

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT A. HUNGERSCHAFER

Complainant,

vs.

WHATCOM COUNTY,

Respondent.

CASE 19433-U-05-4934

DECISION 11500 - PECB

ORDER OF DISMISSAL

On April 28, 2005, Robert A. Hungerschafer (Hungerschafer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Whatcom County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a preliminary ruling was issued on June 1, 2005. The case remained in processing and without resolution for several years. Without detailing the entire procedural history of this case, it is sufficient to state that a Show Cause Directive was issued on June 12, 2012, asking, in summary, why the case should not be dismissed. The employer and Hungerschafer filed responses, with the employer requesting dismissal, and Hungerschafer resisting that action. The matter was referred to the Unfair Labor Practice Manager for review on August 8, 2012. The review indicated that the preliminary ruling should be reconsidered. As a result of that reconsideration, a deficiency notice issued on August 28, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. The complaint, filed on April 28, 2005, was not amended prior to issuance of the deficiency notice. Hungerschafer was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

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.

On September 18, 2012, Hungerschafer submitted e-mailed documents in response to the deficiency notice; he supplemented those documents with collateral information e-mailed on October 1, 2012. Those documents do not constitute an amended complaint. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and domination or assistance of a union in violation of RCW 41.56.140(2), by retaliatory actions of management officials in connection with the termination of Hungerschafer, in reprisal for union activities protected by Chapter 41.56 RCW.

Hungerschafer executed a severance and release agreement with the employer on November 10, 2004, relinquishing all claims against the employer. On March 26, 2010, Hungerschafer asked the Commission to dismiss all claims against the employer occurring prior to November 9, 2004. Hungerschafer confirmed this withdrawal of claims on June 25, 2012.

Domination or Assistance

The complaint, as amended by the withdrawal, indicates no causes of action for unfair labor practices against the employer occurring on or after November 9, 2004. The majority of the information concerns actions by Teamsters Local 231 (union). Regarding the claim for employer domination or assistance of a union, a cause of action will be found if there is an indication that an employer has interfered with the internal affairs or finances of a union, or attempted to create, fund, or control a company union. The statement of facts is bereft of any evidence indicating that the employer committed a domination or assistance violation: There is no evidence that the employer had any involvement with internal union affairs after November 9, 2004.

Discrimination and Interference

Regarding the discrimination and interference claims, Hungerschafer states that he was arrested on November 10, 2004. There is no information in the complaint connecting this incident to his

union activities or explaining how this event is connected to Hungerschafer's unfair labor practice claims against the employer. The reason for its inclusion in the complaint is unclear.

Public Records

Hungerschafer also refers to public records requests. The Commission has no jurisdiction over claims under the Public Records Act; there is no evidence connecting those requests to his union activities. To the extent that Hungerschafer may allege that pursuit of his unfair labor practice complaint depends upon the employer's production of documents, the nearly seven and a half years since the filing of the complaint has been sufficient time to allow Hungerschafer the opportunity to obtain relevant information about events occurring between November 9, 2004, and April 28, 2005. There is no reason to further delay the processing of this complaint.

Amended Complaint

The e-mailed documents submitted by Hungerschafer on September 18 and October 1, 2012, are procedurally and substantively defective and do not cure the defects to the complaint.

Procedural Defects

The documents sent on September 18, 2012, arrived by e-mail. The documents sent on October 1, 2012, also arrived by e-mail and concern e-mails sent by the Examiner between 2006 and 2009 requesting a status update on the case, with responses by both the employer and Hungerschafer. The October 1 documents are supplements to the September 18 documents and do not respond to the defects stated in the deficiency notice of August 28, 2012. Thus, the September 18 documents are controlling. There is no record in the case file of Hungerschafer sending any information by regular mail to the Commission on September 18, 2012. WAC 391-08-120(2)(c) provides for filing by e-mail, subject to the following limitation: "The original paper filed by e-mail attachment shall be mailed to the commission's Olympia office on the same day the e-mail message and the attachment are transmitted." WAC 391-08-120(2)(c)(ii). That provision is no mere formality, but a jurisdictional requirement. Thus, lacking perfection of filing, no amended complaint has been properly filed in this case.

Substantive Defects

Although the information Hungerschafer sent on September 18 and October 1 does not constitute an amended complaint, the substantive defects to that information would not cure the defects to the complaint, and a dismissal would be warranted, even if the filing had been perfected under WAC 391-08-120. An amended complaint must conform to WAC 391-45-050 and provide facts showing that an unfair labor practice could be found. The information provided by Hungerschafer does not contain a clear and concise statement of facts in numbered paragraphs giving new information concerning times, dates, places, and participants. There are no new facts showing that unfair labor practices by the employer could be found after November 9, 2004. Hungerschafer includes only argument, generalizations, and exhibits in the September 18 and October 1 submissions. The exhibits are separate from the purported statement of facts and thus non-responsive, in addition to being mostly untimely and irrelevant.

Regarding the exhibits pertaining to employer actions after November 9, 2004, Hungerschafer alleges that on or about November 15, 2004, the union forwarded his "confidential union related email to the employer," and that "As late as 02/02/2005, the employer was dissecting and analyzing my confidential union email to determine the identity of union supporters that had received 'BCC' Blind Carbon Copies of confidential union email." However, the exhibits do not speak for themselves, consist largely of inconclusive data, do not show any employer violations, and do not remotely support Hungerschafer's conclusions about the employer's motives. Thus, even viewing the September 18 and October 1 information in a light most favorable to Hungerschafer, inclusion of the exhibits in the statement of facts would not support causes of action for employer interference, discrimination, and domination or assistance of a union.

Responses to the September 18 E-mail

The employer sent a response to Hungerschafer's September 18 e-mail, requesting dismissal of the complaint. Hungerschafer replied to the employer's request for dismissal. Neither the employer's request nor Hungerschafer's reply are pertinent to this ruling and have not been considered.

NOW, THEREFORE, it is

ORDERED

The complaint, including information submitted on September 18 and October 1, 2012, charging unfair labor practices in Case 19433-U-05-4934, is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 2nd day of October, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written over a horizontal line.

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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The attached document identified as: **DECISION 11500 - 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: 19433-U-05-04934 FILED: 04/28/2005 FILED BY: PARTY 2
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BAR UNIT: NON UNIFORMED
DETAILS: Dispute: Employer
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