STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 21-R,	)	CASE 11601-U-95-2721
Complainant,	)	DECISION 5138 - PECB
vs.	)	
CITY OF RENTON,	)	PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS
Respondent.	)	

On February 16, 1995, Local 21-R of the Washington State Council of County and City Employees filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Renton had committed unfair labor practices in violation of Chapter 41.56 RCW, as a result of certain personnel actions regarding bargaining unit member Tracy Forler.[1] The complaint was the subject of a preliminary ruling under WAC 391-45-110,[2] and a preliminary ruling letter issued on April 12, 1995 found certain allegations failed to state a cause of action. The complainant was given a period of 14 days in which to file and serve an amended complaint with respect to the insufficient allegations, or face dismissal of those allegations. Nothing further has been heard or received from the complainant.

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[1] The employer volunteered a response on March 27, 1995, asserting that some of the allegations were untimely and that the processing of any timely allegations should be deferred to arbitration.

[2] 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.

Allegations Failing to State a Cause of Action

Paragraphs 1, 2, 3, 4, and 5 lay out the relationship between Forler, the employer, and the WSCCCE as the exclusive bargaining representative of the employer's employees. They were, and are, taken to be merely background to the allegations which follow.

Paragraphs 6 alleges that the employer moved Forler's workstation and personal belongings in November of 1993, while she was participating in a strike against the employer. The preliminary ruling letter noted that allegations concerning personnel actions occurring prior to August 19, 1994, were untimely under the six-month "statute of limitations" found in RCW 41.56.160. In the absence of an amendment to this paragraph, the preliminary ruling previously made will stand.

Paragraph 6 would also be subject to dismissal on the basis of the common law of this state, which holds that public employees do not have a right to strike. Port of Seattle v. International Longshoremen's and Warehousemen's Union, 52 Wn.2d 317 (1958). Although RCW 41.56.040 provides that no public employer shall interfere with or discriminate against a public employee in the free exercise of a right to organize and designate a representative for the purpose of collective bargaining, RCW 41.56.120 expressly provides that nothing contained in Chapter 41.56 RCW permits or grants a public employee the right to strike or refuse to perform official duties. Forler's strike activity was not protected by Chapter 41.56 RCW. Unfair labor practice allegations alleging "interference" with employee rights have been dismissed, even where the employer made actual threats to employees to deter their participation in unprotected strikes. Concrete School District, Decision 1059 (EDUC, 1980); City of Westport, Decision 1194 (PECB, 1981); Lake Washington School District, Decision 2317 (EDUC, 1985); City of Clarkston, Decision 3094 (PECB, 1989); Spokane County, Decision 4828 (PECB, 1994).

Paragraph 7 alleges that the employer unilaterally changed Forler's duties after the strike. The preliminary ruling letter noted that this allegation lacked the details required by WAC 391-45-050(3), and that the complaint would be untimely as to personnel actions which occurred prior to August 19, 1994. In the absence of an amendment, the preliminary ruling previously made will stand.

Paragraphs 8 and 9 were, and are, taken to be background material only.

Paragraph 10 alleges that the employer instructed Forler to submit physician's slips for all sick leave. This was alleged to have occurred on March 26, 1994, and the preliminary ruling letter noted that the complaint was untimely as to personnel actions occurring prior to August 19, 1994. These allegations also lacked the details required by WAC 391-45-050(3). In the absence of an amendment to this allegation, the preliminary ruling previously made will stand.

Paragraph 11 alleges that Forler was "docked pay" on July 15, 1994. The preliminary ruling noted that this allegation also appeared to be untimely under the provisions of RCW 41.56.160, and also lacked the details required by WAC 391-45-050. In the absence of an amendment, the preliminary ruling previously made will stand.

Paragraphs 12, 13, 14, 15, 16, and 17 were, and are, taken to be supplemental information and background to the allegations contained in paragraph 11.

Paragraph 18 alleges that the employer has failed to provide requested information relevant to processing a grievance on Forler's behalf. This relates to a request for information made by the union in a letter dated August 16, 1994, and the preliminary ruling letter noted that the complaint would only be timely as to a refusal occurring after August 19, 1994. This allegation also

lacked the detail required by WAC 391-45-050. In the absence of an amendment, the allegation detailing a refusal within the period for which the complaint was timely, the allegation must be dismissed.

Paragraph 24 regards "accusations of sexual misconduct". The preliminary ruling letter stated that this allegation lacks the detail required by WAC 391-45-050. The preliminary ruling also noted that this allegation would need to be related in some manner to Forler's union activities before a cause of action could be found. In the absence of an amendment, the preliminary ruling previously made will stand.

Allegations Which State a Cause of Action

The preliminary ruling letter concluded that several allegations were sufficient to state a cause of action:

Paragraph 19 alleges that the employer reprimanded Forler on August 22, 1994;

Paragraph 21 alleges that the employer reprimanded Forler on September 1, 1994;

Paragraph 23 alleges that the employer has singled Forler out to be "monitored and observed ... to a far greater extent than any other employee";

Paragraph 25, 26, and 27 allege that the employer made "performance log" entries adverse to Forler's interests on February 9, 13, and 14, 1995.

These incidents are alleged to have been part of a course of conduct in reprisal for Forler's union activity.[3] It appears that unfair labor practices could be found if, having accepted Forler back as a member of its workforce after the unprotected strike, it is now taking reprisals against Forler for her union activities.

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[3] Paragraphs 20 and 22 were, and are, taken to be supplemental information and background to the allegations contained in paragraphs 19 and 21, respectively.

These allegations thus state a cause of action for "interference" violations under RCW 41.56.140(1).

Deferral to Arbitration

The employer's request for "deferral" of the allegations which state a cause of action must be rejected. The Commission restated its policies on "deferral to arbitration" in City of Yakima, Decision 3564-A (PECB, 1991), where it stated:

> There is no legislative preference for arbitration on issues other than "application or interpretation of an existing collective bargaining agreement". RCW 41.58.020(4). We do not defer to arbitrators on other types of issues.

Allegations of "interference" in violation of RCW 41.56.140(1) and 41.56.040 affect the statutory rights of the employees involved, and are among the types of unfair labor practice allegations which are processed directly by the Commission.

NOW, THEREFORE, it is

ORDERED

1. The information contained in paragraphs 1, 2, 3, 4, and 5 of the statement of facts are taken as background material only.

2. The allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 24 of the complaint are DISMISSED as untimely, as lacking in sufficient detail, or as failing to state a cause of action.

3. Further proceedings shall be conducted under Chapter 391-45 WAC with respect to the matters alleged in paragraphs 19, 20,

21, 22, 23, 25, 26, 27, and 28 of the statement of facts, which are found to state a cause of action to the extent specified in the text of this decision.

4. The Executive Director is temporarily designated as Examiner in this matter, and all pleadings and correspondence shall be submitted to the Executive Director until a different Examiner is designated.

5. With respect to the allegations found in paragraph 3 of this order to state a cause of action, the City of Renton shall:

File and serve its answer to the complaint within 21 days following the date of this letter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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 pursuant to WAC 391-45.210. An answer filed by a respondent shall:

1. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.

2. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.

3. Assert any other affirmative defenses that are claimed to exist in the matter.

The original answer and three copies shall be filed with the Commission at its Olympia office. A copy of the answer shall

be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

Issued at Olympia, Washington, this 6th day of July, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 3 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.