

King County, Decisions 5889 and 5890 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LORRAINE C. CAMACHO,)	
)	
Complainant,)	CASE 12900-U-96-3112
)	
vs.)	DECISION 5889 - PECB
)	
KING COUNTY,)	
)	
Respondent.)	ORDER OF
)	PARTIAL DISMISSAL
-----)	
KING COUNTY,)	
)	
Employer.)	
-----)	
LORRAINE C. CAMACHO,)	
)	
Complainant,)	CASE 12901-U-96-3113
)	
vs.)	DECISION 5890 - PECB
)	
AMALGAMATED TRANSIT UNION,)	
LOCAL 587,)	
)	
Respondent.)	ORDER OF
)	PARTIAL DISMISSAL
-----)	

Lorraine Camacho filed two unfair labor practice complaints with the Public Employment Relations Commission on December 26, 1996, naming her employer and her exclusive bargaining representative as respondents. The complaints were reviewed for the purpose of making a preliminary ruling pursuant to WAC 391-45-110,¹ and some

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, either complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

of the allegations were found to state a cause of action, but certain problems with the complaints were detailed in a deficiency notice issued on February 11, 1997. Camacho was given 14 days in which to file and serve amended complaints which addressed the defects noted, or have the further processing of the cases limited to the allegations which had already been found to state a cause of action. Nothing further has been heard or received from Camacho on these cases.

The complaints identify Lorraine Camacho as an employee of King County within a bargaining unit represented by Amalgamated Transit Union, Local 587, and as a shop steward for that union. The complaints further suggest that Camacho filed numerous grievances against the employer, and that she challenged the union leadership on numerous past occasions. The present dispute commenced with an investigatory meeting on November 4, 1996, followed by a suspension of Camacho on November 5, 1996. That suspension was later converted to a discharge.

Allegations Against The Employer

Case 12900-U-96-3112 has been docketed for the complaint against the employer. It is alleged that the employer's suspension and discharge of Camacho were in reprisal for her union activities protected by RCW 41.56.040. Filing of grievances would have been an activity protected by the statute. Even with some lingering ambiguity as to the date on which the suspension was converted into a discharge, this allegation states a cause of action for further proceedings under RCW 41.56.140(1) and Chapter 391-45 WAC.

The complainant may have been alleging, or attempting to allege, that the suspension and/or discharge violated a collective

bargaining agreement between the employer and union, but such allegations do not state a cause of action. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW. City of Walla Walla, Decision 104 (PECB, 1976).

Allegations Against The Union

Case 12901-U-96-3113 has been docketed for the complaint against the union. It is alleged that the union aided the employer in its discrimination against Camacho, in retaliation for Camacho's activism as a shop steward and her criticism of the union leadership. The Commission polices its certifications, and a union places in jeopardy its right to enjoy the benefit of statutory status as exclusive bargaining representative, if it aligns itself in interest against an employee it is supposed to represent, based on unlawful considerations. Discrimination on invidious grounds such as sex, race, or creed, would be a basis for Commission jurisdiction. Discrimination on the basis of union membership status or engaging in activity protected by Chapter 41.56 RCW would also be a basis for the Commission to assert jurisdiction. Elma School District (Elma Teachers' Organization), Decision 1349 (EDUC, 1982). An unfair labor practice could also be found if a union acts in collusion with an employer to interfere with the rights of a bargaining unit member. This allegation states a cause of action for further proceedings under RCW 41.56.150(1) and Chapter 391-45 WAC.

The complaint may have been alleging, or attempting to allege, that the union breached its duty of fair representation in regard to the processing of some or all of her grievances. Commission precedent

distinguishes two types of "duty of fair representation" situations, and the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). This policy is closely related to the lack of jurisdiction to remedy contract violations, and this complaint would not state a cause of action if the allegations were limited to a disagreement about the union's handling of the grievance.

NOW, THEREFORE, it is

ORDERED

1. Allegations that the employer's suspension and/or discharge of Lorraine Camacho violated a collective bargaining agreement between the employer and the union are DISMISSED for failure to state a cause of action.
2. Allegations that the union breached its duty of fair representation in regard to the processing of some or all of the grievances filed by Lorraine Camacho are DISMISSED for failure to state a cause of action.
3. The allegations: (a) That King County suspended and then discharged Lorraine Camacho in reprisal for her union activities; (b) that Amalgamated Transit Union, Local 587, discriminated and retaliated against Camacho for her activism as a shop steward; and (c) that the union aided the employer to discriminate and retaliate against Camacho, state causes of action for further proceedings under Chapter 391-45 WAC.

3.1 The Commission adopted amendments to Chapter 391-45 WAC which now **require the filing of an answer** in response to a preliminary ruling which finds a cause of action to exist. See, WAC 391-45-110(2). Cases are reviewed after the answer is filed, to evaluate the propriety of a settlement conference under WAC 391-45-260, priority processing, or other special handling.

PLEASE TAKE NOTICE THAT, the persons or organizations charged with unfair labor practices in these matters (the "respondents") shall:

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

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

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.

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.

3.2 Please be advised that Katrina I. Boedecker of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC.

The Examiner will be issuing a notice of hearing in the near future. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 10-08-090, including making contact to determine the position of the other party prior to presenting the request to the Examiner.

ISSUED at Olympia, Washington, on the 7th day of April, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 2 of this order will be the final order of the agency on the matters contained therein unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.