

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNION OF PHYSICIANS OF
WASHINGTON,

Complainant,

vs.

STATE - SOCIAL AND HEALTH
SERVICES,

Respondent.

CASE 25263-U-12-6468

DECISION 11594 - PSRA

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On November 1, 2012, the Union of Physicians of Washington filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Social and Health Services (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 7, 2012, 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 those allegations of the complaint as set forth below in the preliminary ruling. The employer must file and serve its answer to the valid allegations within 21 days following the date of this Decision.

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.

DISCUSSION

The allegations of the complaint concern employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by skimming of physician work previously performed by bargaining unit members, without providing an opportunity for bargaining; its refusal to provide relevant information requested by the union concerning the alleged skimming; and employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by shifting pay opportunities away from physicians and skimming of physician work, in reprisal for union activities protected by Chapter 41.80 RCW.

The allegations of the complaint concerning skimming of bargaining unit work and refusal to provide information state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out the defects regarding the discrimination allegations of the complaint.

It is an unfair labor practice in violation of RCW 41.80.110(1)(c) for an employer to discriminate against employees by depriving those employees of ascertainable rights, benefits, or statuses, in reprisal for union activities protected by Chapter 41.80 RCW. The statement of facts contains sufficient information to state causes of action for skimming and refusal to provide information. The statement of facts alleges discrimination related to the skimming claim, including shifting pay opportunities, but not to the claim for refusal to provide information. However, there is no information indicating that the employer's alleged shifting pay opportunities and skimming were in reprisal for protected union activities by bargaining unit members.

NOW, THEREFORE, it is

ORDERED

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

Employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by: (a) skimming of physician work previously performed by bargaining unit members, without providing an opportunity for bargaining, and (b) refusal to provide relevant information requested by the union concerning the alleged skimming of bargaining unit work.

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

The Washington State Department of Social and Health Services 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.

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; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

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. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file 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 employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by shifting pay opportunities away from physicians and skimming of physician work, in reprisal for union activities protected by Chapter 41.80 RCW, are DISMISSED for failure to state a cause of action.

Although the preliminary ruling includes a cause of action for skimming, the cause of action for refusal to provide information concerns an alleged statutory violation that is not subject to deferral under WAC 391-45-110(3). The Commission does not bifurcate unfair labor practice complaints. This case will not be deferred to arbitration in whole or in part.

ISSUED at Olympia, Washington, this 5th day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order concerning dismissal of the defective claim will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

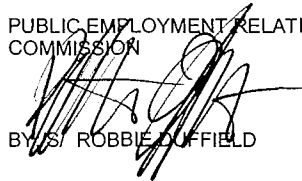
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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

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CASE NUMBER: 25263-U-12-06468 FILED: 11/01/2012 FILED BY: PARTY 2
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