

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LEWIS COUNTY CORRECTIONS  
GUILD,

Complainant,

vs.

LEWIS COUNTY,

Respondent.

CASE 23107-U-10-5883

DECISION 10747 - PECB

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

On March 12, 2010, the Lewis County Corrections Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Lewis County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on March 19, 2010, indicated that it was not possible to conclude that a cause of action existed at that time for certain 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. The allegations of the complaint concern: Employer independent interference with employee rights in violation of RCW 41.56.140(1); discrimination and derivative interference in violation of RCW 41.56.140(1); domination or assistance of a union in violation of RCW 41.56.140(2) and derivative interference in violation of RCW 41.56.140(1); and discrimination for filing charges in violation of RCW 41.56.140(3) and derivative interference in violation of RCW 41.56.140(1), by its actions toward Jeremy Engel regarding all claims.

---

<sup>1</sup> 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 allegations of the complaint concerning independent interference, discrimination and derivative interference, and discrimination for filing charges and derivative interference state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The employer must file and serve its answer to those allegations within 21 days following the date of this Order.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint concerning domination or assistance of a union and derivative interference. That aspect of the complaint is defective. The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning domination or assistance of a union and derivative interference for failure to state a cause of action.

#### DISCUSSION

The complaint alleges 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)]. 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.<sup>2</sup>

The complaint does not allege 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.

NOW, THEREFORE, it is

ORDERED

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

Employer independent interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made by employer official Julie Fitzpatrick to Jeremy Engel (Engel) in connection with his union activities;

Employer discrimination in violation of RCW 41.56.140(1)[and if so, derivative “interference” in violation of RCW 41.56.140(1)], in reprisal for

---

<sup>2</sup> 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](http://www.perc.wa.gov).)

union activities protected by Chapter 41.56 RCW, by (a) denying Engel information on a collective bargaining subject, (b) issuing Engel a letter of warning; and

Employer discrimination in violation of RCW 41.56.140(3) [and if so, derivative “interference” in violation of RCW 41.56.140(1)], by its actions against Engel for the union’s filing of a previous unfair labor practice complaint.

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

Lewis 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 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.

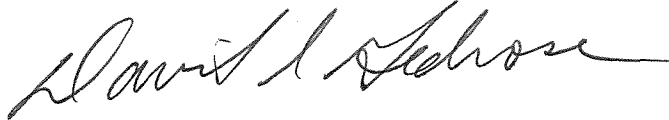
The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure 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 4th day of May, 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

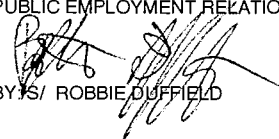
112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 05/04/2010

The attached document identified as: DECISION 10747 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 23107-U-10-05883 FILED: 03/12/2010 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: JAILERS  
DETAILS: Jeremy Engle; Julie Fitzpatrick  
COMMENTS:

EMPLOYER: LEWIS COUNTY  
ATTN: LEWIS COUNTY COMMISSIONERS  
MS: CMS 01  
351 NW NORTH ST  
CHEHALIS, WA 98532-1900  
Ph1: 360-740-1120

PARTY 2: LEWIS COUNTY CORRECTIONS GUILD  
ATTN: LINDA PARKER  
174 OLD SAXTON PL  
PO BOX 511  
CHEHALIS, WA 98532  
Ph1: 360-957-2217

REP BY: DARYL GARRETTSON  
GARRETTSON GALLAGHER FENRICH MAKLER  
5530 SW KELLY AVE  
PORTLAND, OR 97239  
Ph1: 503-226-3906