

City of Kelso, Decision 9214 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WAYNE HOLDAHL,)	
)	
Complainant,)	CASE 19942-U-05-5060
)	
vs.)	DECISION 9214 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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WAYNE HOLDAHL,)	
)	
Complainant,)	CASE 19943-U-05-5061
)	
vs.)	DECISION 9215 - PECB
)	
CITY OF KELSO,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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On November 17, 2005, Wayne Holdahl (Holdahl) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, concerning allegations against the City of Kelso (employer) and the Washington State Council of County and City Employees (union). The Commission docketed the complaint as two case numbers. Case 19942-U-05-5060 concerns allegations of the complaint against the union, while Case 19943-U-05-5061 involves allegations of the complaint against the employer. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 6, 2005, indicated that it was not possible to conclude that a cause of action existed at that

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.

time. Holdahl was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

No further information has been filed by Holdahl. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint against Union

The allegations of the complaint in Case 19942-U-05-5060 concern union interference with employee rights in violation of RCW 41.56.150(1), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.150(3), and an unspecified "other unfair labor practice", by failing to represent Wayne Holdahl in the processing of a grievance concerning his termination.

The deficiency notice pointed out several defects with the complaint. One, the Commission does not have jurisdiction over constitutional claims. Claims concerning an employee's constitutional rights must be pursued before a court.

Two, 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.

Three, if bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns

have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes a duty of fair representation to bargaining unit employees, the 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). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Four, RCW 41.56.150(1) prohibits union interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by union officials, are unlawful. However, the alleged facts are insufficient to conclude that the union made any threats of reprisal or force or promises of benefit in violation of RCW 41.56.150(1).

Five, in relation to the allegations of violation of RCW 41.56.150(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Holdahl has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Six, 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 union's actions.

Complaint against Employer

The allegations of the complaint in Case 19943-U-05-5061 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 termination of Wayne Holdahl in reprisal for union activities protected by Chapter 41.56 RCW.

The deficiency notice pointed out several defects with the complaint. One, as for the complaint against the union, the Commission does not have jurisdiction over constitutional claims.

Two, as for the complaint against the union, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated.

Three, 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).

Four, RCW 41.56.140(1) prohibits employer interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by employer officials, are unlawful. However, the alleged facts are insufficient to conclude that the employer made any threats of reprisal or force or promises of benefit, in violation of RCW 41.56.140(1).

Five, as for the complaint against the union, 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 Holdahl has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Six, as for the complaint against the union, 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.

Seven, 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.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 23rd day of January, 2006.

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.