

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LAURA BROWN-MAYO,)	
)	
Complainant,)	CASE 16737-U-02-4367
)	
vs.)	DECISION 8183 - PECB
)	
PORT OF SHELTON,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

On September 26, 2002, Laura Brown-Mayo (Brown-Mayo) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Shelton (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 5, 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), 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). Brown-Mayo 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.

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.

Nothing further has been received from Brown-Mayo. The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), 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 its termination of Brown-Mayo in reprisal for her union activities protected by Chapter 41.56 RCW.

The deficiency notice stated that in relation to the domination or assistance allegations, none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of a union, or that the employer has attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999). The deficiency notice indicated that in relation to the allegations of violation of RCW 41.56.140(3), the statement of facts attached to the complaint did not contain any factual allegations indicating that Brown-Mayo had previously filed an unfair labor practice complaint with the Commission. 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 deficiency notice pointed out that in relation to the allegations of violation of RCW 41.56.140(4), the refusal to bargain provisions of Chapter 41.56 RCW can only be enforced by an employee organization or an employer, and individual employees do not have standing to process such allegations.

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 Brown-Mayo 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 termination of Laura Brown-Mayo in reprisal for her union activities protected by Chapter 41.56 RCW.

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

2. The Port of Shelton 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 domination or assistance of a union in violation of RCW 41.56.140(2), 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 4th day of September, 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.