

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY DEPUTY SHERIFF)	
GUILD,)	
)	
Complainant,)	CASE 17190-U-03-4448
)	
vs.)	DECISION 8292 - PECB
)	
KITSAP COUNTY,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

On February 10, 2003, the Kitsap County Deputy Sheriff Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Kitsap County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice, issued on October 17, 2003, indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2). 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.

On November 4, 2003, the union filed an amended complaint. After review of the amended complaint, the Unfair Labor Practice Manager dismisses the defective allegations for failure to state a cause of

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.

action, and issues a preliminary ruling for allegations which state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in use of union release time without providing an opportunity for bargaining. The deficiency notice indicated that the allegations of the complaint under RCW 41.56.140(1) and (4) appeared to state a cause of action, and would be the subject of a preliminary ruling and deferral inquiry under WAC 391-45-110(3), after the union had an opportunity to respond to the deficiency notice.

The deficiency notice stated that it was not possible to conclude that a cause of action existed for the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), as 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). The amended complaint did not respond to the deficiencies noted for the domination or assistance allegations under RCW 41.56.140(2), and those allegations are dismissed for failure to state a cause of action.

The amended complaint clarified allegations concerning an interference violation under RCW 41.56.140(1), by comments of Sheriff Steve Boyer to union president Mike Rodrigue at a meeting concerning use of union release time. The clarified allegations call into

question the conclusion of the deficiency notice that the complaint would be the subject of a preliminary ruling and deferral inquiry under WAC 391-45-110(3), after the union had an opportunity to respond to the deficiency notice.

The Commission does not defer interference allegations of unfair labor practice complaints to arbitration. Since an arbitrator's authority is drawn exclusively from the terms of a collective bargaining agreement, an arbitrator does not have authority to interpret or enforce statutory provisions. In *Tacoma Housing Authority*, Decision 7390 (PECB, 2001), the Commission's Director of Administration summarized the Commission's deferral policy as follows:

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.

Subsequent decisions by Commission examiners have followed the Commission's deferral policy, as stated in WAC 391-45-110(3), that only unilateral change allegations under RCW 41.56.140(4) may be deferred to arbitration. *City of Yakima*, Decision 7489 (PECB,

2001); *City of Puyallup*, Decision 7490 (PECB, 2001); *King County*, Decision 7506 (PECB, 2001); and *Garfield County*, Decision 7641 (PECB, 2002). The Commission re-affirmed its deferral policy in *Finley School District*, Decision 7806 (EDUC, 2002).

A preliminary ruling, rather than a preliminary ruling and deferral inquiry, is being issued for the interference and refusal to bargain allegations of the amended complaint.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference 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) and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in use of union release time without providing an opportunity for bargaining, and by comments of Sheriff Steve Boyer to union president Mike Rodrigue at a meeting concerning use of union release time.

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

2. Kitsap County 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:

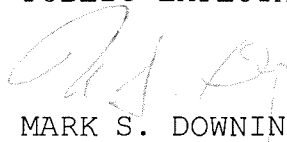
- a. Specifically admit, deny or explain each fact alleged in the amended complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

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 allegations of the amended complaint concerning employer domination or assistance of a union in violation of RCW 41.56.140(2), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of November, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, 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.