

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION, LOCAL 22,

Complainant,

vs.

PORT OF TACOMA,

Respondent.

CASE 26142-U-13-6688

DECISION 11978 - PECB

ORDER OF DISMISSAL

On December 16, 2013, the International Longshore and Warehouse Union, Local 22 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Tacoma as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on December 27, 2013, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On January 17, 2014, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

Original Complaint

The allegations of the complaint concern employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by its issuing a written warning to Scott Smith (Smith), in reprisal for union activities protected by Chapter 41.56 RCW.

<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.

The deficiency notice pointed out the defects to the complaint.

The complaint alleges that the employer issued a written warning to Smith on November 5, 2013. The complaint alleges that Smith was a shop steward from 2008 until 2009, a union business agent from 2009 until 2011, and that since 2011 he has served as a delegate to the Pierce County Central Labor Council (Pierce Labor Council). The complaint alleges that the written warning “is the most recent of numerous retaliatory acts” by the employer in reprisal for Smith’s rights protected by Chapter 41.56 RCW.

The complaint does not give information on other alleged retaliatory actions. See WAC 391-45-050(2), which requires statements of fact to include times, dates, places, and participants in occurrences concerning alleged unfair labor practices. In addition, the complaint does not give sufficient information to conclude that Smith’s union activities between 2008 and 2011, as well as his current service as a delegate to the Pierce Labor Council, could be related to the written warning and indicate that an unfair labor practice could be found.

#### Amended Complaint

The amended complaint details employer actions toward Smith allegedly done in reprisal for union activities between December 2011 and June 2012. The union implies that Smith’s role as Business Agent between 2009 and 2011 was the basis for the employer’s alleged retaliation against him (Paragraph 8 of the amended complaint).

RCW 41.56.160(1) requires unfair labor practice complaints to be filed within six months of the alleged violations. The six month period begins to run when a complainant knew or should have known of the alleged violations. Even if a nexus is accepted between Smith’s role as a Business Agent and the employer’s alleged retaliation against him between December 2011 and June 2012, Smith should have filed an unfair labor practice complaint no later than the end of December 2012.

The amended complaint does not describe any alleged employer actions toward Smith between June 2012 and the written warning issued to him on November 5, 2013. The amended complaint

states that Smith's union membership and service as a delegate to the Pierce Labor Council are his current union activities. Standing alone, a showing that Smith is a union member and a delegate to the Pierce Labor Council does not provide sufficient evidence indicating that the written warning could have been in reprisal for union activities.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 26142-U-13-6688 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of January, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", with a long horizontal line extending to the right.

DAVID I. GEDROSE, Unfair Labor Practice Manager

This 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**

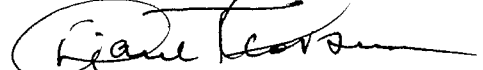
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The attached document identified as: **DECISION 11978 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS  
COMMISSION



BY: /s/ DIANE THOVSEN

CASE NUMBER: 26142-U-13-06688 FILED: 12/16/2013 FILED BY: PARTY 2  
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