

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIMOTHY MILLIGAN,)	
)	
Complainant,)	CASE 20378-U-06-5189
)	
vs.)	DECISION 9393 - PECB
)	
PORT OF LONGVIEW,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
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TIMOTHY MILLIGAN,)	
)	
Complainant,)	CASE 20379-U-06-5190
)	
vs.)	DECISION 9394 - PECB
)	
INTERNATIONAL LONGSHORE AND)	
WAREHOUSE UNION, LOCAL 21,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
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On May 8, 2006, Timothy Milligan (Milligan) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. An identical statement of facts was attached to each complaint. The first complaint concerned allegations against the Port of Longview (employer) and was docketed as Case 20378-U-06-5189. The second complaint concerned allegations against International Longshore and Warehouse Union, Local 21 (union) and was docketed as Case 20379-U-06-5190.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 20, 2006, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaints. Milligan was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the defective allegations.

On July 7, 2006, Milligan filed amended complaints against the employer and the union. The amended complaints fail to cure the defects noted in the deficiency notice. In relation to the complaint against the employer, the Unfair Labor Practice Manager dismisses defective allegations concerning domination or assistance of a union, discrimination for filing unfair labor practice charges and an "other unfair labor practice," and finds a cause of action for allegations of interference and discrimination. In relation to the complaint against the union, the Unfair Labor Practice Manager dismisses defective allegations concerning discrimination for filing unfair labor practice charges, refusal to bargain and an "other unfair labor practice," and finds a cause of action for allegations of interference and inducement of employer to commit an unfair labor practice.

The employer and union must file and serve their answers to the complaints and amended complaints within 21 days following the date of this Decision.

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

DISCUSSIONTemporary Relief

The complaints request that the Commission "seek appropriate temporary relief as granted under WAC 391-45-430 . . ." The deficiency notice explained that this request is considered to be a notice of intent to make a motion for temporary relief under WAC 391-45-430(1). As required by WAC 391-45-430(2), processing of the complaints has been expedited under WAC 391-45-110.

The Commission does not grant temporary relief itself but will, under limited circumstances, invoke its authority under state collective bargaining laws, such as RCW 41.56.160(3), to seek temporary relief by authorizing the Attorney General of Washington to file suit in the courts to preserve the status quo pending the outcome of unfair labor practice proceedings. However, there is doubt as to the availability of temporary relief for fundamentally financial matters. *Grant County Public Hospital District 1*, Decision 7503 (PECB, 2001); *Energy Northwest*, Decision 8797 (PECB, 2004).

Complaint against Employer

The allegations of the complaint in Case 20378-U-06-5189 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 an "other unfair labor practice," by its termination of Timothy

Milligan in reprisal for union activities protected by Chapter 41.56 RCW.

The deficiency notice indicated that the allegations of the complaint concerning employer interference and discrimination, state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The complaint contains several defects. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before November 8, 2005, will be considered merely as background information. The complaint is limited to allegations of employer misconduct occurring on or after November 8, 2005.

Two, the complaint makes reference to alleged violations of the parties' collective bargaining agreement. The 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. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Three, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." *City of Anacortes*, Decision 6863 (PECB, 1999).

Four, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Milligan has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Five, 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.

Amended Complaint against Employer

The amended complaint continues references to alleged contractual violations by the employer. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. In relation to the allegations of employer domination or

assistance of a union, none of the facts alleged in the amended complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union."

In relation to the allegations of violation of RCW 41.56.140(3), the amended complaint does not contain factual allegations indicating that Milligan has previously filed an unfair labor practice complaint with the Commission. In relation to the allegations of an "other unfair labor practice," the amended complaint does not explain or specify what "other" rule or statute has been violated by the employer's actions.

The amended complaint fails to cure the defects noted in the deficiency notice.

Complaint against Union

The allegations of the complaint in Case 20379-U-06-5190 concern union interference with employee rights in violation of RCW 41.56.150(1), inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.150(3), refusal to bargain in violation of RCW 41.56.150(4) and an "other unfair labor practice," by its return of Timothy Milligan to the hiring hall and removal of Milligan from all Port of Longview operations, in reprisal for union activities protected by Chapter 41.56 RCW.

The deficiency notice indicated that the allegations of the complaint concerning union interference and inducement of employer

to commit an unfair labor practice, state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The complaint contains several defects. One, as for the complaint against the employer, the complaint is limited to allegations of union misconduct occurring on or after November 8, 2005.

Two, as for the complaint against the employer, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.

Three, if bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes a duty of fair representation to bargaining unit employees, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Four, as for the complaint against the employer, in relation to the allegations of violation of RCW 41.56.150(3), the complaint does not contain any factual allegations that Milligan has previously filed an unfair labor practice complaint with the Commission.

Five, as for the complaint against the employer, 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 union's actions.

Six, the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.150(4) can only be enforced by an employer. Individual employees do not have standing to process refusal to bargain allegations.

Amended Complaint against Union

The amended complaint continues references to alleged contractual violations by the union. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. In relation to allegations of the amended complaint concerning breach of the union's duty of fair representation, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.

In relation to the allegations of violation of RCW 41.56.150(3), the amended complaint does not contain factual allegations

indicating that Milligan has previously filed an unfair labor practice complaint with the Commission. In relation to the allegations of an "other unfair labor practice," the amended complaint fails to explain and specify what "other" rule or statute has been violated by the union's actions. As noted in the deficiency notice, Milligan does not have standing to process refusal to bargain allegations.

The amended complaint fails to cure the defects noted in the deficiency notice.

Consolidation of Complaints

WAC 10-08-085 provides that "multiple adjudicative proceedings involving common issues or parties" may be consolidated. As the complaints filed by Milligan against the employer and union involve common issues and parties, the complaints in Cases 20378-U-06-5189 and 20379-U-06-5190 are consolidated for further proceedings before the Commission.

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 and amended complaint in Case 20378-U-06-5189 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 Timothy Milligan in reprisal for union activities protected by Chapter 41.56 RCW.

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

2. Assuming all of the facts alleged to be true and provable, the interference and inducement of employer to commit an unfair labor practice allegations of the complaint and amended complaint in Case 20379-U-06-5190 state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), and inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), by its return of Timothy Milligan to the hiring hall and removal of Milligan from all Port of Longview operations, in reprisal for union activities protected by Chapter 41.56 RCW.

The interference and inducement of employer to commit an unfair labor practice allegations of the complaint and amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

3. The Port of Longview and International Longshore and Warehouse Union, Local 21 shall:

File and serve their answers to the allegations listed in paragraphs 1 and 2 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 and 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 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 and amended complaint, will be deemed to be an admission that the fact is true as alleged in the complaint and amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

- 4. The allegations of the complaint and amended complaint in Case 20378-U-06-5189 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 an "other unfair labor practice," are DISMISSED for failure to state a cause of action.
- 5. The allegations of the complaint and amended complaint in Case 20379-U-06-5190 concerning union discrimination for filing an

unfair labor practice charge in violation of RCW 41.56.150(3), refusal to bargain in violation of RCW 41.56.150(4) and an "other unfair labor practice", are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of July, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

Paragraphs 4 and 5 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.