

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MIKE JUDD,)	
)	
Complainant,	)	CASE 20255-U-06-5165
)	
vs.	)	DECISION 9731 - PECB
)	
CITY OF SPOKANE,)	
)	
Respondent.	)	ORDER OF DISMISSAL
_____)	
MIKE JUDD,)	
)	
Complainant,	)	CASE 20359-U-06-5184
)	
vs.	)	DECISION 9732 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES,)	
)	
Respondent.	)	ORDER OF DISMISSAL
_____)	
MIKE JUDD,)	
)	
Complainant,	)	CASE 20646-U-06-5258
)	
vs.	)	DECISION 9733 - PECB
)	
CITY OF SPOKANE,)	
)	
Respondent.	)	ORDER OF DISMISSAL
_____)	
MIKE JUDD,)	
)	
Complainant,	)	CASE 20647-U-06-5259
)	
vs.	)	DECISION 9734 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES,)	
)	
Respondent.	)	ORDER OF DISMISSAL
_____)	

On March 9, 2006, Mike Judd (Judd) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (Commission/PERC) under Chapter 391-45 WAC. The complaint was filed on PERC Form U-1, Complaint Charging Unfair Labor Practices. The complaint form listed the respondent as the Washington State Council of County and City Employees (union), but listed only one alleged statutory violation: "Employer Interference." The allegations of the complaint against the employer were docketed by the Commission as Case 20255-U-06-5165, while the allegations of the complaint against the union were docketed as Case 20359-U-06-5184. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 2, 2006, indicated that it was not possible to conclude that causes of action existed at that time. Judd was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

On September 14, 2006, Judd filed another complaint with the Commission under Chapter 391-45 WAC. The complaint concerned allegations against the employer and the union. While the complaint form listed the union as the respondent, boxes were checked on the form indicating alleged statutory violations by the employer and the union. The Commission docketed the complaint as two case numbers. Case 20646-U-06-5258 concerns allegations of the complaint against the employer, while Case 20647-U-06-5259 involves allegations of the complaint against the union. The complaints were reviewed under WAC 391-45-110, and a deficiency notice issued on October 11, 2006, indicated that it was not possible to conclude

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.

that causes of action existed at that time. Judd was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

On May 12, 2006, Judd filed an amended complaint regarding Cases 20255-U-06-5165 and 20359-U-06-5184. On October 18, 2006, Judd filed an amended complaint regarding Cases 20646-U-06-5258 and 20647-U-06-5259. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state causes of action.

DISCUSSION

Complaints filed March 9, 2006

Employer

The allegations of the complaint in Case 20255-U-06-5165 concern employer interference with employee rights in violation of RCW 41.56.140(1), by unspecified actions related to the processing of several grievances involving Mike Judd.

The deficiency notice pointed out several defects. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

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 September 9, 2005, will be considered merely as background information. The complaint fails to meet the requirements of RCW 41.56.160. In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of employer misconduct occurring on or after September 9, 2005.

Two, 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).

Union

The allegations of the complaint in Case 20359-U-06-5184 concern unspecified statutory violations by the union through its failure to represent Mike Judd in the processing of several grievances.

The deficiency notice pointed out several defects. One, 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). While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Two, as for the complaint against the employer, the complaint fails to contain allegations of union misconduct occurring on or after September 9, 2005.

Complaints filed September 14, 2006

Employer

The allegations of the complaint in Case 20646-U-06-5258 concern employer domination or assistance of a union in violation of RCW 41.56.140(2) and discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by its violation of the parties' collective bargaining agreement related to the assignment of overtime work.

The deficiency notice pointed out several defects. One, in relation to the allegations of employer domination or assistance of a union, 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).

Two, the statement of facts attached to the complaint makes reference to an alleged violation of the parties' collective bargaining agreement. The 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). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Three, in relation to the allegations of violation of RCW 41.56.140(3), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for filing of an unfair labor practice complaint with the Commission.

Union

The allegations of the complaint in Case 20647-U-06-5259 concern union inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), by failing to represent Mike Judd in the processing of a grievance.

The deficiency notice pointed out several defects. One, 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. As for the complaint in Case 20359-U-06-5184, 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.

Two, the process used by a union to decide whether to pursue a grievance for an employee is purely of a union's own creation. Such process is part of a union's internal affairs and is often controlled by a union's constitution and/or bylaws. The constitution and bylaws of a union are the contracts among the members of a union for how the organization is to be operated. Disputes

concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts. *Enumclaw School District*, Decision 5979 (PECB, 1997).

Three, as the complaint in Case 20646-U-06-5258 fails to state a cause of action against the employer under RCW 41.56.140, there are insufficient factual allegations to support a cause of action that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2).

Amended Complaints

The amended complaints do not allege facts sufficient to conclude that either the employer or union violated Judd's rights protected under Chapter 41.56 RCW. The amended complaints fail to cure the defects detailed in the deficiency notices.


NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 11th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


DAVID I. GEDROSE, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

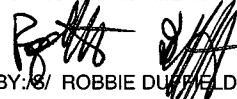

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MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/11/2007

The attached document identified as: **DECISION 9731 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY:  ROBBIE DUFFIELD

CASE NUMBER: 20255-U-06-05165 FILED: 03/09/2006 FILED BY: PARTY 2
DISPUTE: ER INTERFERENCE
BAR UNIT: OPER/MAINT
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF SPOKANE
ATTN: DENNIS HESSON
808 W SPOKANE FALLS BLVD
SPOKANE, WA 99201
Ph1: 509-625-6250

REP BY: FRANK TRIPPLETT
CITY OF SPOKANE
E 914 NORTHFOOTHILLS DR
SPOKANE, WA 99207
Ph1: 509-625-7840

PARTY 2: MIKE JUDD
ATTN:
N 16332 SADDLEWOOD
NINE MILE FALLS, WA 99026
Ph1: 509-467-5082

PARTY 3: WSCCCE
ATTN: CHRIS DUGOVICH
PO BOX 750
EVERETT, WA 98206-0750
Ph1: 425-303-8818

REP BY: MICHAEL SMITH
WSCCCE
1105 W FRANCIS STE C
SPOKANE, WA 99205
Ph1: 509-328-2830 Ph2: 800-932-4850

REP BY: AUDREY B EIDE
WSCCCE
3305 OAKES AVE
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

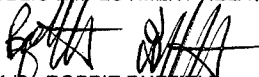
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 20359-U-06-05184 FILED: 03/09/2006 FILED BY: PARTY 2
DISPUTE: UN INTERFERENCE
BAR UNIT: OPER/MAINT
DETAILS: Union Interference
COMMENTS:

EMPLOYER: CITY OF SPOKANE
ATTN: DENNIS HESSON
808 W SPOKANE FALLS BLVD
SPOKANE, WA 99201
Ph1: 509-625-6250

REP BY: FRANK TRIPPLETT
CITY OF SPOKANE
E 914 NORTHFOOTHILLS DR
SPOKANE, WA 99207
Ph1: 509-625-7840

PARTY 2: MIKE JUDD
ATTN:
N 16332 SADDLEWOOD
NINE MILE FALLS, WA 99026
Ph1: 509-467-5082

PARTY 3: WSCCCE
ATTN: CHRIS DUGOVICH
PO BOX 750
EVERETT, WA 98206-0750
Ph1: 425-303-8818

REP BY: MICHAEL SMITH
WSCCCE
1105 W FRANCIS STE C
SPOKANE, WA 99205
Ph1: 509-328-2830 Ph2: 800-932-4850

REP BY: AUDREY B EIDE
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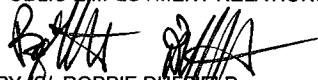
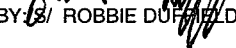
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY:  ROBBIE DUFFIELD

CASE NUMBER: 20646-U-06-05258 FILED: 09/14/2006 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: VEHICLE MAINT
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF SPOKANE
ATTN: DENNIS HESSON
808 W SPOKANE FALLS BLVD
SPOKANE, WA 99201
Ph1: 509-625-6250

REP BY: FRANK TRIPPLETT
CITY OF SPOKANE
E 914 NORTHFOOTHILLS DR
SPOKANE, WA 99207
Ph1: 509-625-7840

PARTY 2: MIKE JUDD
ATTN:
N 16332 SADDLEWOOD
NINE MILE FALLS, WA 99026
Ph1: 509-467-5082

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 20647-U-06-05259 FILED: 09/14/2006 FILED BY: PARTY 2
DISPUTE: UN DISCRIMINATE
BAR UNIT: VEHICLE MAINT
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF SPOKANE
ATTN: DENNIS HESSON
808 W SPOKANE FALLS BLVD
SPOKANE, WA 99201
Ph1: 509-625-6250

REP BY: FRANK TRIPPLETT
CITY OF SPOKANE
E 914 NORTHFOOTHILLS DR
SPOKANE, WA 99207
Ph1: 509-625-7840

PARTY 2: MIKE JUDD
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REP BY: MICHAEL SMITH
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SPOKANE, WA 99205
Ph1: 509-328-2830 Ph2: 800-932-4850

REP BY: AUDREY B EIDE
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