City of Grandview (Teamsters Union, Local 524), Decision 7519 (PECB, 2001)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF GRANDVIEW, Complainant, vs. TEAMSTERS UNION, LOCAL 524, Respondent.	)	CASE 15904-U-01-4045 DECISION 7519 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the City of Grandview (employer) on July 11, 2001. The complaint alleged that Teamsters Union, Local 524 (union) interfered with employee rights in violation of RCW 41.56.150(1), induced the employer to commit an unfair labor practice violation under RCW 41.56.150(2), and refused to bargain in violation of RCW 41.56.150(4).

The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice was issued on August 8, 2001, indicating that it was not possible to conclude that a cause of action existed at that time. The deficiency notice indicated that no statement of facts was filed with the complaint. Commission rules provide 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.

> WAC 391-45-050 CONTENTS OF COMPLAINT CHARGING UNFAIR LABOR PRACTICES. Each complaint shall contain, in separate numbered paragraphs:
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> . . . .
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> (2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The deficiency notice stated that the complaint did not provide sufficient factual information as required by WAC 391-45-050(2).

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

The employer filed an amended complaint on August 22, 2001, alleging that the union interfered with employee rights in violation of RCW 41.56.150(1), induced the employer to commit an unfair labor practice violation under RCW 41.56.150(2), and refused to bargain in violation of RCW 41.56.150(4), by filing grievances violating contractual time limits, pressing issues raised by a few employees over the objections of the majority of employees, advancing criticisms of management actions to intimidate those criticized, raising false allegations of nepotism and favoritism, and promoting racial division through ignoring concerns of Hispanic employees and paying undue attention to concerns of Caucasian employees.

The amended complaint was reviewed under WAC 391-45-110. A second deficiency notice was issued on September 5, 2001, indicating that it was not possible to conclude that a cause of action existed at

that time. The second deficiency notice indicated that the amended complaint concerned two general topics: 1) the union's handling of employee concerns and grievances; and 2) the union's promotion of racial division between Hispanic and Caucasian employees. In relation to the first concern, a union owes a duty of fair representation to bargaining unit employees with respect to the processing of grievances. A union must fairly investigate grievances to decide if they have merit. If a union believes that a grievance has merit, the union has the right to file a grievance under the parties' contractual grievance procedure. The process used by a union to decide whether to file a grievance is purely of its own creation. An employer has no right to insert its opinions into that decision-making process of the union. A union's decision to file a grievance is part of its internal union affairs.

The second deficiency notice stated that while a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation. The Public Employment Relations 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).

The second deficiency notice also addressed the second concern of the amended complaint involving the union's promotion of racial division between Hispanic and Caucasian employees. While the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances, the Commission polices its certifications, and asserts jurisdiction over alleged breaches of

the duty of fair representation where a union is alleged to have aligned itself in interest against one or more bargaining unit employees on some improper or invidious basis. Because such conduct calls into question the right of the union to enjoy the benefits of its statutory status as "exclusive bargaining representative," the potential remedies are quite far-reaching. *See City of Vancouver*, Decision 6933 (PECB, 2000).

The second deficiency notice stated that while allegations concerning racial discrimination are generally within the jurisdiction of the Commission, the amended complaint failed to allege any specific facts related to this subject matter. The second deficiency notice quoted WAC 391-45-050(2) and concluded that, as was the case for the original complaint, the amended complaint did not comply with the provisions of WAC 391-45-050(2).

The second deficiency notice indicated additional problems with the amended complaint. In relation to the inducement to commit unfair labor practice allegations, the amended complaint did not contain sufficient factual allegations concerning conduct by the union inducing the employer to commit unfair labor practices. While the amended complaint alleged that the union breached its good faith obligations under RCW 41.56.150(4), none of the allegations of the amended complaint concerned bargaining tactics in relation to the negotiation of contractual language, or the union's obligations under RCW 41.56.030(4). The second deficiency notice concluded that absent such allegations, a cause of action under RCW 41.56.150(4) could not be found.

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

The employer filed a second amended complaint on September 25, 2001, alleging the same statutory violations as were contained in its amended complaint of August 22, 2001. Two attachments were filed with the second amended complaint: 1) the original statement of facts filed with the amended complaint; and 2) a "supplement to statements of fact" document. The "supplement to statements of fact" document does not include information concerning "times, dates, places and participants in occurrences" detailing the allegations of racial discrimination. The second amended complaint does not contain sufficient factual information as required by WAC 391-45-050(2).

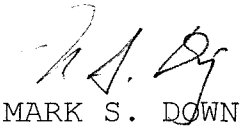
NOW, THEREFORE, it is

ORDERED

The complaint, amended complaint, and second amended complaint charging unfair labor practices in the above captioned matter are DISMISSED for failure to state a cause of action.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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.