

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GARFIELD COUNTY DEPUTIES
ASSOCIATION,

Complainant,

vs.

GARFIELD COUNTY,

Respondent.

CASE 134908-U-22

DECISION 13511 - PECB

ORDER OF DISMISSAL

Morgan Maddess, President, for Garfield County Deputies Association.

Garfield County Commissioners, for Garfield County.

On March 14, 2022, the Garfield County Deputies Association (union) filed an unfair labor practice complaint against Garfield County (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on March 22, 2022, notified the union that a cause of action could not be found at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by the union. The complaint is dismissed for failure to state a cause of action.

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

BACKGROUND

The Garfield County Deputies Association represents a bargaining unit of full-time commissioned law enforcement personnel working for the employer. This agency certified the union as the exclusive representative of the bargaining unit on December 21, 2021. *Garfield County*, Decision 13452 (PECB, 2021).

According to the complaint, the employer adopted a new on-call policy on an unidentified date that required bargaining unit employees to be on-call when not working. When employees are on-call, they are expected to be at home and subject to call out. The employees are restricted from leaving the county and prohibited from consuming alcoholic beverages. The complaint alleges that the employer only compensates employees \$200 per month under this policy. The complaint asks that the employer either pay employees minimum wage for being on-call or cancel the policy.

ANALYSIS

The union's complaint included both procedural and substantive defects that precluded the complaint from being processed.

Procedural Defects: Numbered Paragraphs

The requirements for filing a complaint charging unfair labor practices are described in WAC 391-45-050. Complainants must number the paragraphs in the attached statement of facts. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer. The union failed to number the paragraphs in its original complaint and failed to file an amended complaint curing these defects. The complaint is procedurally defective under WAC 391-45-050.

Substantive Defects: Unilateral Changes

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 prove a unilateral change, the complainant must prove 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). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

Application of Standard

The union's complaint fails to state a unilateral change cause of action. The complaint lacks detailed facts establishing the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. This includes the lack of dates of the alleged unilateral change. At minimum, the dates of occurrences are needed to determine whether the allegations are timely filed and to allow the employer to respond to the allegations. Dates are especially needed in this case as the bargaining unit was certified on December 27, 2021. If the employer implemented the on-call practice prior to the union being certified as the bargaining unit's exclusive representative, the on-call practice would be part of the existing status quo and the union's proper recourse would be to ask for negotiations with the employer about changing the policy. Absent facts demonstrating that the employer unilaterally implemented the on-call policy after the union was certified as the exclusive representative of the bargaining unit, the complaint lacks facts demonstrating a unilateral change and must be dismissed.

Finally, the union cites to a Washington State Department of Labor and Industries' webpage explaining an employee's rights while on-call and asserts the statements from that website

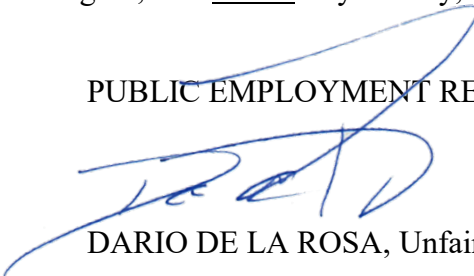
demonstrate the employer is not paying bargaining unit employees properly for on-call status. While the complaint appears to challenge the existing on-call practice, the complaint does not indicate that the employer violated its collective bargaining obligations. This agency's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment, including alleged violation of the state's wage laws. *See Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice it does not necessarily mean the allegations contained within the complaint involve lawful activity. Rather, it simply means that the issues are not matters within the purview of the Commission. *Id.*

ORDER

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of May, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 05/18/2022

DECISION 13511 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 134908-U-22

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