

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIMOTHY MILLIGAN)	
)	
Complainant,)	CASE 20378-U-06-5189
)	
vs.)	DECISION 9393-A - PECB
)	
PORT OF LONGVIEW,)	
)	ORDER OF DISMISSAL
Employer.)	
_____)	

Timothy Milligan, appearing on his own behalf.

Walstead Mertsching PS, Attorneys at Law, by *D.L. Donaldson*, for the employer.

Timothy Milligan (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission against the Port of Longview (employer).¹ A preliminary ruling issued July 14, 2006, found that claims made in alleging interference and discrimination violations would be subject to further proceedings.

A hearing was held in Longview, Washington, on October 24, 2006.² At the conclusion of the complainant's case, the employer moved for dismissal of the charge against it. Examiner Sally B. Carpenter

¹ In a separate but closely-related case, Milligan filed an unfair labor practice charge on the same date against his union, International Longshore & Warehouse Union - Local 21, which was docketed as Case number 20379-U-06-5190.

² The two related cases were consolidated for hearing. Both the respondent employer and the respondent union appeared.

granted the motion, the employer was excused from further proceedings.

ISSUE

Did the complainant offer any facts in support of the allegations of his complaint?

ANALYSIS

The charge against the employer involved one factual claim: The employer interfered with and discriminated against the employee, by terminating his employment, in reprisal for union activities.

APPLICABLE LAW

The employer is a "port district" as defined in Chapter 53.18 RCW. The Chapter provides that port districts shall be covered by the Public Employees' Collective Bargaining Law, Chapter 41.56 RCW:

RCW 53.18.015 Application of public employees' collective bargaining act. Port districts and their employees shall be covered by the provisions of chapter 41.56 RCW except as provided otherwise in this chapter.

Chapter 41.56 RCW prohibits employers from committing unfair labor practices:

RCW 41.56.140 Unfair labor practices for public employer enumerated.

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

. . . .

The Washington Administrative Code (WAC) places the burden of production of evidence on the complainant:

WAC 391-45-270 Hearings (1) Hearings shall be public,

(a) The complainant shall be responsible for the presentation of its case, and shall have the burden of proof.

. . . .

DISCUSSION

In January 2006, the union terminated Milligan's Port of Longview employment by calling him back to the union hall. Many months prior to that event, Milligan and others asserted a pay dispute, which was resolved by the union and employer a month before his termination.

During Milligan's case, he called five co-workers to testify. No other employee involved in the pay dispute had a negative job action taken against him as a result of the pay dispute or its resolution. None linked any action by the employer regarding Milligan's termination to the pay dispute.

Milligan rested his case in chief. The employer moved to dismiss the charge against it. Milligan responded in part with the following:

My whole argument was pretty much based on the interference of employee rights. There's really nothing in

testimony that has a preponderance of evidence that there was collusion on the part of the union officers with the port to get the port to act as they did. Most of the evidence does show that the union acted, you know, and I have no way of proving what I feel and what I think happened at this time.

As summarized by Milligan, the case against the employer was based on his sense of the situation, without provable facts to support that feeling.

CONCLUSION

The record does not present any fact supporting Milligan's allegation of employer reprisal for union activities. Thus, there is no possibility of a finding of a violation of RCW 41.56.140 (1).

ORDER

The Examiner dismisses the complaint, filed by Milligan against the employer, for lack of evidence.

ISSUED at Olympia, Washington, this 8th day of December, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



SALLY B. CARPENTER, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.