

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EUGENE WELTZER,)	
)	
Complainant,)	CASE 18812-U-04-4780
)	
vs.)	DECISION 8772 - PSRA
)	
WASHINGTON STATE - CORRECTIONS,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

On September 3, 2004, Eugene Weltzer (Weltzer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Corrections (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on October 6, 2004, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. Weltzer was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. Nothing further has been received from Weltzer.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, 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.

finds a cause of action for the interference and discrimination allegations of the complaint.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), discrimination in violation of RCW 41.80.110(1)(c), and an unspecified "other unfair labor practice" by its change in bid position for Eugene Weltzer, in reprisal for union activities protected by Chapter 41.80 RCW.

The complaint contained several defects. One, the statement of facts attached to the complaint makes reference to an alleged violation of article 19 of the parties' collective bargaining agreement. 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). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. See *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Two, in relation to the allegations of an "other unfair labor practice," the complaint fails to explain and specify what "other" rule or statute has been violated by the employer's actions.

The deficiency notice stated that the interference and discrimination allegations of the complaint appeared to state a cause of

action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after Weltzer 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 in violation of RCW 41.80.110(1)(a), and discrimination in violation of RCW 41.80.110(1)(c), by its change in bid position for Eugene Weltzer, in reprisal for union activities protected by Chapter 41.80 RCW.

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

2. Washington State Department of Corrections 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 an unspecified "other unfair labor practice" violation by the employer, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5th day of November, 2004.

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.