

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Click here to enter text. WILLIAM
REICHLIN,

Complainant,

vs.

PORT OF TACOMA,
Click here to enter text.

Respondent.

CASE 23404-U-10-5963

DECISION 10841 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On July 26, 2010, William Reichlein (Reichlein) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Tacoma (employer) as respondent. The allegations of the complaint concern employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), and 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 termination of William Reichlein (Reichlein) in reprisal for union activities protected by Chapter 41.56 RCW.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 30, 2010, indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of the complaint concerning domination or assistance of a union. Reichlein was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. Reichlein has not filed any further information. 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 discrimination and derivative interference allegations of

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.

the complaint. The employer must file and serve its answer to the complaint within 21 days following the date of this Decision.

DISCUSSION

It is an unfair labor practice in violation of RCW 41.56.140(2) for an employer to interfere with the internal affairs or finances of a union or attempt to create, fund, or control a company union. The complainant checked the boxes on the complaint form for “interference” and “discrimination,” but did not check the boxes for “unlawful assistance to a union” or “unlawful interference with internal union affairs.” However, the statement of facts refers to an alleged violation of RCW 41.45.140(2) [sic], and the remedy request alleges employer domination, control, and interference with the union based on the employer’s actions toward Reichlein. While the complaint states a cause of action for allegations concerning employer reprisal against Reichlein based on his union activities, there is insufficient evidence indicating that the employer has interfered with the internal affairs or finances of the union or attempted to create, fund, or control a company union. The allegations concerning Reichlein do not support an independent cause of action regarding alleged actions against the union.

NOW, THEREFORE, it is

ORDERED

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

Employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by its termination of William Reichlein in reprisal for union activities protected by Chapter 41.56 RCW.

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

The Port of Tacoma 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.

2. The allegations of the complaint concerning 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)], are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of September, 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.