

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PASCO,	Employer.	
JOSE L. NUNEZ,	Complainant,	CASE 23757-U-11-6061
vs.		DECISION 11018 - PECB
PASCO POLICE OFFICERS' ASSOCIATION,	Respondent.	ORDER OF DISMISSAL

On January 24, 2011, Jose L. Nunez (Nunez) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Pasco Police Officers' Association (union) as respondent. The complaint was docketed by the Commission as Case 23757-U-11-6061. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on February 10, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Nunez was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint.

On February 25, 2011, Nunez filed a rebuttal to the deficiency notice. The rebuttal was apparently intended to serve as an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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 allegations of the complaint concerned union interference with employee rights in violation of RCW 41.56.150(1), inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) [and if so, derivative interference in violation of RCW 41.56.150(1)], and discrimination for filing charges with the Commission in violation of RCW 41.56.150(3) [and if so, derivative interference in violation of RCW 41.56.150(1)], by its actions toward Nunez.

The deficiency notice pointed out the defects to the complaint.

One, WAC 391-45-050 requires complaints to have numbered paragraphs and contain "Clear and concise statements of facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." The statement of facts did not have numbered paragraphs and did not give the year of the alleged violations. The statement of facts was not clear and concise; Nunez's claims were not apparent in all particulars regarding the relationships between the dates, places, and participants in occurrences.

Two, Nunez's employment was terminated in August 2010. He alleged union interference in violation of RCW 41.56.150(1), by the union's failure or refusal to file a grievance on his behalf and/or adequately pursue a grievance on his behalf over the termination. However, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violations.

Three, Nunez apparently alleged that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2), by the manner in which it handled his grievance, including failing to pursue the grievance. A cause of action for a union inducing an employer to commit a violation may be found if the statement of facts indicates that the union requested the employer to take unlawful action against the complainant in reprisal for the complainant's union activities. However, there are no facts indicating that the union was involved with Nunez's termination or was involved with the termination in connection with his union activities.

Four, it is an unfair labor practice in violation of RCW 41.56.150(3) for a union to discriminate against an employee for filing an unfair labor practice complaint or testifying before the Commission. However, Nunez's claims appeared to be related solely to his grievance, and perhaps an EEOC complaint filed by him. The statement of facts did not indicate that Nunez has previously filed an unfair labor practice complaint against the union or testified before the Commission against the union.

Five, Nunez's claims against the union concerned the union's internal decisions relative to his termination and the filing and processing of a grievance. The Commission has no jurisdiction over internal union affairs. Nunez must seek relief through internal union procedures or the courts.

Rebuttal/Amended Complaint

The rebuttal substantially consists of argument, does not allege additional claims other than those previously alleged in the complaint, does not provide additional facts to support Nunez's claims, and does not cure the defects to the complaint. Nunez states that the union did nothing to help him during his termination proceedings and did not file a grievance on his behalf as it had for previous union presidents. He disagrees that the Commission has no jurisdiction over allegations of union breach of the duty of fair representation arising exclusively out of grievance proceedings. However, the Commission does not have jurisdiction over those claims, and does not have jurisdiction over internal union decisions concerning who the union will represent in grievance proceedings, absent a showing of an improper or invidious basis for union actions.

Although Nunez's rebuttal claims that the union was active in his termination, the complaint did not make those allegations. In the complaint, Nunez discussed the union grievance committee's unanimous decision not to pursue his grievance, and added, "I am unsure as to the reasons as to why this was done." The complaint provided no facts indicating that the union requested the employer to terminate Nunez because of his union activities or for other improper or invidious reasons. The rebuttal does not cure this defect.

In the rebuttal, Nunez states that the employer and union are “one in the same,” and that the union allowed the employer to retaliate against him for his previous union activities “which means the union retaliated against me as well for my previous union activities.” He states that the union is dominated by “parasites” who “were implanted gradually through the years by the city of Pasco and now have complete control of the union,” and that the union “has deteriorated to the point that it is no longer a union.” Those allegations concerning the union’s current status and motivations are conclusory and do not state a cause of action. Finally, the rebuttal confirms that Nunez has neither previously filed an unfair labor practice complaint against the union nor testified before the Commission against the union.

As with the complaint, the rebuttal fails to state causes of action for union interference with employee rights in violation of RCW 41.56.150(1), inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) [and derivative interference in violation of RCW 41.56.150(1)], and discrimination for filing charges with the Commission in violation of RCW 41.56.150(3) [and derivative interference in violation of RCW 41.56.150(1)].

NOW, THEREFORE, it is

ORDERED

The allegations of the amended complaint in Case 23757-U-11-6061 are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of March, 2011.

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

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

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY: *[Signature]* ROBBIE DUFFIELD

CASE NUMBER: 23757-U-11-06061 FILED: 01/24/2011 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: LAW ENFORCE
DETAILS: -
COMMENTS:

EMPLOYER: CITY OF PASCO
ATTN: MATT WATKINS
525 N 3RD AVE
PO BOX 293
PASCO, WA 99301-0293
Ph1: 509-545-3404

PARTY 2: JOSE L NUNEZ
ATTN:
123 CAMARGO LANE
PASCO, WA 99301
Ph1: 509-727-6585

PARTY 3: PASCO POLICE OFFICERS ASSN
ATTN: DEAN PERRY
PO BOX 822
PASCO, WA 99301
Ph1: 509-545-3421