that receives an information request has an obligation to respond and the duty to explain any objection to the request. If a party believes the requested information is not relevant to collective bargaining activities, it has a duty to notify the other party that it does not believe the information is related to collective bargaining. *Seattle School District*, Decision 9628-A (PECB, 2008). In *King County*, Decision 6772-A, this Commission embraced the "discovery-type" standard used by the National Labor Relations Board to determine relevancy of requested information. This standard, as explained in *Maben Energy Corp.*, 295 NLRB 152 (1989), obligates a party to provide the other party with requested information if there is a probability that such data is relevant and will be of use in fulfilling its statutory duties and responsibilities. *City of Yakima,* Decision 10270-B (PECB, 2011).

A responding party must reply to the information request in a reasonable and timely manner and may be found responsible for delays caused by its staff's failure to understand the duty to provide information. *Seattle School District*, Decision 8976 (PECB, 2005). Even if the request is too vague or overly burdensome, a request cannot simply be ignored. Instead, the responding party must communicate any objections and allow the requesting party an opportunity to justify or modify the request. *Port of Seattle*, Decision 7000-A (PECB, 2000).

The Commission generally finds that any refusal to bargain violation inherently interferes with the rights of bargaining unit employees and is routinely a derivative interference violation. *Skagit County,* Decision 8746-A (PECB, 2006).

ANALYSIS

On July 15, 2010, a member of the bargaining unit, Cliff Griffin, volunteered to work two overtime shifts in addition to his regularly scheduled work shift and, when requested, was not provided an eight hour break. As a result, Griffin was on duty for 96 uninterrupted hours. The parties' collective bargaining agreement contains language that states the maximum amount of time an employee can work is 72 hours. On July 20, 2010, the union filed a grievance alleging a contract violation. On July 27, 2010, the employer disciplined Griffin for his role in the incident.

On August 20, 2010, the union filed documents with the Washington State Department of Labor and Industries (Labor and Industries) alleging both a safety and a discrimination violation, stemming from Griffin's 96-hour shift and the related disciplinary action. The union provided the employer with a copy of these documents.

On September 23, 2010, the union received a letter from a department within Labor and Industries stating the discrimination complaint would not be pursued because it did not meet the relevant criteria for discrimination. The letter also stated that the union's safety complaint was being sent to different divisions of Labor and Industries.

By October 8, 2010, the employer had withdrawn Griffin's discipline and the parties entered discussions to resolve several issues that they had in dispute. When these discussions began, the union notified the employer that the grievance alleging a contract violation when Griffin worked 96 hours and the Labor and Industries complaint would not be part of this settlement. Thus, the parties' settlement agreement included language excluding the 96-hour issue and the Labor and Industries complaint from the settlement.

On January 5, 2011, the union's attorney contacted Labor and Industries to determine the status of the remaining safety complaint. On January 14, 2011, the union attorney received an e-mail from Labor and Industries stating the safety complaint would not be pursued. The union's attorney forwarded this e-mail to the union president on January 15, 2011, but did not notify the employer. On January 31, 2011, the parties finalized and signed their settlement agreement regarding the unrelated issues. Meanwhile, Griffin's grievance regarding the 96-hour issue

continued to be pursued through the grievance procedure and was scheduled for arbitration on May 2, 2011.

On February 18, 2011, the union informed the employer that Labor and Industries would not pursue the safety complaint. The employer responded by e-mail asking for anything in writing from Labor and Industries about the dismissal. The union president said that he would check with the union's attorney. On February 26, 2011, the employer e-mailed the union and again asked for documentation from Labor and Industries about the dismissal. Once again, the union president said he would check with the union's attorney. In addition to its requests through e-mail, the employer verbally requested that the union provide the Labor and Industries documentation.

Two months later, on April 28, 2011, the union's attorney sent the employer's attorney a copy of the Labor and Industries September 23, 2010 letter stating that the discrimination complaint would not be pursued. The next day, Friday, April 29, 2011, the union's attorney sent the employer's attorney a copy of Labor and Industries' January 14, 2011 e-mail which stated that the safety complaint would not be pursued. These documents were accompanied with an apology for the delay, but this apology did not justify the tardiness of the documents or give a sufficient reason why the request had been given a low priority. The arbitration was scheduled and held on Monday, May 2, 2011, the next business day after the union sent the second document.

In this case, the union had chosen two parallel approaches to deal with its safety concerns over the 96-hour shift. It processed the grievance and filed complaints with Labor and Industries. When the union decided to send a copy of the Labor and Industries complaint to the employer, the union essentially tied the parallel proceedings together. The information regarding the Labor and Industries complaint was relevant to the grievance and arbitration since it involved the same matter.

Since the 96-hour shift lead to a grievance arbitration and the union's filing with Labor and Industries, it is possible that a similar situation could arise again during the term of the collective

bargaining agreement. Labor and Industries' response to the union's filing could have provided the employer with a fuller understanding of whether Labor and Industries might become involved with other similar situations. Therefore, this information was relevant to how the employer and union may choose to administer the collective bargaining agreement regarding other long shifts in the future.

Although the union had already told the employer that Labor and Industries was not going to pursue the claim, the union had a duty to provide the information when the employer asked to see the documentation. By withholding the information until the business day before the hearing, the employer was prevented from properly performing its collective bargaining duties. Within a reasonable period of time, the union should have responded to the employer's request, requested clarification, or explained if it had an objection to the request. For example, if the union believed that the employer's request for the Labor and Industries documentation was not relevant to the employers' collective bargaining duties, the union had a duty to explain this objection and give the employer an opportunity to explain why they believed information was relevant. Instead, the union put a low priority on the employer's request, and did not explain an objection or provide the documentation until the days prior to the related arbitration.

FINDINGS OF FACT

1. King Fire District 36 (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. International Association of Fire Fighters, Local 2950, (union) is a bargaining representative within the meaning of RCW 41.56.030(2) and is the exclusive bargaining representative of uniformed firefighters employed by the employer. The union and employer are parties to a collective bargaining agreement dated January 1, 2011, to December 31, 2012.

3. On July 15, 2010, a member of the bargaining unit, Cliff Griffin, volunteered for two overtime shifts, and then worked his scheduled shift. Griffin was not afforded a break and therefore worked a total of 96 hours.

4. On July 20, 2010, the union filed a grievance alleging the employer violated the parties' collective bargaining agreement when Griffin worked 96 hours without a break.

5. On July 27, 2010, the employer disciplined Griffin for his role in the incident on July 15, 2011.

6. On August 20, 2010, the union filed documents with the Washington State Department of Labor and Industries alleging that safety and discrimination violations occurred from the 96-hour shift and the related disciplinary action of Griffin. The union provided the employer with a copy of its complaints to Labor and Industries.

7. On September 23, 2010, the union received a letter from Labor and Industries stating that the discrimination complaint would not be pursued because it did not meet the criteria for discrimination standards, but the safety complaint might be pursued by different sections of Labor and Industries.

8. By October 8, 2010, the employer withdrew Griffin's discipline. However, the union's grievance continued to be processed and was scheduled for arbitration on May 2, 2011.

9. On January 5, 2011, the union's attorney contacted Labor and Industries to determine the status of the pending safety complaint. On January 14, 2011, the union received an e-mail from Labor and Industries stating that the safety complaint would not be pursued. The union's attorney forwarded this e-mail to the union president. On February 18, 2011, the union informed the employer that Labor and Industries had made a determination that it will not pursue the safety complaint. Subsequently, the employer requested from the union for anything in writing from Labor and Industries about the dismissal.

10. On February 26, 2011, the employer asked again by e-mail for any documentation from Labor and Industries about the dismissal.

11. In addition to the e-mailed requests for documentation, the employer verbally requested the documentation.

12. On April 28, 2011, the union's attorney sent the employer's attorney a copy of the Labor and Industries September 23, 2010 letter stating that the discrimination complaint would not be pursued. On Friday, April 29, 2011, the union's attorney sent the employer's attorney a copy of the January 14, 2011 e-mail which stated that the safety complaint would not be pursued.

13. The arbitration for the related issue occurred one business day later on Monday, May 2, 2011.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-WAC.

2. By unduly delaying its response to the employers request in Findings of Fact 9 through 11 above, the union refused to bargain in violation of RCW 41.56.150(4), and thereby committed a derivative interference in violation of RCW 41.56.150(1).

ORDER

International Association of Fire Fighters Local 2950, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Placing a low priority on the employer's request for information and thus causing an unreasonable delay in its response.

   b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Respond promptly to requests for information.

b. Mail copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission to all bargaining unit members

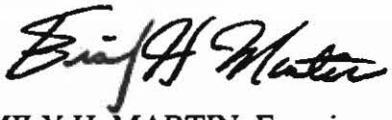
c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice provided by the Compliance Officer.

e. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 28th day of February, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY H. MARTIN, Examiner

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.

CASE 24046-U-11-6150
DECISION 11302 - PECB

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE *INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2950* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to give a timely response to the employer's request for information.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL respond promptly to future requests for information.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.