

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,)	
)	
Employer.)	
-----)	
KIM GENTRY,)	
)	
Complainant,	)	CASE 18554-U-04-4721
)	
vs.	)	DECISION 8694 - PECB
)	
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 46,	)	PRELIMINARY RULING AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
)	
-----)	
KIM GENTRY,)	
)	
Complainant,	)	CASE 18555-U-04-4722
)	
vs.	)	DECISION 8695 - PECB
)	
CITY OF SEATTLE,	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
)	
-----)	

On May 21, 2004, Kim Gentry (Gentry) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The first complaint concerned allegations against the International Brotherhood of Electrical Workers, Local 46 (union) and was docketed as Case 18554-U-04-4721. The second complaint concerned allegations against the City of Seattle (employer) and was docketed as Case 18555-U-04-4722. WAC 10-08-085 provides that "multiple adjudicative proceedings involving common issues or parties" may be consolidated. As the complaints filed by Gentry involve common issues, the complaints are consolidated for further proceedings before the Commission.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice, issued on July 12, 2004, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaints. Gentry was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the defective allegations. Based upon a timely motion for extension of time filed by Gentry under WAC 391-08-180, a continuance of 21 days was granted for the filing of amended complaints.

On August 16, 2004, Gentry filed amended complaints against the union and employer.

- As the amended complaint against the union cured the defects noted in the deficiency notice, a preliminary ruling and order for further proceedings is being issued by the Unfair Labor Practice Manager in Case 18554-U-04-4721.
- The amended complaint against the employer deleted allegations of domination or assistance of a union in violation of RCW 41.56.140(2), and added allegations of an "other unfair labor practice" by violating RCW 41.56.110. The amended complaint failed to cure the defect noted in the deficiency notice concerning the allegations of employer discrimination under RCW 41.56.140(1). A partial dismissal and order for further proceedings is being issued by the Unfair Labor Practice Manager in Case 18555-U-04-4722, deleting allegations of employer domination or assistance of a union 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(2), finding a cause of action for allegations of an "other unfair labor practice" by violating RCW 41.56.110, and dismissing allegations of employer discrimination under RCW 41.56.140(1) for failure to state a cause of action.

DISCUSSION

Complaint Filed Against Union

The allegations of the amended complaint in Case 18554-U-04-4721 concern union interference with employee rights in violation of RCW 41.56.150(1), inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), and an "other unfair labor practice" by violating WAC 391-95-010, through attempts to have Kim Gentry discharged based on an alleged failure to pay union dues under a union security provision of a collective bargaining agreement.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before November 21, 2003, will be considered merely as background information. The complaint and amended complaint are limited to allegations of union misconduct occurring on or after November 21, 2003.

Complaint Filed Against Employer

The allegations of the amended complaint in Case 18555-U-04-4722 concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and an "other unfair labor practice" by violating RCW 41.56.110, through attempts to have Kim Gentry discharged based on an alleged failure to pay union dues

under a union security provision of a collective bargaining agreement, in reprisal for union activities protected by Chapter 41.56 RCW.

As indicated above for the complaint against the union, the complaint contains information concerning events occurring more than six months before filing of the complaint. The complaint and amended complaint are limited to allegations of employer misconduct occurring on or after November 21, 2003.

The amended complaint failed to cure the defect noted in the deficiency notice concerning the allegations of employer discrimination under RCW 41.56.140(1). The complaint and amended complaint fail to allege facts indicating that the employer's actions were taken against Gentry in reprisal for union activities protected under Chapter 41.56 RCW.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference, inducement of employer to commit an unfair labor practice, and "other unfair labor practice" allegations of the amended complaint in Case 18554-U-04-4721 state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), and an "other unfair labor practice" by violating WAC 391-95-010, through attempts to have Kim Gentry discharged based on an alleged failure to pay union dues under a union security provision of a collective bargaining agreement.

The interference, inducement of employer to commit an unfair labor practice, and "other unfair labor practice" allegations of the amended 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 "other unfair labor practice" allegations of the amended complaint in Case 18555-U-04-4722 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1), and an "other unfair labor practice" by violating RCW 41.56.110, through attempts to have Kim Gentry discharged based on an alleged failure to pay union dues under a union security provision of a collective bargaining agreement.

The interference and "other unfair labor practice" allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

3. The City of Seattle and International Brotherhood of Electrical Workers, Local 46 shall:

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

4. The allegations of the complaint and amended complaint in Case 18555-U-04-4722 concerning employer discrimination in violation of RCW 41.56.140(1), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 25th day of August, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.