

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY))	
AND CITY EMPLOYEES,))	
)	
Complainant,))	CASE 16320-U-02-4173
)	
vs.))	DECISION 7732 - PECB
)	
SNOHOMISH COUNTY,))	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.))	PROCEEDINGS
)	
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WASHINGTON STATE COUNCIL OF COUNTY))	
AND CITY EMPLOYEES,))	
)	
Complainant,))	CASE 16330-U-02-4177
)	
vs.))	DECISION 7733 - PECB
)	
SNOHOMISH COUNTY,))	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.))	PROCEEDINGS
)	

On April 1, 2002, WSCCCE (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complaint was docketed as Case 16320-U-02-4173. The complaint alleged that Snohomish County (employer) interfered with employee rights in violation of RCW 41.56.140(1) and refused to bargain in violation of RCW 41.56.140(4), by circumventing the union through direct dealings with Nathan Kelley and Dave Mackey, employees represented by the union, and by failing to negotiate last chance agreements for Kelley and Mackey with the union. The union filed an amended complaint with the Commission on April 11, 2002.

On April 8, 2002, the union filed a second unfair labor practice complaint against the employer with the Commission. The complaint was docketed as Case 16330-U-02-4177. The complaint alleged that the employer interfered with employee rights and discriminated in violation of RCW 41.56.140(1), dominated or assisted the union in violation of RCW 41.56.140(2), and discriminated for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by comments in a letter of April 2, 2002, from Director of Human Resources Bridget Clawson that the employer would seek sanctions from the Commission if a previous complaint filed by the union was not withdrawn, in reprisal for union activities protected by Chapter 41.56 RCW. The union filed an amended complaint in the second case with the Commission on April 11, 2002.

The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice was issued for both cases on April 26, 2002. In relation to Case 16320-U-02-4173, the deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of employer refusal to bargain in violation of RCW 41.56.140(4). The deficiency notice stated that an employer has the right to determine whether to take disciplinary action against an employee. Once an employer has made that decision, the union may challenge the decision under the parties' collective bargaining agreement. The deficiency notice indicated that the interference allegations of the complaint under RCW

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

41.56.140(1) appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

In relation to Case 16330-U-02-4177, the deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of employer domination or assistance of the union in violation of RCW 41.56.140(2). The deficiency notice stated that none of the facts alleged in the complaint suggested that the employer had involved itself in the internal affairs or finances of the union, or that the employer had attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999). The deficiency notice indicated that the interference and discrimination allegations of the complaint under RCW 41.56.140(1), and the discrimination allegations for filing an unfair labor practice charge under RCW 41.56.140(3), appeared to state a cause of action and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

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 allegations of employer refusal to bargain in violation of RCW 41.56.140(4) in Case 16320-U-02-4173, and the allegations of employer domination or

assistance of the union in violation of RCW 41.56.140(2) in Case 16330-U-02-4177, would be dismissed.

On May 1, 2002, the union filed an amended complaint in Case 16320-U-02-4173. The filing did not contain any factual information different in kind than the union's previous filings. The amended complaint alleges that the employer's conduct violates the parties' collective bargaining agreement. The Public Employment Relations 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). On May 7, 2002, the union filed an amended complaint in Case 16330-U-02-4177, indicating that it was withdrawing the allegations of employer domination or assistance of the union in violation of RCW 41.56.140(2).

A "second look" is in order for the complaint in Case 16320-U-02-4173. The deficiency notice indicated that the complaint failed to state a cause of action for the allegations of employer refusal to bargain in violation of RCW 41.56.140(4), but did state a cause of action for the allegations of employer interference with employee rights in violation of RCW 41.56.140(1). The complaint concerns two subject matters: 1) Circumvention of the union through direct dealings with Kelley and Mackey; and 2) Failure to negotiate last chance agreements for Kelley and Mackey with the union. The defects indicated in the deficiency notice concern the second subject matter of the complaint. No defects were indicated in the deficiency notice concerning the circumvention allegations.

Circumvention allegations involve an employer negotiating directly with bargaining unit employees on wages, hours or working condi-

tions that should be negotiated with the union. The Commission processes allegations of circumvention of the union under the refusal to bargain provisions of RCW 41.56.140(4). The circumvention allegations of the complaint do state a cause of action under the interference provisions of RCW 41.56.140(1) and the refusal to bargain provisions 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 refusal to bargain allegations of the complaint in Case 16320-U-02-4173 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by circumventing the union through direct dealings with Nathan Kelley and Dave Mackey, employees represented by the union.

The interference and refusal to bargain allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations under RCW 41.56.140(1), and the discrimination allegations for filing an unfair labor practice charge under RCW 41.56.140(3) in Case

16330-U-02-4177 state a cause of action, summarized as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by comments in a letter of April 2, 2002 from Director of Human Resources Bridget Clawson that the employer would seek sanctions from the Commission if a previous complaint filed by the union was not withdrawn, in reprisal for union activities protected by Chapter 41.56 RCW.

The interference, discrimination, and discrimination for filing an unfair labor practice charge allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

3. Snohomish County shall:

File and serve its answer to the allegations listed in paragraphs 1 and 2 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 complaints, 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 matters.

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 complaints. 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 complaints, will be deemed to be an admission that the fact is true as alleged in the complaints, and as a waiver of a hearing as to the facts so admitted. See WAC 391-45-210.

4. The allegations in Case 16320-U-02-4173 concerning employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4) for failure to negotiate last chance agreements for Kelley and Mackey with the union, and the allegations in Case 16330-U-02-4177 concerning employer domination or assistance of the union in violation of RCW 41.56.140(2), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29th day of May, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

Paragraph 4 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.