

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PAULINE BARBOUR,)	
)	
Complainant,)	CASE 19585-U-05-4968
)	
vs.)	DECISION 9074 - PECB
)	
PIERCE TRANSIT,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	

On June 22, 2005, Pauline Barbour (Barbour) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Pierce Transit (employer) as respondent. The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and an unspecified "other unfair labor practice", by its actions leading Barbour to resign her employment in lieu of termination.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 3, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. Barbour was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On August 8, 2005, Barbour filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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.

DISCUSSION

The complaint contained several defects. One, while various documents were included with the complaint, the complaint failed to explain how the employer's actions violated the provisions of Chapter 41.56 RCW. Unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for presentation of evidence supporting its complaint at a hearing before an examiner in accord with WAC 391-45-270.

Two, in relation to the allegations of discrimination under RCW 41.56.140(1), 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.

Three, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Barbour has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Four, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." *City of Anacortes*, Decision 6863 (PECB, 1999).

Five, in relation to the allegations of an "other unfair labor practice," the complaint fails to explain and specify what "other" rule or statute has been violated by the employer's actions.

The amended complaint withdrew the allegations of the complaint concerning employer discrimination in violation of RCW

41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and an unspecified "other unfair labor practice". The amended complaint continues to allege employer interference with employee rights in violation of RCW 41.56.140(1).

The amended complaint states as follows:

I resigned in lieu of termination due to disparaged treatment. . . .

The amended complaint does not explain how the employer's actions interfered with Barbour's rights under Chapter 41.56 RCW. 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. The amended complaint fails to allege sufficient facts supporting an employer interference violation under RCW 41.56.140(1).

NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 29th day of August, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.