

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID LAZAR,)	
)	
Complainant,)	CASE 21036-U-07-5368
)	
vs.)	DECISION 9740 - PSRA
)	
WASHINGTON PUBLIC EMPLOYEES)	
ASSOCIATION,)	
)	ORDER OF DISMISSAL
Respondent.)	
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DAVID LAZAR,)	
)	
Complainant,)	CASE 21037-U-07-5369
)	
vs.)	DECISION 9741 - PSRA
)	
WASHINGTON STATE - REVENUE,)	
)	ORDER OF DISMISSAL
Respondent.)	
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On April 23, 2007, David Lazar (Lazar) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Public Employees Association (union) and the Washington State Department of Revenue (employer) as respondents. The complaint against the union was docketed as Case 21036-U-07-5368, and the complaint against the employer was docketed as Case 21037-U-07-5369. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency

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 claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

notice issued on May 4, 2007, indicated that it was not possible to conclude that causes of action existed at that time. Lazar was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

Lazar has not filed any further information. The Unfair Labor Practice Manager dismisses the complaints for failure to state causes of action.

DISCUSSION

Complaint against the Union

The allegations of the complaint in Case 21036-U-07-5368 concern union interference with employee rights in violation of RCW 41.80.110(2)(a), inducement of the employer to commit an unfair labor practice in violation of RCW 41.80.110(2)(b), discrimination for filing charges in violation of RCW 41.80.110(2)(c), and other unspecified unfair labor practice. The statement of facts attached to the complaint alleges that the union has demanded that the employer enforce the union security provision of the collective bargaining agreement between the parties and terminate Lazar's employment for failure to pay union dues.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint. The deficiency notice pointed out several defects. One, Chapter 41.80 RCW contains the following provisions:

RCW 41.80.100 UNION SECURITY--FEES AND DUTIES--RIGHT OF NONASSOCIATION. (1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no

later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

Although Lazar did not submit the collective bargaining agreement to which his complaint refers, as required by WAC 391-45-050(5)(c)(ii), the Commission takes notice of a valid collective bargaining agreement between the union and employer. Under RCW 41.80.100, union security provisions are negotiated by an employer and union in the parties' collective bargaining agreement. If such provisions are contained in the parties' agreement, it is lawful for the employer and union to require employees to abide by the terms of the agreement.

Two, Lazar alleges union interference based upon the union's demand that the employer enforce the union security provision of the collective bargaining agreement. This allegation fails for the reason noted above. Lazar alleges no other facts sufficient to conclude that the union made threats of reprisal or force or promise of benefit in violation of RCW 41.80.110(2)(a).

Three, Lazar alleges that the union induced the employer to commit an unfair labor practice. As with defect two, the claim is based upon the union's demand that the employer enforce the union security provision of the collective bargaining agreement. Lazar

alleges no other facts sufficient to conclude that the union induced the employer to discriminate against Lazar in violation of RCW 41.80.110(2)(b).

Four, Lazar alleges union discrimination for filing charges in violation of RCW 41.80.110(2)(c). Lazar has filed previous charges against the union under Chapter 41.80 RCW. As with the other claims in the present complaint, his allegations are based upon the union's demand for enforcement of the union security clause. He does not allege that the union seeks selective enforcement in his case, nor does he allege other facts sufficient to conclude that the union has discriminated against him in reprisal for filing charges.

Five, Lazar checked the box on the complaint form alleging "other unfair labor practice," but did not attached the required explanation of the allegation nor include a statutory reference. The allegation of other unfair labor practice is not specific enough to state a cause of action.

Complaint against the Employer

The allegations of the complaint in Case 21037-U-07-5369 concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), encouraging membership in an employee organization by discrimination in regard to tenure of employment in violation of RCW 41.80.110(1)(c), and discrimination for filing charges in violation of RCW 41.80.110(1)(d). Lazar checked the box on the complaint form alleging employer domination of a union, but did not check the boxes for the remaining allegations. Those allegations are derived from the statement of facts attached to the

complaint. It is unclear if Lazar intends to include those unchecked allegations in his complaint.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint. The deficiency notice pointed out several defects. One, as with the complaint against the union, all of Lazar's claims are based upon the union's demand for enforcement of the union security provision of the collective bargaining agreement.

Two, regarding the allegations of employer interference, the statement of facts alleges that the employer has committed interference with employee rights in violation of RCW 41.80.110(1)(a), by enforcing the union security clause relative to the termination of Lazar's employment and collection of union dues. A claim of employer interference based upon these facts is defective for the reason noted above. Lazar does not allege other facts sufficient to conclude that the employer made threats of reprisal or force or promise of benefit in violation of Chapter 41.80 RCW.

Three, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.80.110(1)(b), 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, regarding the allegations that the employer has encouraged membership in an employee organization by discrimination in regard to tenure of employment, Lazar has alleged no facts, outside of

those involving union security, sufficient to conclude that the employer violated RCW 41.80.110(1)(c).

Five, regarding the allegations that the employer discriminated against Lazar in violation of RCW 41.80.110(1)(d) in reprisal for filing a charge under Chapter 41.80 RCW, a violation concerning discrimination for filing charges cannot stand absent evidence that Lazar has previously filed a charge against the employer with the Commission. The complaint does not contain any such factual allegations concerning the employer.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in Case 21036-U-07-5368 and Case 21037-U-07-5369 are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 15th 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

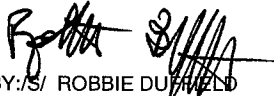
112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

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

RECORD OF SERVICE - ISSUED 06/15/2007

The attached document identified as: **DECISION 9740 - PSRA** 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: /s/ ROBBIE DUFFIELD

CASE NUMBER: 21036-U-07-05368 FILED: 04/23/2007 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: ALL EMPLOYEES
DETAILS: Termination because of non-payment of dues.
COMMENTS:

EMPLOYER: STATE - REVENUE
ATTN: STEVE MCLAIN
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5166

REP BY: DOLLY HANSON-GARCIA
STATE - REVENUE
6500 LINDERSON WAY
PO BOX 47463
OLYMPIA, WA 98504-7463
Ph1: 360-725-7493

REP BY: FRANKLIN PLAISTOWE
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4167 Ph2: 360-586-4538

PARTY 2:
ATTN: DAVID LAZAR
6300 LINDERSON WAY
TUMWATER, WA 98504-7461
Ph1: 360-586-7980

PARTY 3:
ATTN: WA PUBLIC EMPLOYEES ASSN
LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

PUBLIC EMPLOYMENT RELATIONS COMMISSION

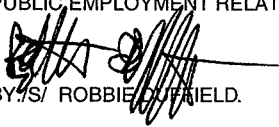
112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE D. FIELD.

CASE NUMBER: 21037-U-07-05369 FILED: 04/23/2007 FILED BY: PARTY 2
DISPUTE: ER INTERFERENCE
BAR UNIT: ALL EMPLOYEES
DETAILS: WDR termination for non-payment of Union Dues
COMMENTS:

EMPLOYER: STATE - REVENUE
ATTN: STEVE MCLAIN
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5166

REP BY: DOLLY HANSON-GARCIA
STATE - REVENUE
6500 LINDERSON WAY
PO BOX 47463
OLYMPIA, WA 98504-7463
Ph1: 360-725-7493

REP BY: FRANKLIN PLAISTOWE
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4167 Ph2: 360-586-4538

PARTY 2:
ATTN: DAVID LAZAR
6300 LINDERSON WAY
TUMWATER, WA 98504-7461
Ph1: 360-586-7980

PARTY 3:
ATTN: WA PUBLIC EMPLOYEES ASSN
LESLIE LIDDLE
140 PERCIVAL ST NW
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OLYMPIA, WA 98507-7159
Ph1: 360-943-1121