

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEVEN K. CASTELLO,)	
)	
Complainant,)	CASE 22322-U-09-5691
)	
vs.)	DECISION 10363 - PECB
)	
CITY OF SEATTLE,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On March 6, 2009, Steven K. Castello (Castello) 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 complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 11, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Castello was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On April 3, 2009, Castello filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and domination or assistance of a union in violation of RCW 41.56.140(2), by its actions regarding Castello.

The deficiency notice pointed out the defects to the complaint. One, the term "union" on the complaint form designates a bargaining representative as defined in RCW 41.56.030(3). The "union of employees" referred to in the complaint does not constitute a bargaining representative. For the purposes of this deficiency notice, the term "union" refers only to a bargaining representative.

Castello attached to the complaint a collective bargaining agreement between the employer and IAFF, Local 27 (union) and refers to the union in the statement of facts. However, it does not appear that the union is a party to this complaint. Related to this, Castello has no standing to enforce provisions of the collective bargaining agreement between the employer and the union.

Two, the complaint alleges domination or assistance of a union in violation of RCW 41.56.140(2); however, none of the facts alleged in the complaint indicate 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."

Three, Castello claims employer interference with employee rights and discrimination in violation of RCW 41.56.140(1). Castello alleges that the employer has violated his rights secured under the

Constitution of the United States. The Commission has no jurisdiction over allegations concerning violations of constitutional rights. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions. The Commission could process this case only if the facts showed that the employer allegedly took action against Castello as a result of, or in reprisal for, his union activities. However, the facts indicate that Castello purposefully and knowingly acted outside of the collective bargaining process. Under the facts presented, the Commission has no jurisdiction in this case.

The Amended Complaint

The amended complaint withdraws the allegation concerning employer domination or assistance of a union. Castello realleges his claims of employer interference and discrimination, claiming violations of the "National Labor Relations Act, Sec. 7 [sec. 157] . . . [and] Sec. 8 [sec. 158](a)(1)(2)." Castello asserts that his actions constituted "protected concerted activity" under the Act (NLRA).

However, the Commission does not recognize a cause of action for "protected concerted activity." The Commission's jurisdiction is limited to State of Washington statutes governing collective bargaining--in this case, Chapter 41.56 RCW. The Commission has no jurisdiction to enforce federal law and has consistently declined to interpret Chapter 41.56 RCW to provide for the protection of

employee concerted activities similar to the NLRA. See *City of Seattle*, Decision 9439-B (PECB, 2009).

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 22322-U-09-5691 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of April, 2009.

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.