

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF BELLINGHAM,	)	
	)	
Employer.	)	
-----	)	
MARY McHUGH,	)	CASE 14795-U-99-3723
	)	
Complainant,	)	DECISION 6985 - PECB
	)	
vs.	)	
	)	
WASHINGTON STATE COUNCIL OF	)	
COUNTY AND CITY EMPLOYEES,	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
	)	
_____	)	

This case is before the Executive Director for further processing under WAC 391-45-110, following issuance of a deficiency notice and the filing of an amended complaint. Some of the allegations fail to state a cause of action, and are dismissed. Other allegations warrant further processing under Chapter 391-45 WAC.

BACKGROUND

This proceeding was initiated by a complaint charging unfair labor practices filed with the Commission on September 22, 1999. Mary McHugh is identified as a dispatch supervisor employed by the City of Bellingham (employer), working within a bargaining unit historically represented by the Washington State Council of County and City Employees (WSCCCE or union). In this case, McHugh has alleged that the union violated RCW 41.56.150(1) and (4), by

actions taken against her in breach of the union's duty of fair representation toward her as a member of the bargaining unit.<sup>1</sup>

A deficiency notice was issued on December 3, 1999, indicating that some of the allegations did not state a cause of action. Specifically, this complaint could only be considered timely, under RCW 41.56.160, as to acts or events on or after March 22, 1999, so that allegations set forth in paragraphs 11, 12, 15, 17, 19, 20, 21, and 23 could not be a basis for a remedy in this proceeding.<sup>2</sup> Additionally, it appeared that McHugh lacked legal standing to pursue the rights of others in connection with allegations set forth in paragraph 27.

McHugh was given a period of 14 days in which to file and serve an amended complaint which stated causes of action, or face dismissal of the deficient allegations. McHugh responded to the deficiency notice with an amended complaint filed on December 17, 1999.

#### The Untimely Allegations

The allegations previously identified as untimely are now characterized, in paragraphs 11 through 26, as providing background information. The order issued herein confirms the withdrawal of allegations concerning events prior to March 22, 1999, as a basis for any remedy in this proceeding, but does not preclude the presentation of evidence showing the influence or effect of those events on actions and events for which the complaint is timely.

---

<sup>1</sup> An unfair labor practice complaint filed by McHugh against the employer was docketed separately, as Case 14909-U-99-3757, and is being processed separately.

<sup>2</sup> Allegations in paragraphs 5, 14, 18, 22, 24, 25, 26, 28, 29, and 30 were found to state a cause of action against the union for breach of the duty of fair representation.

Alleged Animus Toward Supervisors

The deficiency notice questioned the legal standing of Ms. McHugh to pursue an allegation contained in paragraph 27 of the original complaint, to the effect that the union had removed another employee from an appointive office. That allegation has been modified, in paragraph 31 of the amended complaint, to allege the union leadership bore animus toward the dispatch supervisors and anybody within the bargaining unit who supported them. The order issued herein confirms the withdrawal of allegations concerning events prior to March 22, 1999, as a basis for any remedy in this proceeding, but does not preclude the presentation of evidence showing the influence or effect of those events on other allegations which do state a cause of action.

Additional Allegations

Paragraph 8 of the amended complaint provides additional information concerning a representation petition filed by McHugh and others. The filing of a representation petition is clearly an activity protected by RCW 41.56.040.

Paragraph 9 of the amended complaint alleges that the employer's civil service commission was scheduled to act on a proposed reorganization on January 5, 2000. Although not explicitly stated as such, this is understood to be a continuation or postponement of civil service proceedings dating back to February of 1999. The importance of that inference is that this complaint is timely as to union actions adverse to McHugh's interests in connection with the current civil service proceedings (along with other proceedings the past six months), even if the complaint is time-barred as to earlier events.

Paragraph 19 of the amended complaint alleges that a union official made statements adverse to the interests of McHugh at a union meeting held on September 24, 1998. This is among the paragraphs labeled as "Background Information", and will be limited in the same manner as other allegations in that group.

Paragraphs 27, 28, 30, and 35 describe the hesitance of union officials to represent McHugh in April, June, and September of 1999, and repeated references to the union's disagreement with testimony given by McHugh against a bargaining unit member in a previous proceeding, and the failure of the union to seek a modification of the bargaining unit through unit clarification proceedings before the Commission. As was indicated in the Deficiency Notice with regard to similar allegations, these allegations state a cause of action against the union.

Paragraph 37, 38, and 39 allege the union's settlement or refusal to pursue grievances filed by McHugh was in reprisal for her exercise of her right to file and process the representation petition. These allegations state a cause of action against the union.

NOW, THEREFORE, it is

ORDERED

1. Allegations concerning events and actions prior to March 22, 1999, may be admissible as background evidence in this proceeding, but shall not be a basis for any remedy.
2. Assuming all of the facts alleged in the amended complaint filed in the above-captioned matter to be true and provable,

the complaint states causes of action against the union, summarized as follows:

- A. Union interference with employee rights, in violation of RCW 41.56.150(1), by threats of reprisal or force or promises of benefit made in connection with the exercise of the right to select and change their exclusive bargaining representative; and
- B. Union discrimination, in violation of RCW 41.56-.150(1), in reprisal for the exercise by McHugh of her right to select and change their exclusive bargaining representative; and
- C. Union interference and refusal to bargain, in violation of RCW 41.56.150(1) and (4), by breach of the duty of fair representation in aligning itself in interest against a member of a bargaining unit for which it holds status as exclusive bargaining representative.

Those allegations shall be the subject of further proceedings under Chapter 391-45 WAC.

3. 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 original answer and one copy 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:

- A. 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; and

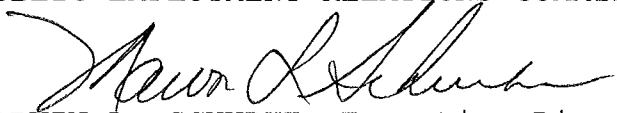
- B. Assert any affirmative defenses that are claimed to exist in the matter.

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.

4. Jack T. Cowan of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC.

Issued at Olympia, Washington, on this 29<sup>th</sup> day of February, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L, SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on the matters covered, unless a notice of appeal is filed with the Commission under WAC 391-45-350.