



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL P. SELLARS, EXECUTIVE DIRECTOR

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July 26, 2017

VIA E-MAIL AND U.S. MAIL

Peter A. Altman
Summit Law Group PLLC
315 5th Avenue South, Suite 1000
Seattle, Washington 98104

Alyssa Melter
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Re: DEFERRAL TO ARBITRATION
City of Mill Creek
Mill Creek Police Officers' Guild
(Law Enforcement Bargaining Unit)
Case 129004-U-17
Filed May 25, 2017

Dear Mr. Altman and Ms. Melter:

This unfair labor practice case has been reviewed in light of the "deferral to arbitration" policies set forth by the Commission in WAC 391-45-110(3). The result of that review is as follows:

- The unfair labor practice allegations fall into the "unilateral change - refusal to bargain" category for which deferral to arbitration is possible.
- There was a collective bargaining agreement in effect between the parties at the time the cause of action arose.
- The collective bargaining agreement contains procedures for final and binding arbitration of grievances.
- There is no indication that the employer has asserted procedural defenses to arbitration. In its answer filed on July 18, 2017, the employer explicitly agreed to waive procedural defenses to grievance arbitration, including timeliness.



- It appears that the employer conduct at issue is “arguably protected or prohibited” by the parties’ collective bargaining agreement, so that a substantial question of contract interpretation exists which could influence or control the outcome of the unfair labor practice case.

PLEASE BE ADVISED that the processing of the unfair labor practice case has been suspended, and that it will be held open on our docket in “Deferred to Arbitration” status, while the parties pursue the grievance and arbitration procedures of their collective bargaining agreement. This deferral is subject to the following conditions:

1. The parties are directed to advise this office of the progress of the grievance proceedings, by filing updates at least once per calendar quarter.
2. The parties are directed to supply the arbitrator with a copy of this letter, so that the arbitrator will be made aware of the Commission’s deferral policy, and of the relationship between the contractual and statutory proceedings.
3. This deferral to arbitration will be subject to reconsideration, upon motion, if pursuit of the grievance and arbitration procedure is resisted by the employer on procedural grounds or if there is a failure to pursue those procedures.
4. The parties are to supply the Commission with a copy of any arbitration award resulting from the arbitration proceedings. The Commission reviews the arbitration award to determine its effect, if any, on this unfair labor practice case. The arbitrator draws his or her authority from the collective bargaining agreement, and the question before the arbitrator is the interpretation of the contract. Assuming that the fairness standards for acceptance of an award are otherwise met, the most likely contract interpretations (and their effects on the unfair labor practice case) will be as follows:
 - a. If the arbitrator finds the employer’s conduct was protected by the collective bargaining agreement, then the arbitrator will likely deny the grievance. It would logically follow that the union’s right to bargain the matter will have been waived by the language of the collective bargaining agreement, and the union should anticipate dismissal of the unfair labor practice allegation based on the “waiver” conclusion.
 - b. If the arbitrator finds the employer’s conduct was prohibited by the collective bargaining agreement, the arbitrator will need to remedy the contract violation. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, and the union should anticipate dismissal of the unfair labor practice allegation on a subject that was bargained by the parties and is merely a contract dispute.
 - c. If the arbitrator finds the employer’s conduct was neither protected nor prohibited by the collective bargaining agreement, the Commission will resume the

processing of the unfair labor practice case, and will accept the arbitrator's determination as conclusive on any "waiver by contract" defenses which might be asserted by the employer. Unless the employer is able to establish some other valid defense, a finding of an unfair labor practice violation generally follows an arbitrator's "not covered" interpretation of the agreement.

If you have any questions or concerns about this directive or the "deferral to arbitration" procedure, please do not hesitate to contact the agency.

Very truly yours,



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JJB:drb

cc: Pam Pruitt
Jesse Mack