STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE OFFICERS' GUILD,	)	
	)	
Complainant,	)	CASE 22287-U-09-5684
	)	
vs.	)	DECISION 10335 - PECB
	)	
CITY OF SEATLE,	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
	)	

On February 20, 2009, the Seattle Police Officers' Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Seattle (employer) as respondent. The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2), by threats of reprisal or force or promises of benefit made by employer official Joel Guay to Ty Elster as a result of Elster's union activities.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on February 25, 2009, indicated that it was not possible to conclude that a cause of action existed at that time for the allegation concerning employer domination or assistance of a union. The union was given a period of 21 days in which to file

[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.

and serve an amended complaint or face dismissal of the domination or assistance claim.

On March 13, 2009, the union filed a response to the deficiency notice. For the purposes of this ruling the response is considered an amendment to the complaint. As more fully set forth below, the response did not cure the defect. The union's claim of employer domination or assistance of a union in violation of RCW 41.56.140(2) is dismissed. The allegations of the complaint concerning independent interference state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

DISCUSSION

The deficiency notice pointed out the defect to the allegations concerning 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." A cause of action for this violation is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test's second clause, that is, whether an employer has attempted to create, fund, or control a company union. *See Washington State Patrol*, Decision 2900 (PECB, 1988). Although the Commission has issued few decisions on this issue, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are: allowing the free use of employer buildings and resources for union business, aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The

meaning of the term "domination" is thus directly tied to the term "assistance" and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer's actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference, discrimination, and refusal to bargain violations. A union alleging that an employer is interfering with, discriminating against, or refusing to bargain with the union should file complaints based upon those allegations. A union should not file a complaint alleging employer domination or assistance of a union unless the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign.[2]

The Union's Response

RCW 41.56.140(2) provides that it is an unfair labor practice for an employer to "control, dominate or interfere with a bargaining representative." In its response of March 13, 2009, the union states that by its claim of employer domination or assistance of a union, it is not alleging that the employer's actions dominated or assisted the union, but that the employer interfered with a bargaining representative.

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[2] This is not intended to be an exhaustive list. Parties should consult Commission precedent or the Commission staff manual for a more comprehensive view of this subject. (See the Commission's web site, at www.perc.wa.gov.)

Under RCW 41.56.030(3), "'Bargaining representative' means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers." In unfair labor practice proceedings, the Commission uses the term "union" as a synonym for "bargaining representative." The Commission interprets RCW 41.56.140(2) as prohibiting interference with a union, not individuals representing a union.

In the present case, the union has stated a cause of action under RCW 41.56.140(1) for allegations concerning employer interference with the union's agent, Ty Elster, as a result of his union activities. There is no cause of action under the same facts for employer interference with the 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 interference allegations of the amended complaint state a cause of action, summarized as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made by employer official Joel Guay to Ty Elster as a result of Elster's union activities.

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

2. The City 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 amended complaint, as set forth in paragraph 1 of this Order, 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 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. WAC 391-45-210.

3. The allegations of the amended 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 23rd day of March, 2009.

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.