

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DRAKE E. WALTERS,

Complainant,

vs.

BAINBRIDGE ISLAND FIRE DEPARTMENT,

Respondent.

CASE 15511-U-00-3920

DECISION 7347 – PECB

ORDER OF DISMISSAL

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by Drake E. Walters (Walters) on December 5, 2000. Walters is represented for the purposes of collective bargaining by IAFF, Local 4034 (union). The complaint alleged that Bainbridge Island Fire Department (employer) discriminated against Walters in violation of RCW 41.56.140(1), by failing to implement a new job description for Walters' position of Facilities and Equipment Coordinator/Firefighter.

The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice was issued on February 1, 2001, indicating that it was not possible to conclude that a cause of action existed. The deficiency notice stated that the Commission is bound by the following provisions of Chapter 41.56 RCW:

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, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

RCW 41.56.160 Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission....

The complaint refers to employer actions taken in March and April of 2000. In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of employer misconduct occurring on or after June 5, 2000.

The deficiency also indicated that the complaint failed to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW. Commission docket records indicate that the union filed a petition for investigation of a question concerning representation on March 31, 2000, seeking to represent uniformed personnel of the employer. See, Case 15115-E-00-2521. Walters was listed as one of the uniformed personnel of the employer. On May 30, 2000, the Commission issued an Interim Certification indicating that the union had been selected as exclusive bargaining representative by the uniformed personnel of the employer. *Bainbridge Island Fire Department*, Decision 7060-A (PECB, 2000).

The employer raised a question as to the supervisory status of Walters in the initial stages of the representation case. However, by letter filed with the Commission on July 27, 2000, the employer withdrew its position concerning the eligibility of Walters. On July 28, 2000, the Commission issued an Order Closing Case, indicating that the interim certification would stand as the final certification in the proceeding. *Bainbridge Island Fire Department*, Decision 7060-B (PECB, 2000).

The complaint alleges that the employer informed Walters that implementation of a new job description for the Facilities and Equipment Coordinator/Firefighter position was "blocked by the newly formed organized labor union (IAFF Local 4034)". After employees select an exclusive

bargaining representative, a public employer must negotiate any changes in mandatory subjects of bargaining with that representative.

The deficiency notice advised Walters that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Walters that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed. Nothing further has been received from Walters.

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 27th day of March, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

MARK S. DOWNING, Director of Administration

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