

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UA PLUMBERS, LOCAL 82,)	
)	
Complainant,)	CASE 15638-U-01-3964
)	
vs.)	DECISION 7390 - PECB
)	
TACOMA HOUSING AUTHORITY,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by UA Plumbers, Local 82 (union) on February 7, 2001. The complaint alleged that Tacoma Housing Authority (employer) interfered with employee rights in violation of RCW 41.56.140(1), dominated or assisted the union in violation of RCW 41.56.140(2), and discriminated for the filing of unfair labor practice charges in violation of RCW 41.56.140(3), by its skimming and subcontracting of work previously performed by members of Local 82.

The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice was issued on April 17, 2001, indicating that it was not possible to conclude that a cause of action existed at that time for the allegations of domination or assistance of the union, and

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.

discrimination for filing an unfair labor practice charge. In relation to the domination allegations, none of the facts alleged in the complaint suggested that the employer had involved itself in the internal affairs or finances of the union, or that the employer had attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

In relation to the discrimination allegations, the deficiency notice stated that a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The statement of facts did not contain any such factual allegations.

The deficiency notice stated that allegations concerning the transfer of bargaining unit work, whether in the form of skimming the work to other employees of the same employer, or subcontracting the work to employees of another employer, are processed by the Commission under the refusal to bargain provisions of RCW 41.56.-140(4). No such statutory violation was alleged in the complaint. The deficiency notice indicated that absent an allegation of a violation of RCW 41.56.140(4), it was not possible to conclude that a cause of action existed for the skimming and subcontracting allegations of the complaint.

The deficiency notice advised the union that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised the union that in the absence of a timely amendment stating a cause of action, the domination and discrimination allegations of the complaint would be dismissed.

On April 30, 2001, the union filed an amended complaint and a "Reply to Director's Letter of 17 April, 2001" (reply). In relation to the allegations of domination or assistance of the union, the amended complaint and reply failed to allege any additional information stating a cause of action. Those allegations are being dismissed. In relation to the discrimination for filing an unfair labor practice charge allegations, the amended complaint and reply claims that the employer eliminated two part-time positions filled by members of Local 82 in reprisal for the filing of the complaint. The union has cured the defects indicated in the deficiency notice concerning the discrimination allegations.

The amended complaint and reply added a violation of RCW 41.56.140(4) for the allegations concerning transfer of bargaining unit work. The union has cured the defects indicated in the deficiency notice concerning the refusal to bargain allegations.

The deficiency notice indicated that allegations of the complaint stating a cause of action would be the subject of a Preliminary Ruling and Deferral Inquiry, after the union had an opportunity to respond to the deficiency notice. The Commission defers "unilateral change - refusal to bargain" allegations in violation of RCW 41.56.140(4) to arbitration under WAC 391-45-110(3).

The allegations of the amended complaint and reply now include interference and discrimination allegations in violation of RCW 41.56.140(1) and (3). The Commission does not defer interference or discrimination allegations to arbitration or any other forum. *City of Kelso*, Decision 2633-A (PECB, 1988); *City of Yakima*, Decision 3564-A (PECB, 1991); and *Clover Park School District*, Decision 7073 (EDUC, 2000).

The Commission's deferral policies relate to "unilateral change - refusal to bargain" unfair labor practice allegations, where an arbitrator's interpretation concerning whether employer conduct is protected or prohibited under the parties' collective bargaining agreement may well put the entire dispute to rest. However, the same cannot be said for interference and discrimination allegations, where an arbitrator, drawing his or her authority from the collective bargaining agreement, has no authority or jurisdiction parallel to that conferred upon the Commission by RCW 41.56.140(1) and (3), and 41.56.160.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference, discrimination, and refusal to bargain 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), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by skimming and subcontracting work previously performed by members of Local 82, by assignment of craft work of other unions to members of Local 82, and by elimination of two part-time positions filled by members of Local 82 in reprisal for union activities protected by Chapter 41.56 RCW.

The interference, discrimination, and refusal to bargain allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Tacoma Housing Authority 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, 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. See WAC 391-45-210.

3. The allegation of the amended complaint concerning employer domination or assistance of the union in violation of RCW

41.56.140(2) is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M.S. Downing', is written over the printed name.

MARK S. DOWNING, Director of Administration

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.