City of Lynnwood, Decision 6986 (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LESLIE N. WIENSZ, Complainant,	)	CASE 14793-U-99-3722
vs.	)	DECISION 6986 - PECB
CITY OF LYNNWOOD, Respondent.	)	ORDER OF DISMISSAL

On September 21, 1999, Leslie N. Wiensz filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45-WAC, alleging that the City of Lynnwood (employer) violated Chapter 41.56 RCW by placing him in an employer-initiated hostile work environment. The complaint was reviewed by the Executive Director under WAC 391-45-110,[1] and a deficiency notice issued on November 29, 1999, pointed out defects in the complaint as filed. Wiensz was given a period of 14 days following the date of the deficiency notice in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

Nothing further has been heard or received from Wiensz so that dismissal of the complaint is now in order.

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[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceeding before the Commission.

DISCUSSION

Wiensz identifies himself as an employee of the City of Lynnwood, who apparently worked at the employer's wastewater treatment facility until he was transferred to a different position. The complaint further indicates that Wiensz is employed in a bargaining unit represented by Teamsters, Local 763. Thus, the jurisdiction of the Commission in this case, if any, would be under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

Complaint Untimely as to Some Allegations

Wiensz alleges that he is the victim of an employer-initiated hostile work environment dating back to April of 1998. RCW 41.56.160 imposes a six-month limitation on the filing of unfair labor practice complaints. Accordingly, the complaint filed in this case on September 21, 1999, can only be considered timely for acts or events occurring on or after March 21, 1999. Earlier events (including a suspension in July of 1998 and a transfer in August of 1998) can only be considered as background, and could not be the basis for any remedy in this proceeding.

Scope of Jurisdiction

Wiensz alleges that he was unfairly denied sick leave, and that he was unfairly threatened with termination of his employment, in September of 1999. He alleges that those adverse personnel actions by the employer violated the applicable collective bargaining agreement, violated his rights under the federal Family Medial Leave Act (FMLA), and were acts of "retribution for filing safety claims [with the Washington State Department of Labor and Industries] ...".

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of certain collective bargaining disputes between employers, employees and unions. Thus:

- The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). Such claims must be processed through the grievance and arbitration machinery of the collective bargaining agreement, or through the courts.

- The Commission does not have any authority to interpret or enforce the Family Medical Leave Act. Claims under that federal law would have to be taken up with the federal agency authorized to administer that statute.

- While the Commission determines allegations of discrimination related to union activities, it does not have jurisdiction over other forms of unlawful discrimination. Just as claims of discrimination on the basis of sex, race, creed, national origin, etc., must be processed before the Washington State Human Rights Commission or appropriate federal authorities, claims of discrimination in reprisal for filing an industrial health or safety claim would have to be pursued through the Washington State Department of Labor and Industries. Similarly, claims of discrimination for whistleblowing in public employment would have to be pursued through the Office of the State Auditor or a local whistleblower program.

Wiensz has offered no information that indicates the Commission has authority to resolve his claims against his employer.

Violation of Contractual Dispute Resolution Procedure

With regard to any claim or suggestion that the employer has engaged in foot-dragging in the grievance and arbitration process, the Commission does not assert jurisdiction to enforce the agreement to arbitrate, the procedures for arbitration, or the awards issued by arbitrators on grievance disputes. Thurston County Communications Board, Decision 103 (PECB, 1976). This is closely related to the absence of Commission jurisdiction regarding the underlying contract violation. See, City of Walla Walla, supra. Enforcement of contractual procedures would have to be sought through the courts, which can also assert jurisdiction over the underlying contract violation.

Breach of Duty of Fair Representation

The union is not named as a respondent in the only complaint now on file, although Wiensz complained about "the union ... using stall tactics instead of moving to resolve this issue". The deficiency notice informed Wiensz that he would need to file and serve a separate complaint if he desired some remedy against the union. Additionally, the deficiency notice indicated that, even if a separate complaint were to be filed naming the union as a respondent, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). This is also closely related to the lack of "violation of contract" jurisdiction. Such claims must be presented to a court which can assert jurisdiction over the underlying contract claim.

The deficiency notice pointed out that the Commission does police its certifications, and asserts jurisdiction in cases where a union

is accused of aligning itself in interest on some unlawful basis against a member of the bargaining unit it represents. There were no such allegations in this case, however.

Form of the Complaint

WAC 391-45-050(2) calls upon a complainant to provide "clear and concise" statements of facts, which will both put the respondent(s) on notice of the charges to be faced at a hearing, and enable the Commission and its examiner to rule on objections concerning irrelevant and immaterial evidence. In this case, the facts set forth in the 29 paragraphs of the statement of facts fall far short of those required by WAC 391-45-050(2). For example:

- The complaint does not identify the employer officials involved, so that a motion to make the complaint more definite and certain would be appropriate even if that omission were disregarded at this stage of the proceeding.
- Paragraph 24 details a conversation that was held on October 20, 1998, but does not identify the other person in the conversation so that even its use as background material is doubtful.
- The complainant has generally failed to identify whether persons named were supervisors, co-workers, union officials, or merely witnesses to events.

In paragraph 23 of his complaint, Wiensz asks the Commission to investigate his allegations. This indicates a lack of familiarity with Commission procedures, which differ significantly from the procedures used by the National Labor Relations Board (NLRB) in its administration of the National Labor Relations Act applicable in the private sector. At the NLRB, a person claiming that the NLRA has been violated need only file a skeletal "charge" which is

investigated by the NLRB staff prior to their issuance of a complaint. The NLRB staff then prosecutes complaints before an impartial administrative law judge. In contrast, the Public Employment Relations Commission and its staff maintain an impartial posture in all proceedings before the agency. A complaining party must discover and assemble the facts and evidence into a coherent presentation, must file a complete and sufficient complaint, and must investigate and prosecute its own case.

Employer Discrimination for Filing Charges

The complainant marked the box on the complaint form to allege "employer discrimination for filing charges", which is a violation of RCW 41.56.140(3). The reference to "filing charges" is statutorily limited to complaints filed with the Public Employment Relations Commission, and is not a general reference that would include grievances filed under a collective bargaining agreement or claims filed with other governmental agencies. In this case, none of the facts alleged in the statement of facts supports such a claim. This case is the first unfair labor practice complaint filed by Wiensz with the Commission, and all of the alleged misconduct predates that filing.

Employer Refusal to Bargain

The complainant has marked the box on the complaint form to allege "employer refusal to bargain", in violation of RCW 41.56.140(4). It is well established, however, that individual employees have no legal standing to file or pursue refusal to bargain complaints. Grant County, Decision 2703 (PECB, 1987). The duty to bargain exists only between an employer and the union selected by the majority of its employees, and only those parties can assert rights

under RCW 41.56.140(4). The union has not filed its own complaint, or intervened on behalf of Wiensz in this proceeding.

"Other Unfair Labor Practice"

The complainant has marked the "other unfair labor practice" box on the complaint form, but his intent is unclear.

The Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic. It is not possible to conclude from the materials now on file that a cause of action exists. In the absence of any response to the deficiency notice, the complaint fails to state a cause of a action.

NOW THEREFORE, it is

ORDERED

THE complaint charging unfair labor practices in this matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of March, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.