

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 286,)	
)	
Complainant,)	CASE 21698-U-08-5533
)	
vs.)	DECISION 10097 - PECB
)	
PORT OF SEATTLE,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
)	

On May 8, 2008, the International Union of Operating Engineers, Local 286 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Seattle (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 13, 2008, indicated that it was not possible to conclude that a cause of action existed at that time for one of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegation. Nothing further has been received from the union.

The Unfair Labor Practice Manager dismisses the defective allegation of the complaint, concerning employer domination or assistance

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.

of a union, for failure to state a cause of action, and finds causes of action for the interference, discrimination, and refusal to bargain allegations of the complaint. The employer must file and serve its answer to the remaining allegations within 21 days following the date of this order.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its termination of Mark Cann in reprisal for union activities protected by Chapter 41.56 RCW; domination or assistance of a union in violation of RCW 41.56.140(2); and refusal to bargain in violation of RCW 41.56.140(4), by its refusal to provide relevant information requested by the union concerning Cann's termination.

The deficiency notice pointed out that the allegations of the complaint concerning interference, discrimination, and refusal to bargain state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice stated that the complaint was defective regarding the allegation of employer domination or assistance of a union. Relevant to the facts of this case, it is an unfair labor practice for an employer to dominate or assist a union by interfering in the administration, internal affairs, or finances of the union. However, the statement of facts fails to explain how the employer's alleged violations constitute a cause of action for employer domination or assistance of a union in violation of RCW 41.56.140(2).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the following allegations of the complaint state causes of action, summarized as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its termination of Mark Cann in reprisal for union activities protected by Chapter 41.56 RCW; and refusal to bargain in violation of RCW 41.56.140(4), by its refusal to provide relevant information requested by the union concerning Cann's termination.

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

2. The Port of Seattle shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

- b. Assert any 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 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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint concerning employer domination or assistance of a union in violation of RCW 41.56.140(2) are DISMISSED for failure to state a cause of action.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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The attached document identified as: **DECISION 10097 - 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: /S/ ROBBIE DUFFIELD

CASE NUMBER: 21698-U-08-05533 FILED: 05/08/2008 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: OPER/MAINT
DETAILS: Mark Cann
COMMENTS:

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