



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL P. SELLARS, EXECUTIVE DIRECTOR

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November 10, 2022

Via Email Only

Susan Sackett DanPullo
Office of the Attorney General
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Eamon S. McCleery
Teamsters Local 117
eamon.mccleery@teamsters117.org

Preliminary Ruling and Deferral Inquiry

Case 135979-U-22, Washington State Department of Corrections
Institutions Bargaining Unit

Dear Susan DanPullo and Eamon McCleery:

When an unfair labor practice complaint is filed, the complaint is reviewed at the preliminary ruling stage to determine whether it states a cause of action under the statutes the Public Employment Relations Commission (PERC) administers and to determine whether the complaint can move forward for further processing. WAC 391-45-110. At the preliminary ruling stage, all facts alleged in the complaint are assumed to be true and provable. *Id.*

The complaint has been reviewed using the preliminary review process. It appears the facts alleged may constitute an unfair labor practice violation and state a cause of action for further case processing.

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)] within six months of the date the complaint was filed, by unilaterally implementing a revised mandatory N95 respirator requirement without providing the union an opportunity for bargaining.

The person or organization charged with unfair labor practices in this matter (respondent) **shall file and serve its answer to the complaint within 21 days** following the date of this letter. WAC 391-45-110(2)(c).

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:

1. 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.
2. Specify whether “deferral to arbitration” is requested and, if so:
 - a. Indicate whether a collective bargaining agreement was in effect between the parties at the time of the alleged unilateral change;
 - b. Identify the contract language requiring final and binding arbitration of grievances;
 - c. Identify the contract language for each bargaining unit which is claimed to protect the employer conduct alleged to be an unlawful unilateral change;
 - d. Provide information (and copies of documents) concerning any grievance being processed on the matter at issue in this unfair labor practice case; and
 - e. State whether the employer is willing to waive any procedural defenses to arbitration, including objections to timeliness. Please note that the employer must waive all procedural defenses for deferral to be granted.
3. 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 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.

Cases are reviewed after the answer is filed to evaluate the propriety of a settlement conference under WAC 391-45-260, priority processing, or other special handling. 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.

Sincerely,



Dario de la Rosa, Unfair Labor Practice Administrator
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cc: Ann Green, labor.relations@ofm.wa.gov
Megan Smith, megan.smith@doc1.wa.gov