STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 32, Complainant, vs. PORT OF EVERETT, Respondent.	CASE 23205-U-10-5915 DECISION 10777 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On May 3, 2010, International Longshore and Warehouse Union, Local 32 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Everett (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on May 13, 2010, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The union has not filed any further information.

As more fully set forth in the Order, the Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for the remaining allegations of the complaint. The employer must file and serve its answer to the allegations set forth in the preliminary ruling (paragraph one of the Order) within 21 days following the date of this Decision.

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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.

DISCUSSION

The deficiency notice affirmed causes of action for some allegations and pointed out the defects to the remaining allegations.

The allegations of the complaint concern: [1] Employer interference with employee rights in violation of RCW 41.56.140(1), by denial of Kevin Waldrop's (Waldrop) right to union representation (*Weingarten* right) in connection with an investigatory interview; [2] employer independent interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit through instructing Waldrop to talk only to employer officials about an incident occurring on February 12, 2010; [3] employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative "interference" in violation of RCW 41.56.140(1)], by its actions toward Waldrop; [4] employer discrimination [and if so, derivative "interference"] in violation of RCW 41.56.140(1), by its actions toward Waldrop, in reprisal for union activities protected by Chapter 41.56 RCW; and [5] employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative "interference" in violation of RCW 41.56.140(1)], by its unilateral changes concerning: (a) administrative leave, without providing an opportunity for bargaining; (b) investigatory interviews, without providing an opportunity for bargaining; and (c) drug and alcohol testing, without providing an opportunity for bargaining.

The allegations of the complaint concerning interference with *Weingarten* rights, independent interference, and refusal to bargain (and derivative interference) state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint concerning discrimination (and derivative interference), and domination or assistance of a union (and derivative interference). Those aspects of the complaint are defective.

Interference and Discrimination

Interference and discrimination claims are separate causes of action with different elements of proof. The complaint states a cause of action for interference not only for an alleged violation of Waldrop's *Weingarten* rights, but for independent interference through the employer allegedly

instructing Waldrop to talk only to employer officials about the incident of February 12, 2010. A cause of action for independent interference will be found for allegations where an employee could reasonably perceive employer statements or actions as threats of reprisal or force or promises of benefit in connection with union activities. An indication of actual coercion or union animus is not necessary to state a cause of action for independent interference. *Northshore Utility District,* Decision 10534-A (PECB, 2010).

Discrimination in an unfair labor practice context concerns the deprivation of ascertainable employee rights, benefits, or status, in reprisal for union activities protected by Chapter 41.56 RCW. Discrimination claims require an indication that an employee was not only actually deprived of rights, benefits, or status, but that the action was taken in reprisal for union activities protected by Chapter 41.56 RCW. *Northshore Utility District,* Decision 10534-A. The complaint states that Waldrop has been placed on administrative leave and states that the employer instructed him to talk only to employer representatives about the incident on February 12, 2010. While those actions concern ascertainable rights, benefits, or status, the complaint does not indicate that the employer took the alleged actions in reprisal for Waldrop's union activities.

Domination or Assistance of a Union

A cause of action will be found for an alleged violation of RCW 41.56.140(2) if a complaint indicates that the employer has involved itself with the internal affairs or finances of a union, or attempted to create, fund, or control a "company union." However, the complaint does not provide facts indicating that the employer has involved itself with internal union affairs, finances, or a "company union."

NOW, THEREFORE, it is

ORDERED

Preliminary Ruling

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

[1] Employer interference with employee rights in violation of RCW 41.56.140(1), by denial of Waldrop's right to union representation (*Weingarten* right) in connection with an investigatory interview;

[2] Employer independent interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit through instructing Waldrop to talk only to employer officials about an incident occurring on February 12, 2010; and

[3] Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative "interference" in violation of RCW 41.56.140(1)], by its unilateral changes concerning: (a) administrative leave, without providing an opportunity for bargaining; (b) investigatory interviews, without providing an opportunity for bargaining; and (c) drug and alcohol testing, without providing an opportunity for bargaining.

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

The Port of Everett 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 complaint, 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 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 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.

Partial Dismissal

2. The allegations of the complaint concerning: Employer discrimination [and if so, derivative "interference"] in violation of RCW 41.56.140(1), by its actions toward Waldrop, in reprisal for union activities protected by Chapter 41.56 RCW; and employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative "interference" in violation of RCW 41.56.140(1)], by its actions toward Waldrop, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of June, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	23205-U-10-05915	FILED:	05/03/2010	FILED BY:	PARTY 2
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BAR UNIT:	SECURITY				
DETAILS:	Kevin Waldrop				
COMMENTS:					

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