STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 174, Complainant, vs. KING COUNTY, Respondent.	CASE 22986-U-10-5858 DECISION 10676 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On January 20, 2010, Teamsters Local 174 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. The complaint was docketed by the Commission as Case 22986-U-10-5858. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on January 25, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint.

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1); employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2); and unspecified "other unfair labor practices," by its actions on December 18, 2009. The Unfair Labor Practice Manager dismisses the allegations of the amended complaint concerning interference and domination or assistance of a union and "other" violations for failure to state

---

[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.

causes of action, and finds a cause of action for independent interference allegations of the amended complaint. The employer must file and serve its answer to the amended complaint within 21 days following the date of this Decision.

DISCUSSION

The deficiency notice pointed out the defects to the complaint. It is an unfair labor practice in violation of RCW 41.56.140(1) for an employer to interfere with employee rights; it is an unfair labor practice in violation of RCW 41.56.140(2) for an employer to involve itself in the internal affairs or finances of the union, or attempt to create, fund, or control a company union. WAC 391-45-050(2) provides that each complaint shall contain clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences; WAC 391-45-050(3) requires a statement of the remedy sought by the complainant.

The statement of facts does not give sufficient information concerning the nature of the meeting on December 18, 2009. The complaint does not indicate that the employer violated the provisions of RCW 41.56.140(1) and (2). In addition, the complaint neither contains a remedy request nor identifies the alleged "other unfair labor practices."

Amended Complaint

It is an unfair labor practice in violation of RCW 41.56.140(1) for an employer to interfere with employee rights by threats of reprisal or force or promises of benefit in connection with union activities. The amended complaint alleges the following:

- A union business agent attended a lunch with bargaining unit members on employer property on December 18, 2009;
- After the lunch, an employer's representative told the union agent that the employer's representative intended to meet with employees, and that the union agent should leave the premises;

- The union agent asked if the meeting could lead to disciplinary action against bargaining unit members, but the employer's representative did not respond;
- When the union agent did not leave, the employer's representative called the police, who arrived and determined that the union agent was lawfully on the property and was not a threat;
- The police left, as did the employer's representative, and no employee meeting was held.

Assuming all of the facts to be true and provable, the amended complaint states a cause of action for employer interference with employee rights in violation of RCW 41.56.140(1). However, to the extent that the union might be alleging a violation of *Weingarten* rights, the preliminary ruling set forth below does not include a cause of action for denial of right to representation under *Weingarten.* There is no indication that the employer compelled employees to attend a disciplinary interview or that any employees requested a union representative at such an interview. In fact, the employer cancelled the meeting at issue.

The amended complaint further alleges domination or assistance of a union in violation of RCW 41.56.140(2). The test for a cause of action for a domination or assistance violation is whether the complainant provides facts showing that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a company union. A cause of action for this violation is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test's second clause; that is, whether an employer has attempted to create, fund, or control a company union. *See Washington State Patrol,* Decision 2900 (PECB, 1988). Although the Commission has issued few decisions on this issue, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. A few examples of such assistance are: allowing the free use of employer buildings and resources for union business, aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The term domination concerns an employer's involvement in the internal affairs or finances of a union, or its attempt to create, fund, or control a company union, and does not imply a cause of action for alleged negative acts or comments directed toward the union or union members.

An employer's actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference, discrimination, and refusal to bargain violations. A union alleging that an employer is interfering with, discriminating against, or refusing to bargain with the union should file complaints based upon those allegations. A union should not file a complaint alleging employer domination or assistance of a union unless the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign.[2]

The amended complaint does not indicate that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a company union.

The amended complaint contains a remedy request, but does not specify the nature of "other unfair labor practices."

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, independent interference allegations of the amended complaint state a cause of action, summarized as follows:

---

[2] This is not intended to be an exhaustive list. Parties should consult Commission precedent or the Commission staff manual for a more comprehensive view of this subject. (See the Commission's web site, at www.perc.wa.gov.)

> Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit concerning a meeting involving bargaining unit members on December 18, 2009.

These allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

King County shall:

> File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny or explain each fact alleged in the amended complaint, as set forth in paragraph 1 of this Order, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

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

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the complaint concerning employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2), and "other unfair labor practices," are DISMISSED for failures to state causes of action.

ISSUED at Olympia, Washington, this 16th day of February, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.