

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF RENTON,)	
)	
Employer.)	
)	
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)	
SCOTT ANDRUS,)	
)	
Complainant,)	CASE 21692-U-08-5530
)	
vs.)	DECISION 10096 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES, COUNCIL 2,)	
LOCAL 2170,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	

On May 7, 2008, Scott Andrus (Andrus) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Council of County and City Employees, Council 2, Local 2170 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 12, 2008, indicated that it was not possible to conclude that a cause of action existed at that time. Andrus was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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.

On May 21, 2008, Andrus filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state causes of action.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1), discrimination for filing charges in violation of RCW 41.56.150(3), refusal to bargain in violation of RCW 41.56.150(4), and unspecified "other" violations.

The deficiency notice pointed out the defects to the complaint. One, a statute of limitations applies to unfair labor practice complaints filed under 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 was filed on May 7, 2008. Only allegations of violations occurring on or after November 7, 2007, are subject to remedial orders of the Commission.

Two, Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. Complaints must conform to WAC 391-45-050.

WAC 391-45-050 CONTENTS OF COMPLAINT
Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

While the complaint contains information regarding times, dates, places, and participants, it does not conform to the requirements of WAC 391-45-050 in giving a clear and concise statement of the facts in numbered paragraphs.

Three, the complaint seems to suggest that Scott Andrus (Andrus) is filing the complaint on his own behalf, as well as on behalf of other bargaining unit members. Class action complaints are not permitted under Commission rules. Individual employees must file their own unfair labor practice complaints. The complaint is limited to allegations concerning Andrus.

Four, the complaint alleges union interference with employee rights in violation of RCW 41.56.150(1), by the hostile actions of a union steward against Andrus, and the failure of the union to address the alleged actions. The complaint apparently concerns internal union affairs. The selection and management of union stewards is a matter 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. The Commission has no jurisdiction over these matters. Disputes concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts.

Five, the complaint alleges union discrimination for filing charges in violation of RCW 41.56.150(3). Under the Chapter 41.56 RCW,

this claim relates to the filing of unfair labor practice charges before the Commission, or giving testimony before the Commission. An allegation concerning discrimination for filing charges cannot stand absent evidence that Andrus has previously filed an unfair labor practice complaint with the Commission or given testimony before the Commission. The complaint does not contain any such factual allegations.

Six, the complaint alleges union refusal to bargain in violation of RCW 41.56.150(4). The duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.150(4) can only be enforced by an employer. Individual employees such as Andrus do not have standing to process refusal to bargain allegations.

Seven, the complaint alleges "other" unfair labor practices, but does not specify the nature of the alleged violations.

Amended Complaint

Andrus filed an amended statement of facts, but not an amended complaint form. The amendment addresses deficiencies 1-3 by revising the allegations to include only incidents occurring after November 7, 2007, numbering the paragraphs, and seemingly limiting the allegations to incidents involving Andrus. The amendment does not indicate a change in the alleged violations and does not include an amended remedy request.

The remaining deficiencies concern allegations of union interference, discrimination for filing charges, refusal to bargain, and "other" violations.

Regarding the allegation of union interference, the amendment does not allege facts altering the conclusion stated in the deficiency notice that the Commission lacks jurisdiction in this case. Andrus must seek redress of his complaints through internal union procedures or the courts.

In like manner, the amendment contains no new information concerning Andrus filing previous unfair labor practice complaints, or information concerning "other" violations. Finally, Andrus has no standing to pursue a duty to bargain cause of action.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 21692-U-08-5530 is DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 6th day of June, 2008.

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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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 21692-U-08-05530 FILED: 05/07/2008 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: MIXED CLASSES
DETAILS: Building Inspector
COMMENTS:

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