



The amendment filed on May 22, 1984 (with paragraph identification added for ease of reference) states:

- A. It is my belief that Mayor Carl Whisler committed a fraudulent act to jeopardize my future employment.
- B. July 6, 1983 while doing my regular duties I was in an accident caused by a third party involving injuries to my person. Appointed Mayor Whisler made no speculations concerning my job with the city until being elected on November 8, 1983. At which time Mayor Carl Whisler, City Clerk Diane Jenks and City Attorney George Kelly contrived my firing.
- C. In my personal opinion George Kelly, City Attorney should be barred from practice. By willingly signing his signature on fraudulent papers he should be penalized so as not to disgrace his profession.
- D. Mayor Carl Whisler on September 3, 1970 was a councilman when the matter of the firing of Mr. Herman Kelso, a policeman, was brought before the council. The proper procedure in a termination was openly presented to the council. However, Mr. Kelso was exonerated later.
- E. In November of 1972 a water clerk was fired by City Manager Tom Rhinevault. Mr. Whisler was at this time Mayor. December 13, 1972 council meeting the council openly discuss the grievance after firing someone. February 14, 1973 council meeting Water Clerk Kye Hiller was reinstated due to false charges in her firing.
- F. On December 1, 1983 I was fired. January 4, 1984 I was refired. Again Mayor Carl Whisler.
- G. With Mr. Whisler's prior experience of union activities and being a union member on his own job with the Boeing Company as well as a neighbor for many years I fully believe that the accident was a tool which he used to put forth his personal feelings for my union activities regarding the 1972-73 dispute involving Mr. Rhinevault and Mr. Whisler.
- H. The December 1, 1983 firing of me led to several questions:
  - (1) December 1, 1983-January 4, 1984 I was fully terminated from employment. The union contract stated my medical and dental benefits only had one month before expiring. Why did they continue to pay my medical and dental insurance after I'd been fired?
  - (2) Why was I fired in a secretive manner? The chain of command was broken in regards to my firing. My boss of eight years knew nothing of it.
  - (3) Why, when I requested, did they refuse to let me see my personnel (sic) file?
  - (4) Why have they denied me arbitration? The letter requesting arbitration was solely mine not from a lawyer.
  - (5) Why was I not paid my vacation pay when I was fired but later after supposedly being reinstated?
  - (6) How or why can Mary Brown be a union representative (sic) for the people who collaborate with the employers against the best interests of the union employee?
- J. I believe Mr. Carl Whisler is persueing (sic) his personal prejudices against me which is and has jepordized (sic) my future employment. It is presently unknown whether I will be physically able in the future to return to my previous duties with the city. The city's incompetency in dealing with its affairs has damaged my faith in its integrity.

Paragraph "A" "C" and "J" clearly deal with matters outside of the jurisdiction of the Public Employment Relations Commission. Fraud is a crime, to be taken up with the prosecuting attorney for the appropriate county. The discipline of attorneys is a matter regulated by the Supreme Court. Incompetency or prejudice of public officials pose political issues to be decided by the electorate of the public employer.

Paragraph "B" reiterates previously stated facts concerning the complainant's current disability. The right of an employee to keep his or her job (or, concomitantly, limitation of the employer's right to discharge an employee to those situations where the employer has "just cause") is often secured by contract in a collective bargaining agreement negotiated under Chapter 41.56 RCW, but is not a right stemming from the statute itself. RCW 41.56.140(1) precludes a public employer from discharging or otherwise discriminating against an employee because of the exercise of lawful union activities protected by Chapter 41.56 RCW. A "contrived" discharge would not be an unfair labor practice under the statute unless it is contrived to conceal a true motivation of anti-union animus. Accordingly, paragraph "B", standing alone, does not state a cause of action.

Paragraphs "D" and "E" reiterate previously stated facts concerning the complainant's union activity and the findings made against the employer (and its present mayor) in the 1972-73 era. The six-month statute of limitations found in RCW 41.56.160 would preclude litigation of such matters now, and the allegations are taken merely as background to paragraph "G", where the complainant finally alleges that the city's December 1, 1983 actions (well within the statute of limitations) were taken in reprisal for his previous union activity. The various sub-paragraphs to paragraph "H" numbered (1) through (5) pose circumstantial questions concerning the handling of the discharge, but do not set forth any separate or additional causes of action. The allegations of paragraph "G" will be referred to an Examiner for further proceedings under Chapter 391-45 WAC. As noted in that chapter, the complainant initially has the burden of proof in such proceedings.

The facts and allegations concerning the union are skimpy, at best. In a letter written to the grievant shortly after his discharge and included among the documents filed with the complaint, an attorney then representing the complainant urged the complainant to bring the discharge matter immediately to the attention of the union. The same correspondence advised that the employer may have the inherent right to terminate an employee who is physically unable to perform his work. A grievance was signed by the employer and by a union steward on December 21, 1983, and the statement of facts indicates that the grievant contacted the union representative. The documents filed prior to May 22, 1984 contain only conclusionary statements that "the city has worked to undermine the credibility of the union contract"

and "I feel that my own union is no longer supporting me". The question posed in paragraph "H(6)" of the May 22, 1984 document is not based on any facts set forth elsewhere in the documents. It thus appears that, at most, the union has disagreed with the complainant concerning the merits of his grievance. There are no facts on which to conclude that the union has aligned itself in interest against the complainant on the basis of any activity of the complainant protected by Chapter 41.56 RCW or on the basis of any type of invidious discrimination. The allegations against the union thus fail to state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission. To the extent that the complainant would allege that the union has breached its duty of fair representation in connection with the processing of his grievance, such allegations would have to be addressed in civil litigation in the courts. See: Mukilteo School District, Decision 1381 (PECB, 1982).


NOW, THEREFORE, it is

ORDERED

1. Examiner Ronald L. Meeker of the Commission staff is authorized to conduct further proceedings, consistent with the foregoing, in Case No. 5210-U-84-921.
2. The complaint charging unfair labor practices filed against the Washington State Council of County and City Employees, AFL-CIO in Case No. 5211-U-84-922, is dismissed as failing to state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

DATED at Olympia, Washington, this 4th day of June, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.