

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT BOLING,	)	
	)	CASE 12855-U-96-3097
Complainant,	)	
	)	
vs.	)	DECISION 5853 - PECB
	)	
CITY OF SEATTLE,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
_____	)	

On December 3, 1996, Robert Boling filed a complaint charging unfair labor practices with the Public Employment Relations Commission alleging that the City of Seattle had interfered with employee rights. Specifically, Boling alleged that he was denied out-of-class assignments and that his employment at the Seattle Center was terminated, because he was a shop steward, he had attempted to file grievances for others, and he had advocated excluding crew chief positions from the bargaining unit.

In a deficiency notice issued on January 21, 1997, pursuant to WAC 391-45-110,<sup>1</sup> Boling's attention was directed to WAC 391-45-050,

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<sup>1</sup> 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.

which sets out requirements for a complaint charging unfair labor practices, including:

Each complaint shall contain, in separate numbered paragraphs:

...

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

As initially filed, the complaint lacked factual allegations from which it could be concluded that the employer knew Boling advocated removing crew chief positions from the bargaining unit, or that the employer would be upset by (or oppose) such a removal. The complaint also lacked dates of Boling's attempts to file grievances on behalf of other employees, the names and positions of employer officials with whom Boling attempted to file such grievances, or other facts indicating employer knowledge of Boling's efforts as a shop steward. Finally, the complaint lacked any factual allegations about the dates and circumstances of Boling's loss of out-of-class work assignments, and their connection to his union activities.

Boling was given a period of 14 days in which to file and serve an amended complaint, or face dismissal of the case. Boling filed a timely amendment on January 14, 1997, but it fails to correct the defects.

Paragraphs A through X of the amended complaint detail the history of relations between the Seattle Center and its intermittent

workers from 1976 through 1995. All of the events occurred before the six month period for which this complaint could be considered timely under RCW 41.56.160(1), and those paragraphs are taken as merely providing background.

Paragraph Y of the amended complaint alleges discrimination against Boling by denial of training, in retaliation for his opposition to subcontracting, his efforts to enforce the collective bargaining agreement, and his role as shop steward. The only time frame provided is "in 1996", so this paragraph is still insufficient to form a conclusion that the complaint is timely under RCW 41.56.160(1). Further, this paragraph still fails to identify the employer officials alleged to have discriminated. The allegations in Paragraph Y thus fail to state a cause of action for unfair labor practice proceedings before the Commission.

Paragraph Z of the amended complaint alleges that Boling advocated the exclusion of crew chiefs from the bargaining unit at union meetings in April, May, June, and July of 1996. Neither in this paragraph nor elsewhere does Boling allege the City of Seattle knew, or should have known, about Boling's advocacy. Employer knowledge of the employee's protected activities is an essential element of a discrimination unfair labor practice. Mansfield School District, Decisions 5238-A, 5239-A (EDUC, 1996). The allegations in paragraph Z thus fail to state a cause of action.

Paragraph AA of the amended complaint alleges that Boling is a shop steward who attempted to file grievances on behalf of others. The January 21, 1997 deficiency notice specifically mentioned the

failure to identify the employer officials Boling dealt with, and the dates of attempted grievance filings. The amended complaint contains no more detail than the original complaint, and thus fails to state a cause of action.

Paragraph BB in the amended complaint is identical to paragraph C of the original complaint: It merely asserts that Boling was denied out-of-class assignments and was discharged because of his protected activities. The conclusory nature of those allegations was the subject of the deficiency notice issued in this case. No facts supporting the legal conclusions have been supplied in the amended complaint, so paragraph BB also fails to state a cause of action.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED.

DATED at Olympia, Washington, this 27th day of February, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.