

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CECIL WILLIAMS MOMASSIE, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 27228-U-15 (against employer) DECISION 12415 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
CECIL WILLIAMS MOMASSIE, Complainant, vs. LABORERS LOCAL 1239, Respondent.	CASE 27229-U-15 (against union) DECISION 12416 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On May 20, 2015, Cecil Williams Momassie (complainant) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Seattle (employer) and Laborers Local 1239 (union) as respondents. Because the complaints concern the same events in the same time period these cases were consolidated for processing.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 15, 2015, indicated that it was not possible to conclude a cause of action existed at that time. The complainant was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases. The complainant filed amended complaints on June 29, 2015. The

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

amended complaints received a deficiency notice issued on August 20, 2015. On August 24, 2015, the complainant filed second amended complaints.

The Unfair Labor Practice Manager reviewed the second amended complaints and dismisses defective allegations of the second amended complaints for failure to state a cause of action. The second amended complaints state causes of action for employer and union interference. The employer and union must file and serve their answers to the second amended complaints within 21 days following the date of this decision.

DISCUSSION

Allegations Against the Employer

The second amended complaint against the employer alleges that the employer is requiring union dues to be deducted from Momassie's paychecks, even though there is no collective bargaining agreement (CBA) in effect between the employer and union. According to the complaint, the most recent CBA covering employees in the Seattle Center Emergency Services/Security department expired on December 31, 2007. The complaint states a cause of action for:

Employer interference in violation of RCW 41.56.140(1) by requiring employees in the Seattle Center Emergency Services/Security department to pay union dues in compliance with union security obligations for the period of a hiatus between contracts.

The second amended complaint also alleges that the employer's supervisors made false accusations against Momassie in an attempt to destroy Momassie's character and integrity. The allegations describe that these accusations and a related investigation resulted in a hostile work atmosphere, causing significant stress and disruption to Momassie's lifestyle. The complaint also alleges that the employer violated Title 5 of the United States Code (USC), Section 7100; Title 18 of the USC, Sections 243 through 245; the National Labor Relations Act (NLRA); and the Landrum-Griffin Act. These allegations are dismissed for failing to state a cause of action under Chapter 41.56 RCW.

Allegations Against the Union

The second amended complaint against the union states a cause of action for:

Union interference in violation of RCW 41.56.150(1) by:

1. Requiring employees in the Seattle Center Emergency Services/Security department to pay union dues in compliance with union security obligations for the period of a hiatus between contracts.
2. Breaching its duty of fair representation by failing to negotiate a collective bargaining agreement and to represent employees in the Seattle Center Emergency Services/Security department.
3. Breaching its duty of fair representation by failing to fairly investigate concerns and possible policy violations and failing to provide union representation to bargaining unit employee Cecil Williams Momassie since April 14, 2015.

The complaint also alleges that the union contributed to a hostile work environment and violated Title 5 of the USC, Section 7100; Title 18 of the USC, Sections 243 through 245; the NLRA; and the Landrum-Griffin Act. These allegations are dismissed for failing to state a cause of action under Chapter 41.56 RCW.

No Jurisdiction Over Hostile Work Environment Allegations

The Commission only has jurisdiction over hostile work environment allegations alleged to be in retaliation for protected union activity. It is an unfair labor practice for an employer or a bargaining representative to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1); RCW 41.56.150(1). While complaints involving employer conduct occur with more frequency, either a union or an employer can commit an interference violation. The standards are similar: a violation occurs if employees can reasonably perceive conduct as a threat of reprisal or force, or a promise of benefit, related to the pursuit of rights protected by Chapter 41.56 RCW. A finding of intent is not necessary. *City of Port Townsend*, Decision 6433-B (PECB, 2000).

The complaint alleges that Momassie contacted the union on May 8, 2015, after the hostile work environment allegations occurred. In order to have a discrimination or interference allegation the

facts would have to show union activity prior to the hostile work environment and a causal connection between the union activity and the adverse action. The hostile work environment claims against the employer and union described in the complaints are not covered by statutes administered by the Commission because they do not involve union activity or collective bargaining.

No Jurisdiction Over Violations of Title 5, Title 18, the NLRA, or the Landrum-Griffin Act

The Commission only has jurisdiction over certain employer-employee relationships. Title 5 of the USC, Section 7100; Title 18 of the USC, Sections 243 through 245; the NLRA; and the Landrum-Griffin Act are not statutes that are administered by the Commission.

CONCLUSION

The second amended complaints state causes of action for employer and union interference. These allegations will move on for further case processing. The defective allegations of the second amended complaints concerning hostile work environment and violations of Title 5 of the USC, Section 7100; Title 18 of the USC, Sections 243 through 245; the NLRA; and the Landrum-Griffin Act are dismissed for failure to state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the second amended complaint in Case 27228-U-15 state a cause of action, summarized as follows:

Employer interference in violation of RCW 41.56.140(1) by requiring employees in the Seattle Center Emergency Services/Security department to pay union dues in compliance with union security obligations for the period of a hiatus between contracts.

This employer interference allegation of the second amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Assuming all of the facts alleged to be true and provable, the second amended complaint in Case 27229-U-15 states causes of action, summarized as follows:

Union interference in violation of RCW 41.56.150(1) by:

1. Requiring employees in the Seattle Center Emergency Services/Security department to pay union dues in compliance with union security obligations for the period of a hiatus between contracts.
2. Breaching its duty of fair representation by failing to negotiate a collective bargaining agreement and to represent employees in the Seattle Center Emergency Services/Security department.
3. Breaching its duty of fair representation by failing to fairly investigate concerns and possible policy violations and failing to provide union representation to bargaining unit employee Cecil Williams Momassie since April 14, 2015.

These union interference allegations of the second amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

3. The employer and union shall file and serve their answers to the allegations listed in paragraphs 1 and 2 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 complaints, as set forth in paragraphs 1 and 2 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 complaints. 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 complaints, will be deemed to be an admission that the fact is true as alleged in the amended complaints and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

4. The allegations of the second amended complaint in Case 27228-U-15 concerning hostile work environment in violation of RCW 41.56.140(1); Title 5 of the USC, Section 7100; Title 18 of the USC, Sections 243 through 245; the NLRA; and the Landrum-Griffin Act are DISMISSED for failure to state a cause of action.
5. The allegations of the second amended complaint in Case 27229-U-15 concerning hostile work environment in violation of RCW 41.56.150(1); Title 5 of the USC, Section 7100; Title 18 of the USC, Sections 243 through 245; the NLRA; and the Landrum-Griffin Act are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 10th day of September, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraphs 4 and 5 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

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 09/10/2015

DECISION 12415 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 27228-U-15

EMPLOYER: CITY OF SEATTLE
ATTN: DAVID BRACILANO
PERSONNEL DEPARTMENT
PO BOX 34028
SEATTLE, WA 98124-4028
david.bracilano@seattle.gov
(206) 684-7874

REP BY: TAMI GOMEZ
CITY OF SEATTLE
701 FIFTH AVE STE 2050
SEATTLE, WA 98104-7097
tami.beckergomez@seattle.gov
(206) 684-0374

PARTY 2: CECIL WILLIAMS MOMASSIE
PO BOX 3156
ARLINGTON, WA 98223
cmag1@gmx.com
(360) 659-0004



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 09/10/2015

DECISION 12416 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 27229-U-15

EMPLOYER: CITY OF SEATTLE
ATTN: DAVID BRACILANO
PERSONNEL DEPARTMENT
PO BOX 34028
SEATTLE, WA 98124-4028
david.bracilano@seattle.gov
(206) 684-7874

REP BY: TAMI GOMEZ
CITY OF SEATTLE
701 FIFTH AVE STE 2050
SEATTLE, WA 98104-7097
tami.beckergomez@seattle.gov
(206) 684-0374

PARTY 2: CECIL WILLIAMS MOMASSIE
PO BOX 3156
ARLINGTON, WA 98223
cmag1@gmx.com
(360) 659-0004

PARTY 3:
ATTN: LABORERS LOCAL 1239
IAN GORDON
2800 1ST AVE RM #301
SEATTLE, WA 98121
ian@local1239.com
(206) 443-1239