

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING FIRE DISTRICT 11,

Employer.

LLOYD D. ANSEL,

Complainant,

vs.

INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS, LOCAL 1810,

Respondent.

CASE 23594-U-10-6014

DECISION 10927 - 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 the International Association of Fire Fighters, Local 1810 (union) 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

<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.

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).

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 Firefighters, 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 union interference in violation of RCW 41.56.150(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 firefighter in a civil court case.

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.

It is an unfair labor practice in violation of RCW 41.56.150(1) for a union to breach its duty of fair representation by aligning itself against a bargaining unit member on an improper or invidious basis. Ansel claims that as a result of unlawful employer pressure, the union has breached its duty of fair representation because of his status as a LEOFF I employee and his use of family medical/disability leave.

As previously mentioned, Ansel states that in January 2010 the union president told Ansel that management was pressuring the union to adopt the LEOFF I sick leave proposal. Ansel states that this proposal is unique to him as the only LEOFF I employee, and would deprive him of disability leave benefits. He states that the union resisted the change until October 2010, when it informed the union membership that it would negotiate over the LEOFF I sick leave provisions. 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 in this case is between April 22, 2010, and the filing of the complaint on October 22, 2010.

Ansel states that the union told him it has no bargaining power regarding the negotiations, presumably referring to the LEOFF I sick leave provision. Ansel offers no evidence indicating that the union changed its position for any improper or invidious reason. He alleges that the employer intended to harm him after his deposition testimony, but gives no supporting information for that assertion, and thus does not provide sufficient evidence to state a cause of action against the union for interference.

However, the amended complaint does indicate that the union has adopted a bargaining strategy that involves negotiations over the LEOFF I sick leave policy; that is a matter outside of the Commission's jurisdiction. The process used by a union to decide what proposals to accept in collective bargaining negotiations is purely of a union's own creation. Such process is part of a union's internal affairs and is often controlled by a union's constitution and/or bylaws. The constitution and bylaws of a union are the contracts among the members of a union for how the organization is to be operated. Disputes concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts. Ansel must take his concerns to one of those forums for redress. He 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 23594-U-10-6014 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

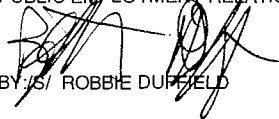
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: /s/ ROBBIE DUFFIELD

CASE NUMBER:	23594-U-10-06014	FILED:	10/22/2010	FILED BY:	PARTY 2
DISPUTE:	UN INTERFERENCE				
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DETAILS:	-				
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