



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL P. SELLARS, EXECUTIVE DIRECTOR

*112 Henry Street NE, Suite 300 • Post Office Box 40919 • Olympia, Washington 98504-0919
(360) 570-7300 • Fax: (360) 570-7334 • E-mail filings: filing@perc.wa.gov • Website: www.perc.wa.gov*

October 28, 2016

VIA EMAIL & US MAIL

Lincoln County Commissioners
Lincoln County
450 Logan Street
Box 28
Davenport, Washington 99122

Jack Holland
Reid, McCarthy, Ballew & Leahy, L.L.P.
100 West Harrison Street, North Tower Suite 300
Seattle, Washington 98119-4143

Re: DEFICIENCY NOTICE
AND ORDER CONSOLIDATING CASES
Lincoln County
Teamsters Local 690
Cases 128467-U-16
(Non-Commissioned Sheriff's Office Bargaining Unit)
128468-U-16
(Commissioned Law Enforcement Bargaining Unit)
Filed September 29, 2016

Dear Commissioners and Mr. Holland:

The complaints charging unfair labor practices filed in these matters have been reviewed using the preliminary review process described in WAC 391-45-110.

Consolidation of Cases

The issues in both cases are sufficiently similar to warrant consolidation under WAC 10-08-085. Because both cases involve the same parties and similar issues, the cases are being consolidated for further proceedings.



Preliminary Review of Allegations

One purpose of the preliminary review is to comply with RCW 34.05.419(2), which requires administrative agencies to “examine the application, notify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require”

At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether the complaints state claims for relief available through unfair labor practice proceedings before the Commission.

ISSUES

The allegations of the complaint in case 128467-U-16 (Non-commissioned bargaining unit) concern:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] since September 6, 2016, by unilaterally passing a resolution making collective bargaining contract negotiations open to the public, without providing the union with an opportunity for bargaining.

The allegations of the complaint in case 128468-U-16 (Commissioned bargaining unit) concern:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] since September 6, 2016, by unilaterally passing a resolution making collective bargaining contract negotiations open to the public, without providing the union with an opportunity for bargaining.

It is not possible to conclude that a cause of action for refusal to bargain/unilateral change exists at this time. The complaints lack details needed to determine whether there is a cause of action for a unilateral change/refusal to bargain. The complaints do not explain how bargaining unit employees’ wages, hours, or working conditions were changed. In reviewing the complaints it is not apparent that the employer’s decision to make contract bargaining sessions open to the public could arguably constitute a mandatory subject of bargaining.

LEGAL STANDARDS

Unilateral Change

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010), citing *Skagit County*, Decision 8746-A (PECB, 2006).

To state a cause of action for unilateral change, the complainant must allege that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). Whether a particular item is a mandatory subject of bargaining is a mixed question of law and fact for the Commission to decide. WAC 391-45-550. To decide, the Commission applies a balancing test on a case-by-case basis. The Commission balances “the relationship the subject bears to the wages, hours, and working conditions” of employees, and “the extent to which the subject lies ‘at the core of entrepreneurial control’ or is a management prerogative.” *International Association of Fire Fighters, Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197, 203 (1989). The decision focuses on which characteristic predominates. *Id.* A finding that a party has refused to bargain in good faith is predicated on a finding of bad faith bargaining in regard to mandatory subjects of bargaining. *See Spokane School District*, Decision 310-B (EDUC, 1978).

ANALYSIS

The complaints allege that on September 6, 2016, the Board of Lincoln County Commissioners passed Resolution 16-22. That resolution stated: “From this day forward, Lincoln County shall conduct all collective bargaining contract negotiations in a manner that is open to the public; and Lincoln County shall provide public notice of all collective bargaining negotiations in accordance with the Open Public Meetings Act (RCW 42.30.00-42.30.080) . . .

On September 7, 2016, the employer informed the union of the passage and content of Resolution 16-22. The union alleges that prior to passing Resolution 16-22 the employer failed to provide the union with notice and opportunity to bargain with regard to bargaining guidelines and other parameters, including making collective bargaining negotiations open to the public.

It is not apparent that bargaining guidelines and other parameters could arguably constitute a mandatory subject of bargaining. In order to state a cause of action for unilateral change the complainant would need to explain how the employer’s decision to make bargaining open to the public, or other specific actions by the employer, could constitute a change to a mandatory subject of bargaining. At this time, the complaints lack necessary elements to qualify for further case processing before the Commission.

Filing of Amended Complaints

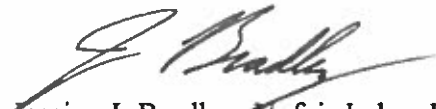
These proceedings will be held open for a limited time to permit the complainant to correct the defects or voluntarily withdraw the complaints. If the complainant would like to continue to pursue these cases the complainant should file and serve amended complaints within 21 days following the date of this letter.

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Any materials filed as an amended complaint will be reviewed under WAC 391-45-110 to determine if they state a cause of action. If the complainant does not file a timely amendments correcting the defects, the complaints will be DISMISSED.

Very truly yours,



Jessica J. Bradley, Unfair Labor Practice Manager
Public Employment Relations Commission
jessica.bradley@perc.wa.gov | (360) 570-7322

JJB:drb

cc: Val Holstrom