STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WSCCCE, LOCAL 1533K, Complainant,	)	CASE 15497-U-00-3915
vs.	)	DECISION 7302 - PECB
KLICKITAT COUNTY, Respondent.	)	PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by WSCCCE, Local 1533K (union) on November 27, 2000. The complaint alleged that Klickitat County (employer) interfered with employee rights and discriminated in violation of RCW 41.56.140(1), by its suspension of Ronee Bothamley (Bothamley) on November 1, 2000.

The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice was issued on January 4, 2001, indicating that it is not possible to conclude that a cause of action exists at this time. The deficiency notice stated as follows:

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

> The union has failed to explain its theory as to how the provisions of RCW 41.56.140(1) have been violated by the employer's conduct. The complainant is responsible for the presentation of its case. See, WAC 391-45-270. The Commission staff is not at liberty to take on advocacy responsibilities such as assembling a coherent presentation, filling in gaps, or making leaps of logic. In reference to the discrimination allegations, the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW.
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> Although the complaint fails to allege a unilateral change/refusal to bargain violation under RCW 41.56.140(4), the complaint refers to various changes made by the employer in its disciplinary procedures after the union was certified as the employees' bargaining representative, apparently without bargaining those changes with the union. Is the union alleging a unilateral change/refusal to bargain violation under RCW 41.56.140(4)? If so, the union must indicate what specific disciplinary procedures the employer has allegedly changed.

The deficiency notice advised the union 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 the union that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed.

On January 24, 2001, the union filed an amended complaint. The amended complaint has cured the problems noted in the deficiency notice concerning the allegations of interference and discrimination in violation of RCW 41.56.140(1). In relation to the unilateral change/refusal to bargain allegations, the amended

complaint form indicates that the union is claiming a violation of RCW 41.56.140(4). However, the statement of facts attached to the amended complaint contain no indication of any specific disciplinary procedures that have been changed by the employer. Exhibit 6 of the amended complaint contains a November 13, 2000 letter from union staff representative Thomas E. Barrington to chief deputy assessor Harold Vandenberg. The letter alleges that the employer failed to follow its progressive discipline policy, as contained in the employer's personnel policy, in its November 1, 2000 discipline of Bothamley.

An allegation that an employer has failed to adhere to its policies and procedures in a specific instance does not rise to the level of an allegation that an employer has actually changed its policies and procedures. In *King County*, Decision 4258-A (PECB, 1994), the Commission stated:

> The unilateral action alleged to be unlawful in this case was the employer's failure, in regard to the questioning of one police officer, to follow a previously announced personnel policy covering investigatory interviews. The union does not claim that the employer announced any new or different policy.
>
> ... In the case now before us, the employer did not adopt any new policies. Rather, its conduct amounted to no more than an apparently isolated violation of an existing policy which occurred only in regard to one police officer.

See, *King County*, Decision 4893-A (PECB, 1995), and *City of Burlington*, Decision 5841-A (PECB, 1997). An isolated variance in policy affecting a single employee does not amount to a unilateral change in working conditions. The change in policy must be one which represents a departure from an established practice. The

amended complaint fails to state a cause of action concerning employer refusal to bargain in violation of RCW 41.56.140(4).

NOW THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations of the amended complaint state a cause of action, summarized as follows:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(-1), by its suspension of Ronee Bothamley on November 1, 2000 in reprisal for her union activities protected by Chapter 41.56 RCW.

The interference and discrimination allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Klickitat County shall:

> File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny or explain each fact alleged in the amended 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.

The answer 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 amended complaint. Service shall be completed no later than the day of filing. 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. See, WAC 391-45-210.

3. The allegation of the amended complaint concerning employer refusal to bargain in violation of RCW 41.56.140(4) is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of March, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Director of Administration

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.