

City of Omak, Decision 5579 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEAN ISSAC,)	
Complainant,)	CASE 12378-U-96-2937
vs.)	DECISION 5579 - PECB
CITY OF OMAK,)	
Respondent.)	
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DON EDDY,)	
Complainant,)	CASE 12506-U-96-2967
vs.)	DECISION 5580 - PECB
CITY OF OMAK,)	
Respondent.)	
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MIKE MARSHALL,)	
Complainant,)	CASE 12507-U-96-2968
vs.)	DECISION 5581 - PECB
CITY OF OMAK,)	
Respondent.)	
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JOE SOMDAY,)	
Complainant,)	CASE 12508-U-96-2969
vs.)	DECISION 5582 - PECB
CITY OF OMAK,)	
Respondent.)	
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RICHARD WATERS,)	
Complainant,)	CASE 12509-U-96-2970
vs.)	DECISION 5583 - PECB
CITY OF OMAK,)	ORDER OF PARTIAL DISMISSAL
Respondent.)	

A complaint charging unfair labor practices filed with the Public Employment Relations Commission on March 11, 1996, alleged that the

City of Omak had taken actions in violation of RCW 41.56.140, with regard to employees of its police department. One case was docketed initially, but four additional case files were subsequently established to reflect that five individual employees signed the complaint.

The complaint(s) were reviewed for purposes of making a preliminary ruling under WAC 391-45-110.¹ A preliminary ruling letter issued on May 23, 1996, reviewed each of the 22 paragraphs of the statement of facts, and noted that some of them did not state claims for relief available to these individual complainants under RCW 41.56.140 et seq. The complainants were given a period of 14 days following the date of the preliminary ruling letter to file and serve amendments to the complaint. Nothing further has been heard or received from the complainants on these matters.

Paragraph 1 of the statement of facts was characterized as only providing background information.

Paragraphs 2, 3 and 4 involve the discipline of Officer Issac more than six months prior to the filing of the complaint. They were characterized in the preliminary ruling letter as untimely under RCW 41.56.160, and must be dismissed.

Paragraph 5 was characterized as relating to possible violations of a collective bargaining agreement. The preliminary ruling letter pointed out that the Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

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.

This allegation must also be dismissed as failing to state a cause of action under RCW 41.56.140.

Paragraph 6 relates to a conversation between the police chief and Officer Eddy, who is described as a union shop steward. The complaint alleges only that the employee was told that the employer official "would take it personally" if any grievances were filed against the police department. These allegations were found to be insufficient to base a finding that employees reasonably perceived them as a threat of reprisal or force. They remain unamended, and must be dismissed.

Paragraphs 7 and 8 involve alleged unilateral changes of rules regarding employee suspensions. The preliminary ruling letter noted that these individual complainants lack legal standing to pursue a "refusal to bargain" theory, that only the organization which was the incumbent exclusive bargaining representative at the time of the alleged unilateral changes would have had standing to file and prosecute such charges under RCW 41.56.140(4), and that even that organization lost its legal standing upon being decertified. These allegations are also dismissed.

Paragraph 8 also contains allegations regarding threatening comments made by an employer official to Officer Issac in the course of a grievance meeting. An individual can file and pursue an "interference" theory under RCW 41.56.140(1), so this allegation states a cause of action in Case 12378-U-96-2937. It will be referred to an Examiner for hearing.

Paragraph 9 of the statement of facts was characterized as providing only background information.

Paragraph 10 was found to state a cause of action for each of the individual complainants on an interference theory under RCW 41.56.140(1), on the basis of allegations that the policy changes

unilaterally implemented by the employer in October and November of 1995 could be interpreted as threatening to bargaining unit members and interference under RCW 41.56.140(1).² These allegations will be forwarded to an Examiner for hearing.³

Paragraphs 11 through 15, 18 through 20 and 22 were found to state causes of action for interference and discrimination violations under RCW 41.56.140(1) only, based on allegations that the elimination of "K-9 [canine] patrol" and "take-car-home" policies were threats or reprisals related to the employee's exercise of rights protected by Chapter 41.56 RCW. These allegations will be forwarded to an Examiner for hearing.⁴

Paragraphs 16 and 17 allege that the employer threatened the personal employment status of Officer Eddy in response to his efforts as a union official. These allegations were found to state a cause of action in Case 12506-U-96-2967, and will be referred to an Examiner for hearing.

Paragraph 21 alleges that employer's elimination of the K-9 and take-home-car policies were in retaliation for the efforts of Officer Issac and Officer Eddy to seek a change of exclusive bargaining representatives. These allegations were found to state causes of action in Case 12378-U-96-2937 and Case 12506-U-95-2967, and will be referred to an Examiner for hearing.

² The preliminary ruling letter contained an inadvertent error, by describing the timing of these allegations as October and November of "1994". The complaint alleged the occurrences were in 1995, and hence was timely.

³ It was noted that these individual complainants did not have legal standing to pursue "refusal to bargain" claims under RCW 41.56.140(4).

⁴ It was noted that these individual complainants did not have legal standing to pursue "refusal to bargain" claims under RCW 41.56.140(4).

NOW, THEREFORE IT IS

ORDERED

1. Paragraphs 2, 3, 4, 5, 6 and 7, together with portions of paragraph 8 and subsequent paragraphs which are based on claims under RCW 41.56.140(4), are DISMISSED as failing to state a cause of action.
2. J. Martin Smith of the Commission staff is designated as Examiner to conduct further proceedings consistent with the foregoing, on portions of paragraph 8, and on paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the complaint common to the above-captioned cases.
 - a. PLEASE TAKE NOTICE THAT, the City of Omak ("the respondent") shall:
 - File and serve its answer to the complaint (as so limited) within 21 days following the date of this order.
 - b. An answer filed by a respondent shall:
 - i. 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.
 - ii. Assert any other affirmative defenses that are claimed to exist in the matter.
 - iii. The original answer and one copy 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.

- c. 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. WAC 391-45-210.

Issued at Olympia, Washington, on the 25th day of June, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 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.