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Decision 98-07-009 July 2, 1998

**ORIGINAL**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Communications Workers of America, AFL-CIO,  
Local 9400,

Complainant,

vs.

GTE California Incorporated,

Defendant.

Case 94-01-012  
(Filed January 10, 1994)

### **OPINION DISMISSING COMPLAINT**

This case arises out of a complaint filed by Local 9400 of the Communications Workers of America (CWA) on January 10, 1994. In summary, the complaint alleges that the decision of defendant GTE California Incorporated (GTEC) to close its South Bay Customer Representative Center in Torrance, California, and to consolidate the functions of that office with GTEC's customer representative centers in Huntington Beach, Granada Hills and Cerritos, California, violates sections 451 and 453 of the Public Utilities (PU) Code. GTEC filed an answer to the complaint on February 14, 1994, and a motion to dismiss the complaint on April 13, 1994.

For the reasons stated below, we agree with GTEC that the complaint fails to allege a cause of action over which this Commission has jurisdiction, and we therefore dismiss the complaint.

#### **Allegations of the Pleadings**

The complaint makes two different sets of allegations. With respect to section 451 of the PU Code,<sup>1</sup> the complaint alleges a violation based principally on the effects of the

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<sup>1</sup> Section 451 of the PU Code provides in pertinent part:

*Footnote continued on next page*

Torrance closing on GTEC employees (and, presumably, CWA members) who have worked at the Torrance customer representative center. In this regard, the complaint alleges:

"It is our contention that GTE has violated PUC Code 451 in that office closures or centralizations are not adequate, efficient, just and reasonable because they:

- (1) Cause undue hardships on employees: longer commutes, family life stress, financial burdens.
- (2) Endanger employees' health: emotional stress[,] longer congested commutes, family life stress, more distant from childcare and medical facilities.
- (3) Endanger health and safety of the public: additional smog, additional cars of already impacted freeways and surface streets, greater possibility of accidents.
- (4) Are not fulfilling the utility's community responsibility for: clean air, reduced traffic congestion, public safety, comfort and convenience for its patrons, employees and the public." (Complaint, p. 2.)

With respect to section 453 of the PU Code,<sup>2</sup> the complaint alleges that the closing of the Torrance customer representative center will "cause a disadvantage to many

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"Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public."

<sup>2</sup> Section 453 provides in pertinent part:

- (a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference of advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.
- (b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, occupation, sex, marital status, or change in marital status . . .

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people who live in the area and use that facility," including not being able to "walk in to pay bills." CWA further alleges that the closure of the Torrance customer representative center shows "discrimination and prejudice in the planning and execution of this office closure[,] with no consideration given to its minority make-up, economic or financial impact . . . or need[s] of [the] citizenry or business[es] surrounding the Torrance area." (*Id.*, pp. 6-7.)

As noted above, GTEC filed an answer on February 13, 1994. In addition to denying all the material allegations of the complaint, the answer avers that the Torrance facility only accepts payments from customers via a "drop box", and that after the planned closure, an agent will be available in Torrance to accept payments:

"GTEC further avers that the South Bay Center in Torrance is currently not a location where customers pay bills in person or can have billing disputes resolved in person. Rather, a 'drop box' is provided at the Torrance site where customers can deposit their bill payments. Only approximately five payments a day, however, are deposited by customers in this 'drop box.' After closure of the facility, a notice will be posted directing customers to a pre-existing and closely located GTEC-authorized payment agent in Torrance, as well as to payment agents in other nearby locations in Redondo Beach and Rolling Hills Estates." (Answer, p. 2.)

On April 13, 1994, GTEC filed a motion to dismiss the complaint. Building upon its answer, GTEC argues that the complaint should be dismissed for four reasons. First, GTEC argues that the claims alleged by CWA amount to a request that this Commission "guarantee permanent employment to the Local Union's membership in Torrance." GTEC argues that this issue clearly relates to the collective bargaining between it and CWA's members, and as such is preempted by the provisions of the National Labor Relations Act and other federal labor laws. (Motion to Dismiss, p. 2.)

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- (c) No public utility shall maintain establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

The second ground for dismissal is that CWA is, in effect, "requesting that the Commission engage in micro-management to require that a single facility remain open," despite the policy embodied in the Commission's New Regulatory Framework (NRF) that micro-management of a utility's operations "has no place in an incentive regulatory framework." (*Id.* at 5.)

The remaining grounds for dismissal are that CWA has failed to plead a claim under either §§ 451 or 453 of the PU Code. As to § 451, GTEC again argues that it was never intended to "ensure permanent jobs for [union] members," and that the allegations concerning air pollution and highway congestion that will supposedly follow from the Torrance closure "are outside the jurisdiction of the Commission and fall more appropriately within the jurisdiction of other California agencies," such as the Los Angeles Air Quality Management District. (*Id.* at 7.) As to § 453, GTEC argues that no actionable discrimination has been pleaded, because whenever a decision to consolidate a utility's operations in a single office is involved, "a choice must be made which will affect personnel and a community. The fact that a choice was made which may affect one community or set of customers or employees instead of other groups or communities does not constitute [unlawful] discrimination," unless "specific unlawful discrimination in some form is pleaded" and proven. (*Id.* at 8-9.)<sup>1</sup>

On June 9, 1994, CWA filed a motion for leave to file a response to the motion to dismiss. The motion for leave argues that the late response should be accepted because the union official with responsibility for the case retired and was not replaced, forcing Local 9400's president to deal with the motion to dismiss after his return "from a lengthy out of town business meeting." The response itself does not add anything beyond what is pleaded in the complaint, nor does it present any new facts or controvert any of the factual averments made by GTEC. Nonetheless, because of the

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<sup>1</sup> GTEC also argues that CWA is claiming GTEC "must maintain an unspecified level of community presence," and that even if this issue is cognizable, it should have been raised in other, more appropriate proceedings, such as the 1992 NRF review (which was decided in D.94-06-011, 55 CPUC2d 1), and the GTEC-Contel merger proceeding (Application 90-09-043).

apparent mix-up in who was responsible for handling the motion to dismiss, we will grant CWA's motion and consider the response.

#### Discussion

We agree with GTEC that CWA's allegations under § 451 must be dismissed. As indicated by the passage quoted above, CWA's § 451 claim is based on the harms that will allegedly be inflicted on its members as a result of the closing of the Torrance office. Such issues are clearly matters for complainant's collective bargaining agreement with GTEC, and as such are outside this Commission's jurisdiction.

We recently had occasion to consider a similar complaint involving Pacific Bell. In *Communications Workers of America, Local 9402 et al. v. Pacific Bell* (1994), Decision (D.) 94-04-070, the complaint alleged that "Pacific's intention to implement a plan of centralization and consolidation of facilities would, if and when implemented, violate [PU] Code § 451." The allegations of harm, including stress, increased commute times and additional air pollution, were very similar to those made here. We granted Pacific's motion to dismiss, concluding that "the general urban-type complaint of congested traffic, air pollution, lengthy commutes and employee lifestyle are issues beyond the jurisdiction of this Commission." (*Mimeo.* at 3.)

GTEC's motion to dismiss the claims under section 453 requires more discussion. As noted above, CWA has alleged that Torrance area "residents are being shown discrimination and prejudice in the planning and execution of this office closure[,] with no consideration given to its minority make-up, economic and financial impact, the greater number of single parents or need of citizenry or business surrounding the Torrance area." (Complaint, p. 7.) CWA cites *Corona City Council v. Southern California Gas Company*, D.92-08-038, 45 CPUC2d 301 (1992), as a case where this Commission took such impacts into account in ordering Southern California Gas Company to re-open 12 branch offices that it had closed on very short notice in 1991. Complainant urges us to hold a hearing in Torrance to assess the alleged discriminatory impacts for ourselves.

We have carefully reviewed the *Corona City Council* case and conclude that it is inapposite here. First, as GTEC has pointed out in its motion to dismiss, that case

involved the simultaneous closure of no less than 12 of Southern California Gas Company's 50 branch offices, while this case involves only a single office.

Second, the 12 offices at issue in *Corona City Council* offered a wide variety of customer services, including help with routine bill payments, late payments, restoration of service and low income rate assistance. (45 CPUC2d at 306-309.) The Commission found after a full hearing that the closure of these 12 full-service offices would result in a significant diminution of service, forcing customers who wanted to handle payment and other issues in person to travel 30-50 miles to the nearest remaining customer service office(s). The Commission also concluded that this diminution of service would have an especially adverse effect upon low-income customers of Southern California Gas Company.

In this case, on the other hand, there is no dispute that the Torrance customer representative center offers very limited services to the public. GTEC has averred and CWA does not dispute that there is only a "drop box" at the office, into which only about five payments a day are placed.<sup>4</sup> GTEC has also averred without dispute that after the Torrance office is closed, Torrance area customers who used the "drop box" will be able to make payments to a GTEC-authorized payment agent in the area. (Answer, p. 2.) Clearly, the closure of GTEC's Torrance office will not have anything resembling the impact on customer service (and low income customers) that the large-scale closure in *Corona City Council* was found to have.

In order to plead a claim under PU Code § 453, some specific form of discrimination must be alleged. (*Andersen v. Pacific Bell* (1988), 204 Cal.App.3d 277, 285.) In this case, the vaguely-pleaded allegation of "discrimination" that is quoted above does not come within the ambit of *Corona City Council*. Instead, it is merely a variant of the "general urban-type complaint" that we have found insufficient to state a claim

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<sup>4</sup> Thus, GTEC's customer representative center in Torrance receives about 150 payments per month. By contrast, the 12 Southern California Gas Company offices in *Corona City Council* received a total of 68,000 payments per month, or an average of 5700 payments per month per office. (45 CPUC2d at 307.)

under PU Code § 451. Under these circumstances, we conclude that CWA has failed to allege a cause of action under § 453, that a hearing is not necessary, and that the complaint should therefore be dismissed.

**Findings of Fact**

1. Complainant CWA filed its complaint on January 10, 1994
2. Defendant GTEC filed an answer to the complaint on February 14, 1994.
3. Defendant GTEC filed a motion to dismiss the complaint on April 13, 1994.
4. Complainant filed a motion for leave to file a response to the motion to dismiss, along with the proposed response, on June 9, 1994.

**Conclusions of Law**

1. Complainant's motion for leave to file a response to defendant's motion to dismiss should be granted.
2. The complaint fails to state a cause of action under section 451 of the Public Utilities Code.
3. The complaint fails to state a cause of action under section 453 of the Public Utilities Code.
4. The complaint fails to state any cause of action over which the Commission has jurisdiction.
5. Defendant's motion to dismiss the complaint should be granted.
6. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

**O R D E R**

**IT IS ORDERED** that the complaint herein is dismissed in its entirety.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

**RICHARD A. BILAS**  
President  
**P. GREGORY CONLON**  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners