STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KAREN FOWLER Complainant, vs. CITY OF RENTON, Respondent.	CASE 23852-U-11-6091 DECISION 11046 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On March 9, 2011, Karen Fowler (Fowler) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Renton (employer) as respondent. The complaint was docketed by the Commission as Case 23852-U-11-6091. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on March 25, 2011, indicated that it was not possible to conclude that a cause of action existed at that time for certain allegations of the complaint. Fowler was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations of the complaint.

On April 13, 2011, Fowler filed an amended complaint. The Unfair Labor Practice Manager finds causes of action for certain allegations of the amended complaint, as set forth in Paragraph 1 of the Order, and dismisses the defective allegations of the amended complaint for failures to state causes of action, as set forth in Paragraph 2 of the Order. The employer must file and serve its answer to the amended complaint within 21 days following the date of this Decision.

---

[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

Original Complaint

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); and 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)], by laying off and rescinding layoff benefits for Fowler.

The allegations of the complaint concerning independent interference, discrimination, and derivative interference, as those claims are related to the rescission of layoff benefits, state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out the defects to the complaint concerning the claims over the layoff and domination or assistance of a union. In addition, Fowler did not attach a copy of the collective bargaining agreement to the complaint or specify the number of employees in the unit.

Layoff

Fowler states that prior to her layoff she was not involved in any union activities. Fowler alleges that on October 9, 2009, the employer and union came to an agreement at a labor-management meeting to change the seniority calculation for part-time employees, but that Fowler was never made aware of the change. The change in calculation of seniority resulted in an adjustment to Fowler's seniority date, which resulted in her layoff. Fowler alleges that employer and union treated part-time employees differently than full-time employees when they agreed to adjust seniority for part-time employees.

That Fowler was not aware of an alleged agreement to change seniority calculations for part-time employees does not indicate an unfair labor practice. The union and employer could legally agree

at the bargaining table to change the seniority calculations for part-time employees, and "the mere designation of 'part-time' status does not bring an employee into a classification protected from invidious discrimination." *Metro (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). There is no indication that the October 2009 agreement or her layoff were directed specifically against Fowler based upon her union activities. *See Skagit County,* Decision 8746-A (PECB, 2006).

Fowler's allegation that she was the first person impacted by the change in seniority calculations could be an indication of unlawful action if the complaint showed that the employer's alleged agreement with the union was connected to Fowler's union status or activity and was specifically directed at Fowler. However, Fowler does not allege that, but rather alleges discrimination based upon her part-time status; as noted, that is not a protected class.

Domination or Assistance of a Union

It is an unfair labor practice in violation of RCW 41.56.140(2) for employers to interfere with the internal affairs or finances of a union, or attempt to create, fund, or control a company union. *See Washington State Patrol,* Decision 2900 (PECB, 1988). The complaint does not indicate any employer action that appeared to have interfered in internal union affairs or finances, nor does the complaint show that the employer attempted to create, fund, or control a company union.

Residual Claims: Breach of Contract, Refusal to Bargain

Breach of contract

Fowler alleges that the employer and union violated the collective bargaining agreement by their agreement over seniority calculations for part-time employees. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla,* Decision 104 (PECB, 1976).

Refusal to bargain

The employer and union had no duty to negotiate with Fowler, and Fowler does not have standing to process refusal to bargain claims. Only a union holding the status of exclusive bargaining

representative has standing to collectively bargain with an employer, and an employer has no duty to bargain with individual employees. Only a union has standing to file and pursue refusal to bargain claims. *Spokane Transit Authority*, Decisions 5742 and 5743 (PECB, 1996).

It is understood that the complaint does not specifically allege breach of contract or refusal to bargain. The rulings on residual claims are made in the interest of averting any possible misunderstandings in the processing of this complaint or an amended complaint.

Timeliness

Fowler filed her complaint on March 9, 2011. 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 with the commission." Although the complaint refers to an alleged agreement between the employer and union in October 2009, the allegations involving that information are untimely, and in any case do not state causes of action. The causes of action granted in this preliminary ruling all concern allegations occurring on or after September 9, 2010.

Procedural Issues

The complaint contains only a portion of the full collective bargaining agreement required to be attached under WAC 391-45-050(5)(c)(ii) (rule), and does not specify the number of employees in the unit [rule, 5(f)].

Amended Complaint

Layoffs

The amended complaint has a collective bargaining agreement attached, specifies the number of employees in the unit, and adds some additional facts concerning the layoff. Fowler re-alleges employer discrimination regarding her layoff. She states that in August 2010 she had a dispute

with her supervisor. She alleges a hostile work environment, and states that she had spoken with other employees about reporting the situation to the employer's human resource department, although she did not make the report to human resources. Fowler alleges that her supervisor targeted her for layoff for unexplained reasons, but provides no supporting facts for this claim, nor does she provide facts showing that it was in reprisal for her union activities. In fact, the amended complaint does not identify any union activities related to the employer other than Fowler's filing her layoff grievance.

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions. The Commission does not have jurisdiction over hostile work environment claims unrelated to union activities. Fowler has not provided facts in the amended complaint indicating that her layoff resulted from her union activities.

Fowler also alleges that the employer did not follow the collective bargaining agreement over layoffs, but provides only argument on this issue, rather than additional facts showing reprisal for her union activities. The amended complaint does not cure the complaint's defects concerning layoffs. There are no facts showing reprisal for union activities; breach of contract and refusal to bargain claims are inapplicable.

Domination or assistance of a union

Fowler re-alleges employer domination or assistance of a union by stating that the employer does not publish or make available up to date seniority lists to union members. This allegation does not indicate that the employer has interfered with the internal affairs or finances of the union, or 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 amended complaint state causes of action:

[1] Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made to Karen Fowler (Fowler) in telling her that filing a grievance over her layoff would result in the rescission of layoff benefits; and

[2] Employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), in reprisal for union activities protected by Chapter 41.56 RCW, by rescinding layoff benefits because Fowler filed the grievance over her layoff.

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

The City of Renton 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 amended complaint, as set forth in Paragraph 1 of this Order, 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the amended complaint in Case 23852-U-11-6091 concerning employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by laying off Karen Fowler in reprisal for union activities protected by Chapter 41.56 RCW; and employer domination or assistance of a union in violation of RCW 41.56.140(2), are DISMISSED for failures to state causes of action.

ISSUED at Olympia, Washington, this 28th day of April, 2011.

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

RECORD OF SERVICE - ISSUED 04/28/2011

The attached document identified as: DECISION 11046 - 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:	23852-U-11-06091	FILED:	03/09/2011	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	MIXED CLASSES				
DETAILS:	-				
COMMENTS:					

EMPLOYER: CITY OF RENTON
ATTN: NANCY CARLSON
1055 S GRADY WAY
RENTON, WA 98057
Ph1: 425-430-7656

REP BY: ELIZABETH R KENNAR
SUMMIT LAW GROUP
315 5TH AVE S STE 1000
SEATTLE, WA 98104-2682
Ph1: 206-676-7068 Ph2: 206-676-7078

PARTY 2: KAREN FOWLER
ATTN:
17124 PARKSIDE WAY SE
RENTON, WA 98058
Ph1: 425-271-3972

PARTY 3: WSCCCE
ATTN: CHRIS DUGOVICH
PO BOX 750
EVERETT, WA 98206-0750
Ph1: 425-303-8818