

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF	)	
COUNTY AND CITY EMPLOYEES,	)	
LOCAL 120,	)	
	)	
Complainant,	)	CASE 16607-U-02-4328
	)	
vs.	)	DECISION 8031 - PECB
	)	
CITY OF TACOMA,	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
	)	
	)	

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On August 13, 2002, the Washington State Council of County and City Employees, Local 120 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Tacoma (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on February 7, 2003, indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of employer 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). The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations of the complaint. Nothing further has been received from the union.

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<sup>1</sup> 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.

The Director of Administration dismisses the defective allegations of the complaint for failure to state a cause of action.

#### DISCUSSION

The complaint alleged that the employer interfered with employee rights and discriminated in violation of RCW 41.56.140(1), discriminated for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refused to bargain in violation of RCW 41.56.140(4), by its suspension of Ingrid Fields for insubordination in part due to her contacting a union representative about a problem rather than going directly to her supervisor.

The deficiency notice stated that in relation to the charges concerning RCW 41.56.140(3), the statement of facts attached to the complaint did not contain any factual allegations indicating that Fields had previously filed an unfair labor practice complaint with the Commission. The deficiency notice indicated that in relation to the charges concerning RCW 41.56.140(4), the statement of facts did not contain any factual allegations in support of a refusal to bargain allegation. The deficiency notice listed examples of a refusal to bargain violation as including circumvention of the union, refusal to meet at reasonable times and places, refusal to provide information, breach of the good faith bargaining obligations of RCW 41.56.030(4), and unilateral changes in the wages, hours or working conditions of bargaining unit employees. The deficiency notice stated that the complaint was unclear as to how the provisions of RCW 41.56.140(4) were violated by the employer's conduct.

The deficiency notice indicated that the interference and discrimination allegations of the complaint under RCW 41.56.140(1) appeared

to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations of the complaint state a cause of action, summarized as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its suspension of Ingrid Fields for insubordination in part due to her contacting a union representative about a problem rather than going directly to her supervisor.

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

2. City of Tacoma 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 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 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 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. See WAC 391-45-210.

3. The allegations of the complaint concerning employer 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) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14<sup>th</sup> day of April, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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.