

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LLOYD D. ANSEL,

Complainant,

vs.

KING FIRE DISTRICT 11,

Respondent.

CASE 23593-U-10-6013

DECISION 10926 - PECB

ORDER OF DISMISSAL

On October 22, 2010, Lloyd D. Ansel (Ansel) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King Fire District 11 (employer) as the respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on October 29, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. Ansel was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On November 19, 2010, Ansel filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1); employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1); 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)]; 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)]; and union interference with employee rights in violation of RCW 41.56.150(1), by employer and union actions toward Lloyd D. Ansel (Ansel).

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<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.

Ansel filed one complaint form and statement of facts alleging unfair labor practice complaints against King Fire District 11 (employer) and the International Association of Fire Fighters, Local 1810 (union). Ansel's filing constitutes one complaint against the employer and a separate complaint against the union. The complaints were docketed as Case 23593-U-10-6013 (employer) and Case 23594-U-10-6014 (union).

The deficiency notice pointed out several defects to the complaint.

WAC 391-45-050 governs the filing of unfair labor practice complaints.

WAC 391-45-050 CONTENTS OF COMPLAINTS.

Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the party filing the complaint (complainant), and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(3) A statement of the remedy sought by the complainant.

(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.

(5) Information concerning the parties' relationships, including:

(a) The employer's principal business;

(b) Identification of the employer department or division in which the dispute arises;

(c) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

(d) The status of related grievance proceedings between the parties, indicating that:

(i) No grievance has been filed on the dispute involved; or

(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or

- (iii) An arbitration award has been issued on a related grievance;
  - (e) A description of the bargaining unit involved, specifying inclusions and exclusions; and
  - (f) The number of employees in the bargaining unit.
- (6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

One, the statement of facts does not contain numbered paragraphs.

Two, each complaint must identify the employer. The respondents are both the employer and union. Ansel should file one complaint form concerning the employer and one concerning the union.

Three, the complaint does not include a clear and concise statement of facts including times, dates, places, and participants in occurrences. Ansel should file one statement of facts concerning the employer and one concerning the union.

Four, it is not clear from the complaint form if Ansel intends to provide a copy of the collective bargaining agreement. The Commission does not have a file copy of the current collective bargaining agreement between the employer and the union.

Five, RCW 41.56.160(1) provides that a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint. The complaint does not identify the dates of the alleged unfair labor practices.

Six, Ansel has alleged employer domination or assistance of a union, by the employer's unlawful interference with internal union affairs. However, Ansel is filing the claim as an individual union member, not on behalf of the union. Ansel has no standing to process this domination or assistance claim.

Seven, Ansel has alleged employer refusal to bargain. Individual employees do not have standing to process refusal to bargain claims.

Amended Complaint

The amended complaint contains numbered paragraphs, identifies the parties, includes a collective bargaining agreement, and provides sufficient facts and dates to allow processing of the amended complaint. The amended complaint restricts its claims to employer interference and

discrimination in violation of RCW 41.56.140(1), by the union notifying its membership on October 12, 2010, that it would be negotiating sick leave for LEOFF I employees. Ansel is the only LEOFF I employee in the union and states that the proposed change in sick leave policy will restrict the amount of family medical/disability leave available to him. Ansel alleges the union has made the proposal because the employer pressured it to do so in retaliation for Ansel's testimony on behalf of another fire fighter in a civil court action.

Ansel alleges that in December 2007 he attempted to have the union support a volunteer fire fighter whom he alleges was being discriminated and retaliated against. He alleges that soon thereafter the employer threatened him with reprisal because of his support for the volunteer. He states that in early 2008 he began to use family medical leave, that the union and employer approached him about retirement, and offered a pay increase in return for his retirement. He states that in January 2010 the employer began pressuring the union to adopt the LEOFF I sick leave proposal. In July 2010 Ansel gave a deposition in the civil case filed by the volunteer against the employer. Ansel states that since the deposition, "I have learned that management is demanding that I be singled out for irreparable harm," through the adoption of the sick leave proposal.

The amended complaint is substantially defective.

As noted above, RCW 41.56.160(1) provides that a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint. The relevant time period here is between April 22, 2010, and the filing of the complaint on October 22, 2010. Neither the complaint nor the amended complaint describe any employer actions during that time that indicate violations of Ansel's collective bargaining rights under Chapter 41.56 RCW. Further, Ansel does not describe any union activities that he engaged in between those dates: His deposition testimony in July 2010 was not union activity protected under Chapter 41.56 RCW.

It is a violation of RCW 41.56.140(1) for an employer to interfere with employee rights by threats of reprisal or force or promises of benefits in connection with union activities. It is also a violation of the aforementioned statute for an employer to discriminate against an employee by depriving the employee of ascertainable rights, benefits, or status in reprisal for union activities protected by Chapter 41.56 RCW. Ansel alleges that the employer pressured the union to negotiate over LEOFF I sick leave and wanted to single him out for harm. However, there has been no change to Ansel's leave; thus, he has not been discriminated against by a deprivation of any ascertainable rights, benefits, or status. Also, his allegations concerning alleged employer threats to harm him do not provide sufficient evidence to state a cause of action for interference,

since Ansel does not provide any supporting information concerning those allegations. The amended complaint contains no indication that the employer has interfered with or discriminated against Ansel because of his union activities. Ansel has not stated a claim for relief under Chapter 41.56 RCW.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 23593-U-10-6013 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of December, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

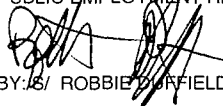
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: /s/ ROBBIE DUFFIELD

CASE NUMBER:	23593-U-10-06013	FILED:	10/22/2010	FILED BY:	PARTY 2
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BAR UNIT:	FIREFIGHTERS				
DETAILS:	-				
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