

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KEITH G. JOHNSON,)	
)	CASE 14507-U-99-3608
Complainant,)	DECISION 6854 - PECB
)	
vs.)	PARTIAL DISMISSAL AND
)	PRELIMINARY RULING
)	
PORT OF SEATTLE,)	CASE 14786-U-99-3718
)	DECISION 6855 - PECB
Respondent.)	
)	ORDER OF DISMISSAL
)	

On April 5, 1999, Keith G. Johnson filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Seattle as respondent. Case 14507-U-99-3638 was docketed. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 16, 1999, pointed out several problems with the complaint. Johnson was given 14 days to file and serve an amended complaint which stated a cause of action, or face dismissal of the deficient allegations.

On September 15, 1999, Keith G. Johnson filed a second unfair labor practice complaint under Chapter 391-45 WAC, again naming the Port of Seattle as respondent, but without reference to the earlier-filed case. Case 14786-U-99-3718 was docketed, but it was then

¹ At that state 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 Commission.

discovered that the controversy described is the same as or a continuation of the situation described in Case 14507-U-99-3638.

Johnson has not cured the deficiencies pointed out in Case 14507-U-99-3638, and the complaint in Case 14786-U-99-3718 merely asserts additional allegations of the same type. The further proceedings are limited to the allegations in Case 14507-U-99-3638 that do state a cause of action.

DISCUSSION

Johnson is identified as having been an employee of the Port of Seattle, assigned as an electrician/wireman at the Sea-Tac Airport terminal. His employment was within a bargaining unit represented by International Brotherhood of Electrical Workers, Local 46.

Scope of Commission Jurisdiction

RCW 41.56.160 imposes a six-month limitation on the filing of unfair labor practice complaints. This complaint filed on April 5, 1999, can only be considered timely as to acts or events that occurred on or after October 5, 1998.

Johnson alleges, generally, that he has been the victim of an employer-initiated "hostile and harassing work environment". 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 Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment. Thus:

- While the Commission provides mediation and arbitration services upon request of the parties to a grievance dispute, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). Such claims must be processed through the grievance and arbitration machinery of the collective bargaining agreement, or through the courts.
- While the Commission determines allegations of discrimination related to union activities, the Commission does not have jurisdiction over other forms of unlawful discrimination. Such claims must be processed before the Washington State Human Rights Commission or appropriate federal authorities.
- While the Commission provides mediation services to assist employers and unions who encounter difficulties in negotiating a collective bargaining agreement, the Commission does not regulate strikes and lockouts. Such matters must be processed in the courts, which have the authority to issue a self-enforcing injunctions under Port of Seattle v. International Longshoremen's and Warehousemen's Union, 52 Wn.2d 317 (1958).

In this case, much of the material submitted does not address a subject matter within the jurisdiction of the Public Employment Relations Commission.

Application of Standards

Case 14507-U-99-3638 Complaint 1 - Pages (paragraphs) 1 - 7 -

Johnson set forth allegations concerning repair of a light fixture, use of an employer vehicle, and a tardiness accusation. The deficiency notice pointed out that these all appear to be "viola-

tion of contract" claims over which the Commission lacks jurisdiction. Additionally, they all occurred in March and April of 1998, so the complaint is untimely as to them. These materials can thus only be considered as background information.

Case 14507-U-99-3638 Complaint 2 - Pages (paragraphs) 8 - 18 -

Johnson set forth allegations concerning the system used by the employer to record employee movements into and out of airport facilities, and concerning a corrective interview. The subjects of the interview included the tardiness accusation, keeping in touch with his foreman during work hours, misuse of an access code to obtain free parking for a personal vehicle, and the first mention of an admonition that Johnson should obtain an electrical license. The deficiency notice pointed out that these all appear to be "violation of contract" claims over which the Commission lacks jurisdiction. Additionally, they all occurred in April and May of 1998, so that the complaint is untimely as to them. These materials can also only be considered as background information.

This portion of the complaint in Case 14507-U-99-3638 alleges Johnson filed a grievance on May 26, 1998, concerning the corrective interview. Even though the merits of the grievance would not be before the Commission in this unfair labor practice case, the filing of grievances is an activity protected by Chapter 41.56 RCW. Valley General Hospital, Decision 1195-A (PECB, 1981).

Case 14507-U-99-3638 Complaint 3 - Pages (paragraphs) 20 - 28 -

Johnson set forth allegations concerning a computer report showing the use of his access code for parking and the monetary value of that parking, a corrective interview, and a follow-up meeting held with supervisors and a union representative. The subjects of the corrective interview included use of his access code for personal use, failing to note the time spent attending to emergency matters

on his time card, failure to follow instructions regarding repair of an electric panel, excessive personal telephone calls, and not keeping in contact with his foreman. Again, the deficiency notice pointed out that these all appear to be "violation of contract" claims over which the Commission lacks jurisdiction. These events occurred in July and August of 1998. The deficiency notice pointed out that the complaint was untimely as to them, so they can only be considered as background information.

This portion of the complaint in Case 14507-U-99-3638 alleges that Johnson filed another grievance in August of 1998, this time concerning the corrective interview held in July of 1998. Even though the merits of the grievance would not be before the Commission in this unfair labor practice case, the filing of grievances is an activity protected by Chapter 41.56 RCW.

Case 14507-U-99-3638 Complaint 4 - Pages (paragraphs) 29 - 32 -
Johnson set forth allegations concerning the filing of another grievance, in late October or early November of 1998, concerning overtime work on October 31, 1998. The deficiency notice pointed out that the claimed denial of the overtime work opportunity as a form of discipline, is a "violation of contract" matter over which the Commission does not assert jurisdiction.

This portion of the complaint in Case 14507-U-99-3638 (at paragraphs 29 to 32) also alleges the denial of the overtime assignment was in retaliation for the grievances Johnson filed on May 26 and August 14, 1998. Assuming those facts to be true and provable, this allegation states a cause of action for further proceedings before the Commission under Chapter 391-45 WAC.

The complaint does not contain a paragraph or material identified as paragraph 33.

Case 14507-U-99-3638 Complaint 5 - Pages (paragraphs) 34 - 38 -

Johnson set forth allegations that he was reprimanded, on or about December 8, 1998, for failing to take the steps necessary to obtain a valid state electrician license. Johnson maintains that although he took steps in December of 1998 toward obtaining the requested license, he was further reprimanded and suspended for failing to take the necessary steps to sit for the licensing test in January of 1999. Johnson further maintains that correspondence from the Department of Labor and Industries indicates the employer is not required to have licensed electricians perform work in its own facilities, and that he was given notice of a due process hearing to be held on April 2, 1999, in anticipation of his discharge. The deficiency notice pointed out that any claim that the employer lacks authority to require him to obtain an electrician's license, or lacks just cause to suspend or discharge him for failing to obtain such a license, that is a "violation of contract" matter over which the Commission does not assert jurisdiction.

Johnson also attempted to characterize his suspension and/or discharge as a work stoppage in violation of language in the collective bargaining agreement which provides:

There shall be no stoppage of work either by strike or lockout because of any proposed changes in this agreement or dispute over matters relating to this agreement. All such matters must be handled as stated herein.

Any remedy for an unlawful work stoppage would have to come from a court, rather than from the Commission.

This portion of the complaint in Case 14507-U-99-3638 (at paragraphs 34 to 38) also alleges that Johnson's suspension and proposed discharge were in retaliation for his filing of the

earlier grievances. Assuming those facts to be true and provable, those allegations, described in paragraphs 34 to 38 state a cause of action for further proceedings before the Commission under Chapter 391-45 WAC.

Employer Discrimination for Filing Charges -

Johnson made reference in Case 14507-U-99-3638 to "employer discrimination for filing charges", which would be a violation of RCW 41.56.140(3), but review of the Commission's docket records discloses that was the first unfair labor practice complaint filed by Johnson with the Commission. The deficiency notice pointed out that RCW 41.56.140(3) only applies to complaints filed with the Public Employment Relations Commission, and is not a general reference that would include grievances filed under a collective bargaining agreement or claims filed with other governmental agencies. None of the facts alleged in the statement of facts supports such a claim.

Employer Refusal to Bargain -

Johnson made reference in Case 14507-U-99-3638 to "employer refusal to bargain", which would be a violation of RCW 41.56.140(4), but individual employees have no legal standing to file or pursue "refusal to bargain" charges. Grant County, Decision 2703 (PECB, 1987). The duty to bargain exists only between an employer and the union selected by the majority of its employees, and only those parties can assert rights under RCW 41.56.140(4). The union has not filed its own complaint, or intervened on behalf of Johnson in this proceeding.

"Other Unfair Labor Practice" -

Johnson made reference in Case 14507-U-99-3638 to "other unfair labor practice" violations. The deficiency notice pointed out that his intent was unclear. He has not cured that defect.

Termination for Unjust Cause -

The only statement of facts accompanying the complaint docketed as Case 14786-U-99-3718 states simply:

1. Employer interference with employee rights
Termination for Unjust Cause - Collective Bargaining Agreement PG.8 Art.2 Sect.2.11 (d)

2. Employer Discrimination - Art. 1 Section 1.10
Termination for not obtaining a State Electrical License as a condition of my employment. It was not a condition of my original employment. Is not a requirement of the State. Others working under the same collective barg. [sic] agreement have never been required to have one.
On July 16th 1999 - A meeting was held. Present were John Christianson (General Manager of Maintenance), Tom Scheffler (General Foreman), Walker Spriggs (Local Union #46 Shop Steward), Dan Hitry (Asst. Electrical Supt.) At this meeting held at 3:30 I was terminated for not having a State license by John Christianson.

Attachments to that complaint appear to be a copy of a grievance protesting the discharge, and an excerpt from the applicable collective bargaining agreement.

While it appears that the controversy has moved forward from a "suspension pending a due process hearing concerning a recommended discharge" to an "employment terminated" status, that does not alter the statement clearly set forth in the deficiency notice concerning the Commission's jurisdiction: The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

NOW, THEREFORE, it is

ORDERED

1. The complaint in Case 14507-U-99-3608 states a cause of action, and shall be the subject to further proceedings under Chapter 391-45 WAC, as follows:

a. A cause of action only exists with respect to:

1) The allegation that the employer's denial of overtime work on October 31, 1998, was in reprisal for Johnson's filing grievances, as set forth in paragraphs 29 to 32.

2) The allegation that Johnson's suspension and discharge were in reprisal for his filing of grievances, as set forth in paragraphs 34 to 38.

b. PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter shall:

File and serve its answer to the complaint within 21 days following the date of this order.

The original answer and one copy 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. An answer shall:

- 1) 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
- 2) Assert any affirmative defenses that are claimed to exist in the matter.

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.

- c. Examiner Frederick J. Rosenberry of the Commission staff has been designated to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. The Examiner will be issuing a notice of hearing in the near future. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 391-08-180, including making contact to determine the position of the other party prior to presenting the request to the Examiner.
2. Except as provided in paragraph 1 of this order, all of the allegations of the complaint in Case 14507-U-99-3608 are dismissed as failing to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.
 3. All of the allegations of the complaint in Case 14786-U-99-3718 are dismissed as failing to state a claim for relief

available through unfair labor practice proceedings before the Public Employment Relations Commission.

ISSUED at Olympia, Washington, this 25th day of October, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marvin L. Schurke", written in a cursive style.

MARVIN L. SCHURKE, Executive Director

Paragraphs 2 and 3 of 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.