State - Labor and Industries, Decision 10418 (PSRA, 2009)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FAIR WASHINGTON LABOR ASSOCIATION, Complainant,	)	CASE 22369-U-09-5708
vs.	)	DECISION 10418 - PSRA
STATE - LABOR AND INDUSTRIES, Respondent.	)	PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On March 31, 2009, the Fair Washington Labor Association (FWLA) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Labor and Industries (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on April 14, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. The mailing was delayed by two days, and FWLA was ultimately given a period of 23 days in which to file and serve an amended complaint or face dismissal of the complaint.

On May 7, 2009, FWLA filed an amended complaint. The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning interference and domination or assistance of a union, and interference and discrimination involving employer health

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[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.

insurance proposals. A cause of action is found for employer interference and discrimination regarding disseminating decertification information by FWLA. The employer must file and serve its answer to the amended complaint within 21 days following the date of this decision.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and discrimination in violation of RCW 41.80.110(1)(c), by its health insurance proposals, and actions regarding the Fair Washington Labor Association (FWLA) disseminating information on decertification.

The allegations of the complaint concerning interference and discrimination regarding disseminating decertification information state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out the defects concerning interference and discrimination regarding to health insurance proposals and interference and domination or assistance of a union.

Regarding interference and discrimination over health insurance proposals, FLWA alleges employer interference with employee rights in violation of RCW 41.80.110(1)(a) and discrimination in violation of RCW 41.80.110(1)(c), concerning health insurance proposals related to collective bargaining between the employer and other unions, as well as proposed legislation on health care. It is not an unfair labor practice for an employer to consider legislation or engage in collective bargaining over terms and conditions of employment, including health insurance.

Regarding domination or assistance of a union, it is an unfair labor practice under RCW 41.80.110(1)(b) for an employer to dominate or assist a union. The test for a cause of action for a domination or assistance violation is whether the complainant provides facts showing 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. A few 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 term domination concerns an employer's involvement in the internal affairs or finances of a union, or its attempt to create, fund, or control a company union 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 FWLA has not provided facts indicating that the employer has dominated or assisted a union.

The Amended Complaint

The amended complaint apparently applies to multiple cases involving multiple employers, including the Department of Labor and Industries. Regarding allegations of domination or assistance of a union, the amended complaint alleges that evidence of the employer assisting the union is found in the employer releasing employee names to the union, but denying release of the names to FWLA. This would constitute an unfair labor practice if, in violation of WAC 391-25-130, the employer refused or failed to submit to the agency a list of employee names after the filing of a representation petition by FWLA and following the determination of a sufficient showing of interest. However, the amended complaint does not allege those facts. The allegation that the union, upon obtaining employee names from the employer, releases those names to credit card companies does not indicate an unfair labor practice by the employer.

The FWLA alleges that evidence of domination is found in the employer's allowing the union to distribute union materials, while

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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.)

restricting access by FWLA and interfering with the FWLA's organizing efforts. This does not present sufficient evidence indicating that the employer favors the union over FWLA. It is not an unfair labor practice for an employer, under a collective bargaining agreement, to provide exclusive use of a bulletin board for an incumbent bargaining representative. The allegations pertain instead to the interference and discrimination claim regarding dissemination of decertification information.

Regarding allegations of discrimination over the employer offering different healthcare benefits to represented and non-represented employees, it is not an unfair labor practice for an employer to offer different terms and conditions of employment to represented and non-represented employees. The amended complaint does not state a cause of action by arguing that the Commission should reverse this long-standing legal conclusion.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the amended complaint in Case 22369-U-09-5708 state a cause of action, summarized as follows:

> Employer interference with employee rights in violation of RCW 41.80.110(1)(a) and discrimination in violation of RCW 41.80.110(1)(c), by its actions regarding the Fair Washington Labor Association disseminating information on decertification.

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

2. The Washington State Department of Labor and Industries 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 in Case 22369-U-09-5708 concerning employer interference with employee rights in violation of RCW 41.80.110(1)(a) and domination or assistance of a union in violation of RCW 41.80.110(1)(b); and interference with employee rights in violation of RCW 41.80.110(1)(a)

and discrimination in violation of RCW 41.80.110(1)(c), by its health insurance proposals, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of May, 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.