

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
MARY STEELE-KLEIN, Complainant,	CASE 26205-U-14-6696
vs.	DECISION 12000 - PECB
TEAMSTERS LOCAL 117, Respondent.	ORDER OF DISMISSAL
MARY STEELE-KLEIN, Complainant,	CASE 26225-U-14-6699
vs.	DECISION 12001 - PECB
KING COUNTY, Respondent.	ORDER OF DISMISSAL

On January 13, 2014, Mary Steele-Klein (Steele-Klein) filed one complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Teamsters Local 117 (union) and King County (employer) as respondents. The complaint against the union was docketed as Case 26205-U-14-6696; the complaint against the employer as Case 26225-U-14-6699. The cases were consolidated under WAC 10-08-085 for further unfair labor practice proceedings. The complaints were reviewed under WAC 391-45-110,¹ and deficiency notices issued on January 28, 2014, indicated that it was not possible to conclude that causes of action existed at that time. Steele-Klein was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases.

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.

Steele-Klein requested and was granted a three-day extension to file amendments, and on February 21, 2014, filed the amended complaints. The Unfair Labor Practice Manager dismisses the amended complaints for failures to state causes of action.

DISCUSSION

Original Complaints

Complaint against the union—Case 26205-U-14-6696

The allegations of the complaint in Case 26205-U-14-6696 concern union violations of Chapter 41.56 RCW, by its actions regarding Steele-Klein. The deficiency notice pointed out the defects to the complaint.

One, the complaint was filed by regular mail on January 13, 2014, and the complaint form appears to be a copy of an original document, although Steele-Klein provided an original signature to the filed document. Under WAC 391-08-120(2)(a)(i), “only the original papers shall be filed.” It is not clear that the complaint was properly filed.

Two, no current or most recent collective bargaining agreement was attached, as required by WAC 391-45-050(5)(c)(ii).

Three, WAC 391-45-050(2) requires clear and concise statements of the facts constituting the alleged unfair labor practices. The complaint contains sections for *facts*, *further procedural steps*, and *legal issues*. It appears that Steele-Klein objects to inclusion in the Teamsters 117 bargaining unit, as well as objecting to being assessed for a union pension trust fund, without having access to pension benefits. However, the complaint is not clear and concise, and it is not possible at this time to determine whether a cause of action exists.

Four, WAC 391-45-050(6) requires identification of the statute allegedly violated. Although Chapter 41.56 RCW applies to this complaint, the complaint does not make clear the provisions of that statute allegedly violated by the union.

Five, regarding membership in the union, it appears from the facts portion of the complaint that Steele-Klein's union membership was based upon employment as a temporary elections worker in 2013, and that Steele-Klein had previously worked in the same capacity in previous years (Paragraph 1; and Relief Requested, asking for 3 years of make whole remedies). Steele-Klein now apparently raises the issue of whether she was improperly included in the Teamsters 117 bargaining union and should have been excluded as a casual or temporary employee under WAC 391-35-350. However, RCW 41.56.160(1) provides that an unfair labor practice complaint must be filed within six months of an alleged violation. The six-month statute begins to run when the complainant knew, or should have known, of the violation. The complaint appears to be untimely.

Six, regarding any claim under WAC 391-35-350, the complaint does not have information on the ending date of Steele-Klein's employment, or the number of hours she worked within the relevant twelve-month period.

Seven, Steele-Klein filed the complaint in objection to the pension fund assessment, but not apparently in objection to paying union dues. The objection to the pension fund assessment is based, at least in part, on the union's alleged statement that Steele-Klein would not be able to access pension benefits. Is it not clear whether Steele-Klein's objection is to membership in the union, or whether it is an objection to the union's alleged policy regarding access to pension benefits. If the issue is over the union's policy on pension benefits, that may be internal union business outside of the Commission's jurisdiction.

Eight, regarding the remedy request, although the first part of the request involves subjects under the Commission's jurisdiction, the remaining parts of the request appear to concern pleadings before the Superior Court. The purpose of including that information in this unfair labor practice complaint is unclear. In addition, the Commission does not have jurisdiction to impose

“exemplary and punitive damages,” and does not process class action complaints (“600-1000 PTTs injured in the past three years”).

Complaint against the employer—Case 26225-U-14-6699

The allegations of the complaint in Case 26225-U-14-6699 concern employer violations of Chapter 41.56 RCW, by its actions regarding Steele-Klein. The deficiency notice pointed out the defects to the complaint.

One, the complaint was filed by regular mail on January 13, 2014, and the complaint form appears to be a copy of an original document, although Steele-Klein provided an original signature to the filed document. Under WAC 391-08-120(2)(a)(i), “only the original papers shall be filed.” It is not clear that the complaint was properly filed.

Two, no current or most recent collective bargaining agreement was attached, as required by WAC 391-45-050(5)(c)(ii).

Three, WAC 391-45-050(2) requires clear and concise statements of the facts constituting the alleged unfair labor practices. The complaint contains sections for *facts*, *further procedural steps*, and *legal issues*. It appears that Steele-Klein objects to inclusion in the Teamsters 117 bargaining unit, as well as objecting to being assessed for a union pension trust fund, without having access to pension benefits. However, the complaint is not clear and concise, and it is not possible at this time to determine whether a cause of action exists.

Four, WAC 391-45-050(6) requires identification of the statute allegedly violated. Although Chapter 41.56 RCW applies to this complaint, the complaint does not make clear the provisions of that statute allegedly violated by the employer.

Five, regarding membership in the union, it appears from the *facts* portion of the complaint that Steele-Klein’s union membership was based upon employment as a temporary elections worker in 2013, and that Steele-Klein had previously worked in the same capacity in previous years

(Paragraph 1; and Relief Requested, asking for 3 years of make whole remedies). Steele-Klein now apparently raises the issue of whether she was improperly included in the Teamsters 117 bargaining union and should have been excluded as a casual or temporary employee under WAC 391-35-350. However, RCW 41.56.160(1) provides that an unfair labor practice complaint must be filed within six months of an alleged violation. The six-month statute begins to run when the complainant knew, or should have known, of the violation. The complaint appears to be untimely.

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Eight, regarding the remedy request, although the first part of the request involves subjects under the Commission's jurisdiction, the remaining parts of the request appear to concern pleadings before the Superior Court. The purpose of including that information in this unfair labor practice complaint is unclear. In addition, the Commission does not have jurisdiction to impose "exemplary and punitive damages," and does not process class action complaints ("600-1000 PTTs injured in the past three years").

Amended Complaints

Steele-Klein filed one amended statement of facts for both amended complaints, along with the current collective bargaining agreement. Steele-Klein objects to paying all union assessments,

whether termed dues or pension benefit fees (hereinafter, union dues). The amended complaint forms appear to be copies. The amended statement of facts cites numerous federal and state statutes and asserts jurisdiction by the National Labor Relations Board. The only relevant statute is Chapter 41.56 RCW. The National Labor Relations Board does not have jurisdiction in this matter.

Steele-Klein makes the following claims:

- Employment discrimination based upon age;
- The employer did not allow her to organize protests by employees to union dues;
- The amended complaint applies to other workers;
- The union dues subjected her and other workers to federal taxes; and
- The union bargained contract terms without notice to her and other workers and did not allow them to vote on the terms.

The Commission does not have jurisdiction over age discrimination claims. In contrast to federal labor law, the Commission does not interpret Chapter 41.56 RCW as protective of “concerted activities.” *City of Seattle*, Decision 9439-B (PECB, 2009). As explained in the deficiency notice, the Commission does not process class action complaints; Steele-Klein does not have standing to file amended complaints on behalf of other employees. It is not an unfair labor practice for union dues to result in tax liabilities. As explained below, Steele-Klein affirms that she was not a bargaining unit member: The union had no duty to notify her about contract negotiations or allow her to vote on contract ratification.

Based upon the amended statement of facts, Steele-Klein appears to make the following claims against the union that are subject to the Commission’s jurisdiction: Interference by either including or excluding her from the bargaining unit and assessing union dues; inducing the employer to commit an unfair labor practice by withholding union dues from her pay and failing to hire her in January 2014. The claims against the employer that are subject to the Commission’s jurisdiction appear to be: Interference by either including or excluding her from the bargaining

unit; discrimination by withholding union dues from her pay, and failing to hire her in January 2014.

Claims against the union

Improper inclusion in or exclusion from the bargaining unit

It is an unfair labor practice in violation of RCW 41.56.150(1) for a union to enter into an agreement with an employer to improperly include an employee in or exclude an employee from a bargaining unit. Steele-Klein states in the amended statement of facts that she did not have enough hours in July 2013 to qualify her as a bargaining unit member, and that she now understands that she was not a bargaining unit member. However, as part of the amended complaint, Steele-Klein filed a unit clarification petition under Chapter 391-35 WAC. That portion of the amended complaint was docketed as a unit clarification petition (Case 26307-C-14-1584). That petition is the subject of a separate proceeding. In the petition, Steele-Klein asks to be excluded from the bargaining unit.

Steele-Klein objects to paying union dues. As noted, the amended statement of facts shows Steele-Klein's recognition that she was not included in the bargaining unit and does not qualify for membership in the bargaining unit. However, the unit clarification petition requests exclusion from the bargaining unit, in order to stop the payment of union dues. Thus, it is apparent that Steele-Klein is not objecting to improper inclusion in the bargaining unit, since she admits that she was never in the bargaining unit, nor is she objecting to exclusion from the bargaining unit, since that is the purpose behind the unit clarification petition. Steele-Klein has not stated a cause of action against the union for improperly including her in or excluding her from the bargaining unit.

Interference by assessing union dues

It is an unfair labor practice in violation of RCW 41.56.150(1), for a union to interfere with employee rights in connection with an employee's union status. Steele-Klein objects to paying union dues without being included in the bargaining unit. The payment of union dues is covered under RCW 41.56.110 and RCW 41.56.122. RCW 41.56.110 provides for the withholding of union dues by an employer upon the written permission of the affected employee. Steele-Klein

does not allege or provide facts showing the union dues were deducted without her written permission.

RCW 41.56.122 provides that a union may assess union dues if the collective bargaining agreement contains a union security provision requiring that employees become members of the union or pay the equivalent of union dues. Based upon the collective bargaining agreement, it appears that the union dues may have been assessed as a “fair share” payment for temporary employees (Section 2.3). There is no evidence that the union acted unlawfully in assessing union dues for Steele-Klein. There is no cause of action for union interference in connection with Steele-Klein’s union activities or status.

Inducing the employer to commit a violation

It is an unfair labor practice in violation of RCW 41.56.150(2), for a union to induce an employer to commit an unfair labor practice. One aspect of the alleged inducement appears to be the employer deducting the union dues from Steele-Klein’s pay. However, in following the above-cited statutes, as well as the provisions of the collective bargaining agreement, the employer was not asked to commit, and did not commit or agree to commit, an unfair labor practice. The second claim of alleged inducement is that the employer failed to hire Steele-Klein in January 2014. Steele-Klein states that her objections to paying union dues were the basis for union reprisals against her. There is no evidence that the employer’s failing to hire Klein was based upon her union activities or status. In addition, those objections would need to be protected activity under Chapter 41.56 RCW in order to state a cause of action. As previously stated, the union did not act unlawfully in assessing union dues; there was no protected activity regarding the payment of union dues. There is no cause of action for union inducement of the employer to commit an unfair labor practice violation.

Claims against the employer

Improper inclusion or exclusion from the bargaining unit

It is an unfair labor practice in violation of RCW 41.56.140(1), for an employer to enter into an agreement with a union to improperly include an employee in or exclude an employee from a

bargaining unit. For the same reasons given above, showing that Steele-Klein has no cause of action against the union for improper inclusion in or exclusion from the bargaining unit, no cause of action applies to the employer.

Discrimination

It is an unfair labor practice in violation of RCW 41.56.140(1), for an employer to discriminate against an employee in reprisal for union activities protected by Chapter 41.56 RCW. Steele-Klein has not produced evidence indicating unlawful actions by the employer or evidence indicating that she engaged in protected activities. As previously stated, the employer did not violate the law by withholding union dues from Steele-Klein's pay, and there is no evidence indicating that the employer failed to hire Steele-Klein in January 2014 in reprisal for her union activities. There is no cause of action for employer discrimination.

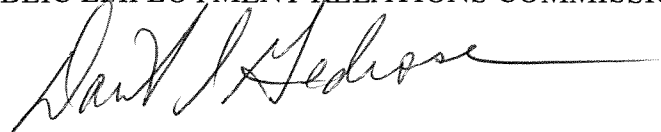
NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in Cases 26205-U-14-6696 and 26225-U-14-6699, are DISMISSED for failures to state causes of action.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

These will be the final orders of the agency unless notices of appeal are filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

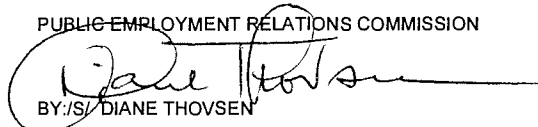
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The attached document identified as: DECISION 12000 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


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CASE NUMBER: 26205-U-14-06696 FILED: 01/13/2014 FILED BY: PARTY 2
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