STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| SEATTLE PROSECUTING ATTORNEYS' ASSOCIATION, | ) | |
| | ) | CASE 12173-U-95-2874 |
| Complainant, | ) | |
| | ) | |
| vs. | ) | DECISION 5391 - PECB |
| | ) | |
| CITY OF SEATTLE, | ) | |
| | ) | ORDER OF PARTIAL |
| Respondent. | ) | DISMISSAL |
| | ) | |
| | ) | |

The complaint charging unfair labor practices was filed with the Public Employment Relations Commission in the above-captioned matter on November 17, 1995. The majority of the allegations concern two memos issued by an employer official during an organizational campaign for a bargaining unit of attorneys.

A preliminary ruling letter issued on December 14, 1996, pursuant to WAC 391-45-110,[1] found that some of the allegations were insufficient to state a cause of action:

Paragraphs 1 and 2 of the statement of facts were deemed to only provide background to the allegations which followed, including the filing of the representation petition and the designation of the employer's spokesman in the pre-election campaign.

Paragraph 3 alleged that certain words or statements used by the employer's spokesman in an October 2, 1995 memo to bargaining unit

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[1] 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.

employees constituted interference, restraint or coercion of the employees, in violation of RCW 41.56.140(1). While it is the nature of the preliminary ruling process that the Executive Director "assumes all of the facts alleged in a complaint to be true and provable", the Executive Director may not ignore internal inconsistences within a complainant's pleadings. In this case, a copy of the challenged memorandum was supplied with the complaint, and examination of that document provided cause for concern:

* The second question/answer pair in the memorandum indicated that the employer "expects managers and union supporters to carefully observe Public Employment Relations Commission rules". The preliminary ruling letter pointed out that violation of the Commission's representation case rules could be a basis for voiding an election result on objections filed under WAC 391-25-590.

* The union objected to the seventh question/answer pair in the memorandum, which used the terminology "at will" but also gave assurance that, "All current conditions of employment, including at-will status, will remain the same unless changes are agreed to through negotiations with the union." The preliminary ruling letter pointed out that the eighth question/answer pair in the memorandum reiterated that the employer is prohibited from changing "current policies and practices", which reinforced interpretation of the seventh question/answer pair as lawful statements.

* The union indicated some general objection to the ninth question/answer pair, which attempted to address limitations on union activity at work. It was noted that a prohibition on use of "office resources" conformed to Commission precedent. The union was notified that the facts alleged were insufficient to form a conclusion that the limitation on union campaigning "during work hours" discriminated in comparison to other activities which are permitted during work hours.

Paragraph 4 of the statement of facts was deemed to merely provide background to the allegations which followed.

Paragraph 5 alleged that a second memo which the employer sent to bargaining unit employees constituted interference, restraint or coercion of the employees, in violation of RCW 41.56.140(1). Again, however, examination of the challenged document disclosed internal inconsistences within the pleadings. The preliminary ruling letter noted:

* No basis was provided for the complainant's apparent assumption that it was entitled to retraction or correction on all of the issues it raised in its intervening letter to the employer.

* To the extent that the union challenged a shift of terminology from "during work hours" in the first memo to "during office hours" in the second memo, it nonetheless failed to furnish any factual basis to support an allegation that the employer is imposing limitations on union campaigning which were discriminatory in comparison to other activities permitted at the workplace.

Paragraph 6 alleged that the employees involved are "exempt" under the federal Fair Labor Standards Act (FLSA), as a basis for an argument that the employer's limitations on union activity are unlawful. The preliminary ruling letter noted that the Public Employment Relations Commission does not interpret or enforce the cited wage/hour law, and that the union's theory put more weight on FLSA "exempt" status than it will bear. It was noted that the proper inquiry is on what other activities the employer has permitted at the workplace, and that no factual basis was furnished to support a contention of discrimination.

Paragraphs 7 and 8 were found to set forth the union's interference claims in conclusionary terms that were at odds with the actual documents attached to the complaint.

The complainant was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the foregoing allegations. An amended complaint filed

on December 22, 1995, is presently before the Executive Director for a preliminary ruling under WAC 391-45-110.

Paragraphs 1 through 7 of the amended complaint are identical, or nearly identical, to the counterpart paragraphs of the original complaint, and they would remain insufficient for the reasons indicated in the preliminary ruling letter.

Paragraph 8 of the amended complaint contains new material alleging that the employer has not previously communicated **any** restriction on communication between employees at the workplace, and that is enough to warrant a hearing on whether the "during work hours" or "during office hours" terminology of the employer memos was reasonably perceived by employees as an interference with their lawful union activities.[2] This material thus rehabilitates the "during ... hours" allegations of Paragraphs 3 and 5.

Paragraphs 9 and 10 of the original complaint (renumbered as 10 and 11 in the amendment) were found to state a cause of action, on the basis of employer statements to employees concerning supervisory exclusions and changes of duties or pay that would be suffered if the assistant supervisors were included in a bargaining unit. The preliminary ruling letter noted that supervisors are public employees within the meaning and coverage of Chapter 41.56 RCW,[3] and that an employer may not threaten employees with changed duties or responsibilities or a reduction in pay in the event they are determined to be in a bargaining unit.

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[2] This is not to say that status of the employees involved as "exempt" under the FLSA gives those employees any greater freedom to discuss organizing issues at the workplace, or that the employer is prohibited from imposing reasonable restrictions on these employees.

[3] Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

NOW, THEREFORE, it is

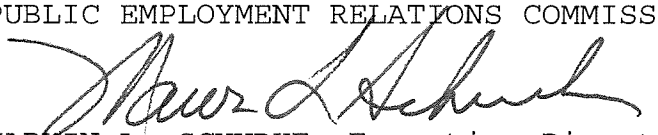
ORDERED

1. Vincent M. Helm of the Commission staff is designated as Examiner, to conduct further proceedings under Chapter 391-45 WAC and consistent with the foregoing, on paragraphs 10 and 11 of the amended complaint, together with the portions of paragraphs 3, 5 and 8 of the amended complaint which concern employer-imposed restrictions on communications among employees at the workplace.

2. All of the other allegations of the complaint and amended complaint are DISMISSED as failing to state a cause of action.

Dated at Olympia, Washington, this 18th day of March, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order will be the final order of the agency on those matters unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.