

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SONJA WISER,)	
)	
Complainant,	)	CASE 18133-U-04-4648
)	
vs.	)	DECISION 8490 - PECB
)	
CLARK COUNTY,	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
)	
<hr/>		
SONJA WISER,)	
)	
Complainant,	)	CASE 18341-U-04-4677
)	
vs.	)	DECISION 8491 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES,	)	PRELIMINARY RULING AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
)	
<hr/>		

On January 13, 2004, Sonja Wisser (Wisser) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Clark County (employer) as respondent. The complaint was docketed by the Commission as Case 18133-U-04-4648. The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and unspecified other unfair labor practices, by including an administrative assistant position occupied by Wisser in the development services division of the community development department in a bargaining unit represented by the Washington State Council of County and City Employees, in reprisal for union activities protected by Chapter 41.56 RCW.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on February 23, 2004, indicated that it was not possible to conclude that a cause of action existed at that time. Wisner was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On February 24, 2004, Wisner filed a memo entitled "Follow-Up Documentation to Unfair Labor Practices Complaint Filed on 1/13/04," which alleged age and sex discrimination by the employer. On March 10, 2004, Wisner filed an amended complaint against the employer and the Washington State Council of County and City Employees (union). The amended complaint included allegations concerning union interference with employee rights in violation of RCW 41.56.150(1). The allegations of the amended complaint against the union were docketed as Case 18341-U-04-4677.

The Unfair Labor Practice Manager dismisses defective allegations of the amended complaint against the employer for failure to state a cause of action, and finds a cause of action for interference allegations of the amended complaint against both the employer and the union.

DISCUSSION

The complaint contained several defects. One, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaints:

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. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

. . . .
(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

A memo of December 29, 2003, from Wisler to the county board of commissioners and the county executive was attached to the complaint, but the complaint did not include a statement of facts with "times, dates, places and participants in occurrences." The memo stated that the union and employer "were seeking to place my position within the Local 307 bargaining unit . . ." but failed to allege any specific facts indicating that the employer and union had actually placed Wisler's position in the unit. The complaint did not conform to the requirements of WAC 391-45-050. The amended complaint cured this defect by including a statement of facts complying with the requirements of WAC 391-45-050.

Two, in *University of Washington*, Decision 8216 (PSRA, 2003), the Commission's Executive Director stated as follows:

Commission precedents under RCW 41.56.140 through .160 recognize the right of individual employees to file unfair labor practice charges against both their employer and a union, where the employee claims that the position held or claimed has been improperly included in or excluded from an existing bargaining unit by agreement of that employer and union. *Castle Rock School District*, Decision 4722-B (EDUC, 1995); *Richland School District*, Decision 2208, 2208-A (PECB, 1985). Several other well-established principles explain the context for those precedents:

- Individual employees do not have standing to file or pursue unit clarification petitions under Chapter 391-35 WAC; [footnote: "See WAC 391-35-010."] and

- The Commission has exclusive jurisdiction to police bargaining relationships and determine appropriate bargaining units under RCW 41.06.340 [and RCW 41.56.060], which could include imposing sanctions upon an "exclusive bargaining representative" which is found guilty of a breach of the duty of fair representation by aligning itself in interest against bargaining unit employees on unlawful grounds; [footnote: "*Elma School District (Elma Teachers Organization)*, Decision 1349 (EDUC, 1982)."] and
 - The Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contract grievances, [footnote: "*Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982)."] because the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. [footnote: "*City of Walla Walla*, Decision 104 (PECB, 1976)."]
- . . . The deficiency notice indicated that the complaints were properly filed against both the employer and the [union], as they are both necessary parties to any proceeding involving their bargaining relationship. See, *Shoreline School District*, Decision 5560, 5560-A (PECB, 1996).

Wiser's complaint was filed against the employer but not against the union. Both the employer and union are necessary parties to Wiser's claim that her position has been improperly included in an existing bargaining unit by agreement of the employer and union. To correct this defect, Wiser must also file an unfair labor practice complaint against the union. The amended complaint cured this defect by including allegations of unfair labor practices by the union.

Three, in relation to the allegations of discrimination under RCW 41.56.140(1), 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. The amended complaint failed to cure this defect. The allegations concerning employer discrimination under RCW 41.56.140(1) do not state a cause of action.

Four, in relation to the allegations of other unfair labor practices, the complaint failed to explain and specify what "other" statute had been violated by the employer's actions. The amended complaint alleges an other unfair labor practice of "denial of due process without a hearing, notice or right to counsel." The Public Employment Relations Commission does not have jurisdiction over constitutional claims. Claims concerning an employee's constitutional rights must be pursued before a court. The amended complaint does not allege a specific statutory violation by the employer. The allegations of an "other unfair labor practice" do not state a cause of action.

Five, it did not appear that the complaint complied with the provisions of WAC 391-08-120 concerning the filing of papers by fax and the service of papers on other parties. Under WAC 391-08-120(2)(b), a party filing papers by fax must mail the original papers to the Commission on the same day that the fax is transmitted. Under WAC 391-08-120(3), a party filing papers with the Commission shall serve a copy of those papers upon all other parties to the case. The amended complaint includes a certificate of service under WAC 391-08-120.

Allegations in Follow-Up Document

The follow-up document filed by Wisner on February 24, 2004, alleged age and sex discrimination by the employer. The Public Employment Relations Commission does not have jurisdiction over allegations of age and sex discrimination.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the amended complaint in Case 18133-U-04-4648 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1), by including an administrative assistant position, occupied by Sonja Wiser in the development services division of the community development department, in a bargaining unit of Clark County employees represented by the Washington State Council of County and City Employees.

The interference 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 allegations of the amended complaint in Case 18341-U-04-4677 state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), by including an administrative assistant position, occupied by Sonja Wiser in the development services division of the community development department, in a bargaining unit of Clark County employees represented by the Washington State Council of County and City Employees.

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

3. Clark County and Washington State Council of County and City Employees shall each:

File and serve their answers to the respective 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 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 answers 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.

4. The allegations of the amended complaint in Case 18133-U-04-4648 concerning employer discrimination in violation of RCW

41.56.140(1), and other unfair labor practices, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5th day of April, 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.