



City of Seattle

Mike McGinn, Mayor

Personnel Department


Dave Stewart, Personnel Director

MEMORANDUM

DATE: June 10, 2011

TO: Peter Holmes
City Attorney

ATTENTION: Paul Olson
Assistant City Attorney

FROM: David Bracilano 
Director of Labor Relations

SUBJECT: Unfair Labor Practice Complaint; Seattle Police Officers' Guild,
Interference with Employee Rights Discrimination and Employer Refusal to Bargain (LR
File No. 11-03)

Enclosed is a copy of the above-referenced unfair labor practice complaint filed by the Seattle Police Officers' Guild. The complaint alleges that the City did not fulfill its collective bargaining obligation in relation to providing outside counsel to police officers. The complaint requires an answer within 21 days of the date of the Preliminary Ruling. I am hereby requesting that the Law Department assist Mike Fields in representing the City in this case and that the Union be so notified. Please contact Mike Fields for further information regarding this case. Thank you for your consideration in this matter.



PERC #11-03

LABOR RELATIONS

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

JUN 07 2011

CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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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

June 6, 2011

Re: City of Seattle
Case 24026-U-11-6144

Dear Parties:

Enclosed is a copy of a case that was filed with the Public Employment Relations Commission. This is only a courtesy copy for your records and may not include a complete copy of the filing or attachments. Although this letter has been mailed to all parties listed on the docket, it does not relieve any party of its obligation or responsibility to serve the other parties under WAC 391-08-120.

An attorney or representative signing an unfair labor practice complaint or petition filing form is presumed to appear on the filing party's behalf. **No other attorney or representative will be considered the representative of record for the employer, the union, or a filing employee until he/she files a notice of appearance.**

Should you have any questions regarding our policies or procedures, please refer to our website, www.perc.wa.gov. You may also submit questions, comments or concerns about our service by e-mail at info@perc.wa.gov.

Any correspondence or questions concerning a specific case must include reference to the specific PERC case number. Thank you for your cooperation.

Very truly yours,

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Cathleen Callahan

CATHLEEN CALLAHAN, Executive Director

Enclosure





PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

NOTICE OF CASE FILING - ISSUED 06/06/2011

A case has been opened on the docket records of the Public Employment Relations Commission, as indicated below. You will be notified when a meeting or hearing is scheduled. Please refer to the case number in any correspondence or formal papers concerning the case.

Notices, correspondence and Commission's orders will be served by the agency only on the parties and their representatives as listed in the docket records. Any additions or corrections to the information set forth below should be forwarded to the Commission, in writing, as soon as possible.

CASE NUMBER: 24026-U-11-06144 FILED: 06/03/2011 FILED BY: PARTY 2
DISPUTE: ER UNILATERAL
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF SEATTLE
ATTN: DAVID BRACILANO
700 5TH AVE 55TH FL
PO BOX 34028
SEATTLE, WA 98124-4028
Ph1: 206-684-7874 Ph2: 206-684-7999

PARTY 2: SEATTLE POLICE OFFICERS GUILD
ATTN: RICHARD ONEILL
2949 4TH AVE S
SEATTLE, WA 98134
Ph1: 206-767-1150

REP BY: HILLARY MCCLURE
VICK JULIUS MCCLURE
5701 6TH AVE S STE 491A
SEATTLE, WA 98108-2568
Ph1: 206-957-0926

JUN 10 2011

MF



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STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CATHLEEN CALLAHAN, 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

June 8, 2011

David Bracilano
City of Seattle
700 Fifth Avenue, 55th Floor
PO Box 34028
Seattle, Washington 98124-4028

Hillary McClure
Vick Julius & McClure
5701 Sixth Avenue South, Suite 491A
Seattle, Washington 98108-2568

Re: PRELIMINARY RULING
AND DEFERRAL INQUIRY
City of Seattle
Case 24026-U-11-6144
Filed June 3, 2011

Dear Parties:

The complaint charging unfair labor practices filed in this matter has been reviewed under WAC 391-45-110. The allegations 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)], by the following unilateral changes:

- (a) to false arrest insurance benefits and privileges for bargaining unit members, without providing an opportunity for bargaining the decision and effects; and
- (b) in conditioning the right of bargaining unit members to receive representation upon bargaining unit members waiving their right to have privileged communications with the attorneys representing them, including attorneys employed in the City Attorney's Office, without providing an opportunity for bargaining the decision and effects.

Assuming for purposes of this preliminary ruling that all of the facts alleged in the complaint are true and provable, it appears that an unfair labor practice violation could be found.

WAC 391-45-110(2) **requires the filing of an answer** in response to a preliminary ruling which finds a cause of action to exist. Cases are reviewed after the answer is filed, to evaluate the propriety of a settlement conference under WAC 391-45-260, deferral to arbitration under WAC 391-45-110(3), priority processing, or other special handling.

PLEASE TAKE NOTICE that the person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

File and serve its answer to the complaint within 21 days following the date of this letter.

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 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.
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 of 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.

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.

Very truly yours,

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

DIG:dlt

cc: Richard O'Neill

VICK, JULIUS,
McCLURE, P.S.

Attorneys at Law

Washington Office:

5701 6th Avenue South
Seattle Design Center, #491A
Seattle, Washington 98108
(206) 957-0926
Fax: (206) 762-2418

Christopher K. Vick
Admitted in WA
chrsv@vjmlaw.com

Jeffrey Julius
Admitted in WA
jeffj@vjmlaw.com

Hillary McClure
Admitted in WA
hillarym@vjmlaw.com

Derrick A. Isackson
Admitted in WA
derricki@vjmlaw.com

Of Counsel:

Will Aitchison
Admitted in OR & AK

LABOR RELATIONS

JUN 07 2011

June 3, 2011

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VIA EMAIL AND REGULAR MAIL

Ms. Cathleen Callahan
Executive Director
Public Employment Relations Commission
112 Henry Street N.E., Suite 300
PO Box 40919
Olympia, Washington 98504-0919

DB
MFV

Re: Unfair Labor Practice Complaint against the City of Seattle

Dear Ms. Callahan:

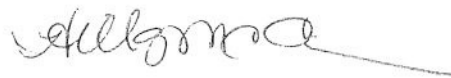
The undersigned is currently representing Seattle Police Officers' Guild ("Guild") in regard to the above captioned matter. Enclosed with this letter, please find each of the following documents for filing with PERC:

1. an unfair labor practice complaint; and
2. a certificate of service.

Please process these documents. Your cooperation is greatly appreciated. If you have any questions or comments concerning this matter, please do not hesitate to contact me.

Respectfully submitted,

Vick, Julius, McClure, P.S.



Hillary McClure
Attorney at Law

HM/ts

cc: Mike McGinn, Mayor
Mike Fields, Labor Negotiator
Rich O'Neill, Guild President

PERC # 1103

JUN 17 2011

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PUBLIC EMPLOYMENT RELATIONS COMMISSION
112 Henry Street NE, Suite 300, Olympia WA 98506
Mail: PO Box 40919, Olympia WA 98504-0919
Phone: (360) 570-7300 Fax: (360) 570-7334
E-mail: filing@perc.wa.gov

COMPLAINT CHARGING UNFAIR LABOR PRACTICES

Form U-1 (9/2010)

Amended Complaint in Case

Filing instructions: www.perc.wa.gov/Forms/U-1-inst.pdf

Applicable Rules: Chapters 10-08, 391-08 and 391-45 WAC

1. PARTIES The complainant alleges the respondent has committed unfair labor practices in violation of state law.

Form fields for Complainant, Respondent, and Employer information including names, addresses, and contact details.

2. ALLEGED VIOLATION Indicate all that apply.

- Against Employer: [X] Employer Interference with Employee Rights, Employer Domination, [] Unlawful Assistance to Union, [] Unlawful Interference with Internal Union Affairs, [] Employer Discrimination, [] Employer Discrimination for Filing Charges with or Giving Testimony before PERC, [X] Employer Refusal to Bargain.
Against Union: [] Union Interference with Employee Rights, [] Union Inducing Employer to Commit Violation, [] Union Discrimination for Filing Charges with or Giving Testimony before PERC, [] Union Refusal to Bargain.

3. BARGAINING UNIT

Department or Division: Police Department
Number of employees in unit: Approximately 1200
Current or Most Recent Collective Bargaining Agreement Indicate one:
[] The parties have never had a collective bargaining agreement;
[] The collective bargaining agreement is attached; OR
[X] The collective bargaining agreement is on file with PERC.
003-12/2010

4. STATEMENT OF FACTS and REMEDY REQUESTED

Attach separate sheets of paper setting forth clear and concise statements of the facts constituting the alleged unfair labor practices (including times, dates, places and participants) in numbered paragraphs, and setting forth the remedies requested for the claimed unfair labor practices.

6. AUTHORIZED SIGNATURE FOR COMPLAINANT

Print Name: Hillary McClure
Title: Attorney at Law
Address: 5701 6th Avenue S., Suite 491-A
City, State, ZIP: Seattle, WA 98108
Telephone: 206-957-0926 Ext.
Fax: 206-762-2418
E-Mail: hillarym@vjmlaw.com

Signature: Hillary McClure Date: 6/3/11

5. GRIEVANCE PROCEEDINGS Indicate one.

- [] No grievance has been filed on the dispute involved in this unfair labor practice complaint.
[X] A grievance on the dispute involved in this complaint is being processed under a contractual grievance procedure.
[] An arbitration award has been issued on a grievance related to this unfair labor practice complaint.

COUNT I

1. The Seattle Police Officers' Guild ("Guild") is the exclusive bargaining representative for all commissioned law enforcement employees employed by the City of Seattle ("City") in the Police Department through the rank of sergeant.

2. The Guild and the City have been and are signatory to a January 1, 2008 through December 31, 2010 collective bargaining agreement setting forth the wages, hours, and other terms and conditions of employment for members of the bargaining unit represented by the Guild. This collective bargaining agreement is pre-filed with PERC #003-12/2010.

3. Article 14, Article 17, and Appendix B of the collective bargaining agreement requires the City to continue to provide bargaining unit employees with same "false arrest insurance" benefits and privileges that have historically been provided. For example, Article 14.1 of the collective bargaining agreement provides:

The City shall provide false arrest insurance either through self-insurance or an insurance policy which conforms to the policy attached hereto as Appendix D and incorporated into the Agreement by this reference. It is the intent of the parties to provide no less benefits for false arrest insurance than currently enjoyed by members of the bargaining unit. Administration of the plan will be in accordance with prior practice or as mutually agreed upon in writing.

Likewise, Article 17 states:

Except as otherwise stated in this Agreement, the Employer agrees that in placing the terms of this Agreement into effect it will not proceed to cancel benefits or privileges generally prevailing for employees with knowledge of the Police Chief even though such benefits or privileges are not itemized in this Agreement.

Additionally, Appendix B states:

The City shall provide false arrest insurance in accordance with the FALSE ARREST AND OTHER SUPPLEMENTAL PERILS policy Certificate No. NAT-73-2199 effective as of December 1, 1973, and shall maintain the benefits therein for the life of this Agreement.

4. One of the false arrest insurance benefits and privileges provided by the City has historically included the right of bargaining unit employees to be represented individually by highly qualified and experienced attorneys from the law firm of Stafford, Frey, Cooper in the following types of matters that arise out of their employment with the City:

a. On-scene and Inquest Representation in Officer Involved Incidents. This entails immediate representation of police officers at the scene of officer-involved incidents, which are defined as incidents that involve death or a reasonable likelihood of death as the result

of an act by the officer, including but not limited to shootings. It also includes representation of the officer during any inquest proceeding in Court.

b. Police Action Litigation Representation. This entails representation of police officers in lawsuits arising out of allegations of wrongful arrest, excessive use of force, police misconduct, violations of 42 U.S.C. § 1983, and similar actions.

5. Insurance benefits and privileges are a mandatory subject of bargaining.

6. On or about September 15, 2010, the Guild heard that the City was contemplating changing the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees.

7. On or about September 30, 2010, the Guild demanded to bargain over the decision and the effects of the City's decision to change the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees.

8. In May, 2011, the City, unilaterally and without bargaining, began the process to change the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees.

9. The City's unilateral decision and the effects of the City's unilateral decision to change the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees constitutes a refusal to engage in collective bargaining.

10. The City's refusal to bargain violates RCW 41.56.140(1) and RCW 41.56.140(4).

11. The City's refusal to bargain in violation of RCW 41.56.140(1) and RCW 41.56.140(4) has injured the Guild and the members of the bargaining unit represented by the Guild.

COUNT II

12. The Guild realleges paragraphs 1 through 11 as fully rewritten herein.

13. The false arrest insurance benefits and privileges provided by the City have historically included the right of bargaining unit employees to have privileged communications with the attorneys representing them in the matters referred to in paragraph 4 above.

14. Because bargaining unit employees were allowed to have privileged communications with the attorneys representing them in the matters referred to in paragraph 4 above, such privileged information could not: (a) be used against bargaining unit employees in investigations that could result in discipline, and, (b) be taken into account in deciding whether to discipline bargaining unit employees, and, (c) serve as the basis for discipline.

15. On or about May 31, 2011, the Guild learned that the City, unilaterally and without bargaining, began conditioning the right to receive representation in the matters referred to in paragraph 4 above on bargaining unit employees waiving their right to have privileged communications with the attorneys representing them, including attorneys employed in the City's Attorney's Office.

16. Because bargaining unit employees are no longer allowed to have privileged communications with the attorneys representing them in the matters referred to in paragraph 4 above, such information could: (a) be used against bargaining unit employees in investigations that could result in discipline, and, (b) be taken into account in deciding whether to discipline bargaining unit employees, and, (c) serve as the basis for discipline..

17. Discipline is a mandatory subject of bargaining.

18. The City's unilateral decision and the effects of the City's unilateral decision to condition the right of bargaining unit employees to receive representation upon bargaining unit employees waiving their right to have privileged communications with the attorneys representing them, including attorneys employed in the City's Attorney's Office, constitutes a refusal to engage in collective bargaining.

19. The City's refusal to bargain violates RCW 41.56.140(1) and RCW 41.56.140(4).

20. The City's refusal to bargain in violation of RCW 41.56.140(1) and RCW 41.56.140(4) has injured the Guild and the members of the bargaining unit represented by the Guild.

REMEDY

WHEREFORE, The Guild requests the following remedies:

- A. Findings of fact consistent with the Guild's allegations.
- B. An order requiring the City to cease and desist from refusing to bargain in violation of RCW 41.56.140(1) and RCW 41.56.140(4).
- C. An order requiring the City to restore the status quo ante.
- D. An order requiring the City to provide the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees, unless and until the City has complied with its obligations under RCW 41.56.
- E. An order prohibiting the City from refusing to provide the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees, unless and until the City has complied with its obligations under RCW 41.56.

F. An order requiring the City to compensate the Guild and/or bargaining unit employees for fees and expenses expended for obtaining the false arrest insurance benefits and privileges that have historically been provided to bargaining unit employees, unless and until the City has complied with its obligations under RCW 41.56.

G. An order prohibiting the City from conditioning the right of bargaining unit employees to receive representation upon bargaining unit employees waiving their right to have privileged communications with the attorneys representing them, including attorneys employed in the City's Attorney's Office, unless and until the City has complied with its obligations under RCW 41.56.

H. An order requiring the City to make the Guild and any affected member(s) of the bargaining unit whole for all loss(es) sustained by them, as a result of the violation(s) of RCW 41.56.140(1) and RCW 41.56.140(4).

I. An order requiring the posting of all orders and notices in this matter

J. An order granting the Guild extraordinary remedies, including payment of the Guild's reasonable attorneys' fees.

K. An order granting the Guild any and all other relief to which it is deemed entitled.

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BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Seattle Police Officers' Guild,)
)
Complainant)
)
v.)
)
City of Seattle,)
)
Respondent.)
)
)
)
_____)

Case No.

CERTIFICATE OF SERVICE

On this 3rd day of June, 2011, I sent by e-mail and mailed an original of the Complaint Charging Unfair Labor Practices and this Certificate of Service to the following parties by first class mail:

Pubic Employment Relations Commission
PO Box 40919
Olympia, Washington 98504-0919

Additionally, I mailed a copy of the Complaint Charging Unfair Labor Practices and this Certificate of Service to the following parties by first class mail:

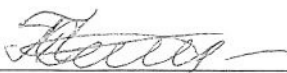
Mike McGinn, Mayor
City of Seattle
600 4th Avenue, Floor 7
Seattle, WA 98124

Mike Fields, Labor Negotiator
City of Seattle
PO Box 34028
Seattle, WA 98124

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Rich O'Neill
Seattle Police Officers' Guild
2949 4th Avenue S.
Seattle, WA 98134

Dated this 3rd day of June, 2011.



Tamila Stearns



2949 4th Ave. S, Seattle, WA 98134

Phone: (206) 767-1150

Fax: (206) 768-1848

President
Richard F. O'Neill

Vice President
Ty Elster

Secretary/Treasurer
Ron Smith

LABOR RELATION

JUN 06 2011

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DB
ME

June 2, 2011

Deputy Chief Nick Metz
Seattle Police Department
P.O. Box #34986
610 Fifth Avenue
Seattle, WA 98124-4986

Re: Step Two Grievance - Legal Representation Issue (Grievance #2011-0006)

Dear Deputy Chief Metz:

I am sending you this letter to inform you that the Seattle Police Officers' Guild (Guild) is moving Grievance 2011-0006 to Step 2 of the grievance procedure.

Details or nature of the alleged violation:

This is a class action grievance involving all SPOG members. In May of 2011, the city violated Article 14, Article 17, Appendix B and past practice by changing the insurance benefits and privileges provided to SPOG represented employees, including assigning and reserving the right to assign the representation of employees in officer involved incidents and police action litigation to attorneys other than attorneys from Stafford Frey and Cooper and conditioning representation upon employees waiving their attorney client privilege. An example of this is Detective Rolf Norton who was assigned a city attorney and then asked to waive attorney client privilege. The grievance covers Detective Norton and all future violations.

According to CBA A.3, SPOG is filing this grievance at Step 2.

It is the position of the Guild that the Department has intentionally violated the following sections of the CBA:

14 False Arrest Insurance

17 Retention Of Benefits

Appendix B False Arrest Insurance

Remedy sought:

1. Reinstatement of the previous benefits and privileges, return to the status quo and make officers whole for any losses sustained.


Thank you for your attention to this matter. If we can be of further assistance please don't hesitate to contact us.

Legal Representation Issue (Grievance #2011-0006)

June 2, 2011

Page 2

Sincerely,



Richard F. O'Neill

President

Seattle Police Officers' Guild

Cc: City Director of Labor Relations: Director David Bracilano

Labor Negotiator Liaison For The Guild: Mr. Mike Fields

Mr. Chris Vick - Hillary McClure

Rennison Bispam

Det. Rolf Norton