

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

OKANOGAN COUNTY SHERIFF'S	)	
EMPLOYEES ASSOCIATION,	)	CASE 21359-U-07-5448
	)	
Complainant,	)	DECISION 9980 - PECB
	)	
vs.	)	
	)	
OKANOGAN COUNTY,	)	AMENDED PRELIMINARY
	)	RULING AND ORDER OF
Respondent.	)	PARTIAL DISMISSAL
	)	
	)	

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On November 14, 2007, the Okanogan County Sheriff's Employees Association (union) filed an unfair labor practice complaint against Okanogan County (employer). Unfair Labor Practice Manager David Gedrose reviewed the complaint under WAC 391-45-110 and issued a preliminary ruling on November 26, 2007.

On November 27, 2007, I was assigned to conduct further proceedings under Chapter 391-45 WAC. The employer submitted a timely answer to the complaint and filed a motion to bifurcate the proceedings. I denied the motion during a pre-hearing telephone conference held on December 27, 2007.

On December 21, 2007, the union filed an amended complaint. On January 10, 2008, I granted the motion to amend the complaint and issued an amended preliminary ruling. The employer submitted a timely answer to the amended complaint.

On January 23, 2008, the union filed a second amended complaint and a motion to clarify the preliminary rulings. On January 31, 2008,

I denied the motion and issued a deficiency notice indicating that it was not possible to conclude that a cause of action existed at that time for some of the allegations included in the second amended complaint. I provided the union seven days to file and serve an amended complaint or face dismissal of the defective allegations.

On February 7, 2008, the union filed a third amended complaint, including an amended statement of facts.

#### DISCUSSION

The January 31, 2008 deficiency notice identified the following deficiencies in the union's second amended complaint:

Pre-disciplinary (*Loudermill*) hearing allegations, including unilateral change in employee access to representation

The union alleges that the employer violated employee rights to union representation during pre-disciplinary (*Loudermill*) hearings. The union also alleges that the employer unilaterally changed a practice that allowed employees access to union representation at pre-disciplinary (*Loudermill*) hearings. The Commission has declined to extend the collective bargaining process and its unfair labor practice procedures to enforce the constitutional "due process" rights on which *Loudermill* is based. *City of Bellevue*, Decision 4324-A (PECB, 1994); *City of Puyallup*, Decision 7490 (PECB, 2001).

Interference by asking about authorship of a union document

The union alleges employer interference concerning the authorship of a union-created document. RCW 41.56.140(1) prohibits employer interference with employee rights by threats of reprisal, force, or

promises of benefit associated with an employee's exercise of protected union activity. The allegations of the complaint concerning the employer's questions about the authorship of a document do not state a cause of action for employer threats of reprisal, force, or promises of benefit in violation of RCW 41.56.140(1).

### Third Amended Complaint

When reviewing the union's third amended complaint at this stage in the proceedings, the Commission assumes that the alleged facts are true and provable. With that assumption, I evaluate whether the third amended complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

Through its third amended complaint, the union alleges that both Sergeant Kim Scott and Sergeant Tracy Harrison reasonably believed that they may be subject to discipline based upon their responses or refusal to respond to the questions posed during their pre-disciplinary hearing. These allegations raise the inference that the pre-disciplinary hearings were in whole or in part investigatory in nature. The allegations that Scott and Harrison were denied union representation state a cause of action for interference with their *Weingarten* rights.

The union has raised questions of fact regarding the employer's use of pre-disciplinary hearings as they relate to investigatory hearings. Thus, the amended complaint raises the question of whether the pre-disciplinary hearings were in fact *Loudermill* hearings. In view of the allegations raised in the third amended complaint, the union's allegation that the employer unilaterally

changed a practice that allowed employees access to union representation at pre-disciplinary hearings also states a cause of action.

The January 31, 2008 deficiency notice also identified concerns with the union's allegation that the employer interfered with employee rights by interrogating employees about the authorship of a union-created document. The union's third amended complaint does not address this issue beyond what was alleged in the second amended complaint. RCW 41.56.140(1) prohibits employer interference with employee rights by threats of reprisal, force, or promises of benefit associated with an employee's exercise of protected union activity. The union's allegation that the employer interrogated employees about the authorship of a document may be relevant to the employer interference and discrimination causes of action which are included in the original preliminary ruling but it does not state a cause of action for an independent interference violation.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the third amended complaint in Case 21359-U-07-5448 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1) by denial of Tracy Harrison's and Kim Scott's right to union representation (Weingarten right) in connection with an investigatory interview on May 31, 2007 and June 14, 2007, respectively; employer interference and discrimination in violation of RCW 41.56.140(1), by its written reprimand and evaluation of Bill Miller in reprisal for union activities protected by

Chapter 41.56 RCW; employer refusal to bargain in violation of RCW 41.56.140(4), by (1) its unilateral change in work shifts for dispatchers and employee access to union representation at pre-disciplinary hearings, without providing an opportunity for bargaining; and (2) circumventing the union through direct dealing with employees represented by the union, in meeting with and e-mailing dispatchers regarding their work shifts and e-mailing all Association members and encouraging them to discuss union business with Sheriff Rogers.

These allegations will be the subject of further proceedings under Chapter 391-45 WAC.

2. Okanogan County shall:

File and serve its answer to the additional factual allegations contained in the third amended complaint within seven (7) days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each new fact alleged in the third 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 new affirmative defenses that are claimed to exist in the matter.

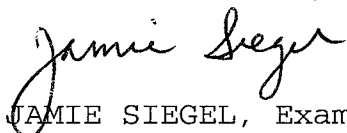
The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no

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.

3. The allegation of the third amended complaint in Case 21359-U-07-5448 concerning the employer interrogating employees about the authorship of a union document in violation of RCW 41.56.140(1) is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 13<sup>th</sup> day of February, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JAMIE SIEGEL, Examiner

Paragraph 3 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.