

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARY MCHUGH,)	
)	
Complainant,)	CASE 14909-U-99-3757
)	
vs.)	DECISION 7040 - PECB
)	
CITY OF BELLINGHAM,)	PARTIAL DISMISSAL AND
)	PRELIMINARY RULING
Respondent.)	
)	
)	
)	

On December 3, 1999, Mary McHugh filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Bellingham (employer) as respondent.¹ The complaint was reviewed under WAC 391-45-110, and certain problems with the complaint, as filed, were pointed out in a deficiency notice issued on February 29, 2000. An amended complaint filed on March 14, 2000, is now before the Executive Director for processing under WAC 391-45-110.

The Executive Director concludes that some of the allegations in the amended complaint state causes of action for further proceedings under Chapter 391-45 WAC.

Untimely Allegations

The deficiency notice pointed out that the complaint filed in this case on December 3, 1999, could only be considered timely, under

¹ An unfair labor practice complaint filed against the union involved is being processed separately.

RCW 41.56.160, with respect to acts or events occurring on or after June 3, 1999. Thus, it was not possible to conclude that a cause of action existed with respect to allegations concerning events and actions prior to that date. The amended complaint cures that problem:

- Paragraph 10 of the original complaint, which concerned union activity by McHugh in 1994, has now been re-cast as "background" to allegations which follow.
- Paragraphs 11, 12, 13, 19 and 21 of the original complaint, which alleged incidents of past anti-union animus on the part of the employer, are now re-cast as "background" to allegations which follow.
- Paragraphs 14, 15, 16, 17, 18, 20 and 22 of the original complaint, which alleged mistreatment of McHugh by employer officials in the period from November of 1998 through April of 1999, are now re-cast as "background" to allegations which follow.

While evidence concerning those matters may be admissible in the context that there is no statute of limitations on anti-union animus, those events will not be a direct basis for any remedy in this proceeding.

"Refusal to Bargain" Claim Abandoned

Paragraphs 25 and 27 of the original complaint alleged that the employer had implemented, or at least taken steps toward implementing, a reorganization without bargaining the matter with McHugh's union. The deficiency notice pointed out that the duty to bargain

only exists between a public employer and the exclusive bargaining representative of its employees, and that individual employees lack legal standing to file and pursue "refusal to bargain" charges under RCW 41.56.140(4) and 41.56.150(4). The allegation does not appear in the amended complaint, and is deemed to have been abandoned.

Allegations Which State a Cause of Action

Paragraphs 23, 24 and 26 of the original complaint alleged that the employer had taken steps to terminate McHugh's employment, in reprisal for her prior activities protected by Chapter 41.56 RCW. Similar allegations found in paragraphs 25 through 28 of the amended complaint are summarized as:

Employer interference and discrimination, in violation of RCW 41.56.140(1), by its actions to eliminate the position held by Mary McHugh and reassign McHugh to a lesser position.

Assuming all of those facts (including the underlying "animus" allegations, as indicated above) to be true and provable, those allegations state a cause of action for further proceedings under Chapter 391-45 WAC.

NOW, THEREFORE, it is

ORDERED

1. The allegations of the original complaint in this matter which were previously identified as deficient are DISMISSED.

2. The allegations set forth in paragraphs 25 through 28 of the amended complaint in this matter shall be the subject of further proceedings under Chapter 391-45 WAC.

A. 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, 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 order.

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:

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; and
2. 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.

- B. 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. The Examiner will be issuing a notice of hearing in the near future. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 391-08-180, including making contact to determine the position of the other party(-ies) prior to presenting the request to the Examiner.

Issued at Olympia, Washington, on the 26th day of April, 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 thereby, unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARILYN GLENN SAYAN, CHAIRPERSON
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JOSEPH W. DUFFY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 7040 - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, POSTAGE PREPAID, ADDRESSED TO THE PARTIES AND THEIR REPRESENTATIVES LISTED IN THE DOCKET RECORDS OF THE COMMISSION AS INDICATED BELOW:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ REBECCA AMES

CASE NUMBER: 14909-U-99-03757 FILED: 12/03/1999 ISSUED: 04/26/2000
FILED BY: PARTY 2 DISPUTE: ER MULTIPLE ULP DETAILS: Er disc for engaging in protected activities.
COMMENTS:

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