King County (Teamsters Local 117), Decision 12000-A (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

Mary Steele-Klein appeared *pro se*.

Daniel A. Swedlow, Associate General Counsel, for the union.

Ian Coleman, Labor Negotiator, for the employer.

Complaints alleging unfair labor practices are reviewed under WAC 391-45-110. At the preliminary ruling stage, the alleged facts are assumed true and provable. On January 13, 2014, Mary Steele-Klein filed an unfair labor practice complaint against King County (employer) and Teamsters Local 117 (union). The Unfair Labor Practice Manager reviewed the complaint and issued a deficiency notice. Steele-Klein filed an amended complaint. Concluding that the

amended complaint did not cure the defects, the Unfair Labor Practice Manager dismissed the complaints for failure to state a cause of action. Steele-Klein appealed.

The issue in these cases is whether the complaints state a cause of action. Assuming the alleged facts are true and provable, it is not possible to conclude the complaint states a cause of action.

ANALYSIS

Legal Standards

Standard of Review

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State - Office of the Governor*, Decision 10948-A (PSRA, 2011), *citing City of Seattle*, Decision 8313-B (PECB, 2004). The party filing a complaint must include a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time, place, date, and participants in all occurrences. WAC 391-45-050(2). The Commission's rules require more than notice pleading.

An unfair labor practice complaint will be reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. When a complaint is reviewed under WAC 391-45-110, all alleged facts are assumed to be true and provable. *Whatcom County*, Decision 8246-A (PECB, 2004). Despite this assumption, vague or nonspecific factual allegations will be insufficient to establish a cause of action at the preliminary ruling phase. *Kitsap County*, Decision 11610-A (PECB, 2013). When determining whether a complaint states a cause of action at the preliminary ruling stage, the agency staff must act on the basis of what is contained in the statement of facts, and is not at liberty to fill in gaps or make leaps of logic.

The Commission does not consider new facts entered at the appeal stage. *King County*, Decision 11221-A (PECB, 2012); *King County*, Decision 8631-A (PECB, 2005). We rely only on those facts alleged in the complaint and amended complaint.

Interference

Employees covered by Chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. It is an unfair labor practice for an employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.140(1). It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.150(1).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Washington State Patrol*, Decision 11863-A (PECB, 2014); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000) (remedy affirmed). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Washington State Patrol*, Decision 11863-A; *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Washington State Patrol*, Decision 11863-A; *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *aff'd*, 98 Wn. App. 809 (2000) (remedy affirmed).

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

Allegations of the Complaints

A collective bargaining agreement between the union and the employer was in effect from January 1, 2011, through January 31, 2014. Through the collective bargaining agreement, the employer recognized the union as the representative of employees in Administrative Specialist 1 job classifications in the Elections Division. Under the collective bargaining agreement, "employees who are temporarily appointed to work in a job classification covered by [the] Agreement" are included in the bargaining unit if the appointment is expected to last thirty days or more. The Commission did not certify the bargaining unit because neither party filed a representation petition.

In August 2011, the employer and union entered into an agreement providing employee contributions to the Western Conference of Teamsters Pension Trust. The agreement was attached to Steele-Klein's complaint. The employee deductions were effective June 8, 2013. (Exhibit D to the complaint filed January 13, 2014).

Steele-Klein began working as a temporary part-time Administrative Specialist 1 (signature verification) in the King County Elections Division on July 19, 2013. She had worked in the same position in 2011, 2012, and 2013. After each election cycle, Steele-Klein's employment was terminated. In 2011, Steele-Klein worked 72.75 hours. In 2012, she worked 188.25 hours. In 2013, she worked 54.50 and 55.75 hours during two separate election cycles. The complaint did not include how many days Steele-Klein worked or the exact dates she worked for the employer. Steele-Klein was told there should be no expectation that she would be rehired after her employment was terminated each election cycle.

In July 2013, Steele-Klein reapplied to work as an Administrative Specialist 1. The amended complaint alleged that when she received an e-mail for reapplication, the notice included the Administrative Specialist 1 position wage. The complaint alleged that, on July 19, 2013, the employer provided Steele-Klein with a letter confirming her appointment as "a short-term temporary" Administrative Specialist I. The appointment letter notified Steele-Klein that the wage rate included a $.50 deduction for the Teamsters Pension Trust, the temporary position was represented by the union, and the position was not eligible for benefits. Steele-Klein was required to pay union dues.

At orientation, Steele-Klein objected to the pension trust reduction. Steele-Klein signed the appointment letter under protest. Steele-Klein alleged that she was not rehired to work the election periods in January or April 2014. However, neither the complaint nor amended complaint identified the application procedure or alleged that she re-applied.

Steele-Klein alleged that the pension trust fund deduction was a "tax" over which she did not have notice, was not represented during the negotiations, and did not have an opportunity to vote to ratify the agreement.

Application of Standards

In essence, Steele-Klein has alleged the employer and the union interfered with her rights under Chapter 41.56 RCW by discouraging her from objecting to the pension fund deduction, not allowing her to vote on ratification of the collective bargaining agreement, failing to provide notice of a ratification vote, subjecting her to a tax, requiring that she pay union dues, and failing to rehire her. Steele-Klein's complaint alleged that other similarly situated employees shared her concerns.

On appeal, Steele-Klein argued that her complaint was inappropriately dismissed for eight reasons. First, the dues were improperly withheld without her consent. Second, the Commission is required to consider and enforce dues provisions under RCW 41.59.100, RCW 41.59.110, and RCW 42.17A.500. Third, a cause of action existed. Fourth, the Unfair Labor Practice Manager demonstrated prejudice by the jurisdictional limitations, flawed factual findings, and improper conclusions of law. Fifth, the Commission's procedures violate the rights of employees. Sixth, jurisdiction should not have been limited to Chapter 41.56 RCW, but should have included the United States Constitution Amendments I and XIV, and United States Supreme Court precedent on dues obligations. Seventh, the Unfair Labor Practice Manager refused to determine Steele-Klein's status as a casual employee. Finally, the Commission failed to review RCW 41.80.050, Chapter 34.05 RCW, and WAC 391-35-350.

The arguments on appeal do not cure the defects of the petition. The arguments concern matters that the Commission does not have jurisdiction over, such as RCW 42.17A.500 and the procedures for dues deduction. The arguments asserting violations of Chapters 41.59 and 41.80

RCW are misplaced, because those statutes do not apply to Steele-Klein. The facts alleged by Steele-Klein do not meet the standard for either employer or union interference under Chapter 41.56 RCW and the Commission precedent.

The complaint and amended complaint contain conflicting factual allegations. First, the complaint alleges that Steele-Klein was informed of the reduced wage rate in a July 2013 e-mail requesting her re-application. Second, the complaint alleged that she received notice of the pension trust deduction in the new employee letter on July 19, 2013. Third, Steele-Klein alleged that she learned she was not eligible for the pension benefit on the first day of employment, July 18, 2013. There is no date on the letter to new employees, nor is there a date when Steele-Klein signed the letter under protest. Thus, it is not possible to conclude when Steele-Klein first learned she was required to pay the pension fund deduction.

Jurisdiction of the Commission

The Legislature delegated to the Public Employment Relations Commission the authority to determine and remedy unfair labor practices under the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. *See* RCW 41.56.140 – 160.

The employer is subject to Chapter 41.56 RCW because it is a county in the state of Washington. RCW 41.56.020; RCW 41.56.030(12). The union is a bargaining representative within the meaning of RCW 41.56.030(2). Steele-Klein is a public employee because, at one time, she was employed by the employer. RCW 41.56.030(11). Thus, the employer, the union, and Steele-Klein are all subject to Chapter 41.56 RCW. The evaluation of whether Steele-Klein's complaints against the employer and union state a cause of action are limited to the rights granted to employees under Chapter 41.56 RCW. The other statutes administered by this agency do not apply to Steele-Klein because neither she nor her former employer is within their jurisdiction.

The Commission does not have jurisdiction over RCW 41.17A.500 or the National Labor Relations Act, which Steele-Klein alleged were violated.

Standing

The Commission rules do not have procedures for class action unfair labor practices. Steele-Klein only has standing to file a complaint on her own behalf. There is no evidence that other similarly situated employees authorized her to be their representative. Thus, Steele-Klein's complaint is read only to apply to her.

Does the complaint state a cause of action for employer or union interference?

The allegations can be grouped into five categories. First, did the employer interfere with Steele-Klein's rights by preventing her from objecting to the pension fund deduction. Second, did the union interfere with Steele-Klein's rights. Third, did the employer or union interfere with Steele-Klein's rights by not allowing her to vote on ratification of the agreement or providing her notice of a ratification vote. Fourth, did the employer interfere with Steele-Klein's attempts to organize employees. Fifth, did the employer or union interfere with Steele-Klein's rights by deducting union dues from her paycheck.

First, the complaint does not state a cause of action for employer interference. Steele-Klein's complaint and amended complaint contain facts about her efforts to object to the pension fund deduction and allege the employer interfered with her rights and retaliated against her for objecting to the pension fund deduction. To state a cause of action for interference, a complainant must allege sufficient facts about an employer action that an employee could reasonably perceive as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. When determining whether activity is protected, we first look at whether the activity was taken on behalf of the union. *Washington State Patrol*, Decision 11863-A; *University of Washington*, Decision 11199-A (PSRA, 2013). If the activity appears to be union activity on its face, a "reasonableness" standard is applied. *Vancouver School District v. SEIU Local 92*, 79 Wn. App. 905 (Div. II 1995); *PERC v. City of Vancouver*, 107 Wn. App. 694 (Div. II 2001); *Washington State Patrol*, Decision 11863-A.

Objecting to the employer about the pension fund deduction is not activity protected under Chapter 41.56 RCW. The right to be free from interference, restraint, coercion, or discrimination does not extend to every workplace complaint or dispute. Chapter 41.56 RCW does not extend to employees the right to engage in protected concerted activities similar to the National Labor

Relations Act. *See City of Seattle*, Decision 489 (PECB, 1978), *aff'd*, Decision 489-A (PECB, 1979).

Neither complaint identified an employer official who discouraged Steele-Klein from engaging in activity protected by Chapter 41.56 RCW. Neither complaint contained facts about how the employer discouraged her from engaging in activity protected by Chapter 41.56 RCW. The complaints did not contain sufficient facts to find a cause of action for employer interference.

Steele-Klein alleged that after she protested the pension fund deduction, she was subject to more intense criticism and not recalled for the next election period. The complaint does not contain details of who criticized her work or the type of criticism she received. The complaint lacks facts about when Steele-Klein applied for re-employment and specific facts of when the employer did not re-hire her. Thus, the complaint does not allege facts specific enough to find a cause of action.

Steele-Klein alleged she complained about the pension fund deduction, and, as a result, the employer did not rehire her in January 2014. It is clear from the complaint that each new election cycle was treated as a new period of employment for which Steele-Klein was required to apply and be hired. The complaint does not contain facts alleging that Steele-Klein re-applied.

Second, the complaint alleged the union interfered with her rights. The amended complaint alleged that the shop steward, on an undisclosed date, told Steele-Klein, "the wall have ears' [sic] even in the lunch room." The statement, on its own, does not state a cause of action for union interference. Other than the statement, the complaints did not allege any further actions by the union to discourage Steele-Klein engaging in rights protected Chapter 41.56 RCW. Based on the facts alleged, it is not possible to find a cause of action for union interference.

Third, the complaints alleged that the employer and union interfered with Steele-Klein's rights because she did not receive notice of the negotiations, was not allowed to participate in the ratification vote, and was not provided a voice in the negotiations and these actions constitute employer and union interference. As an initial matter, the complaints do not allege facts about whether Steele-Klein was a member of the union when the pension fund deduction was

negotiated, what the procedure for ratification was, or whether Steele-Klein was a union member at the time the employer and union negotiated the agreement or at the time of ratification. Whether Steele-Klein was a union member at the time of the negotiations and ratification vote are key to determining whether the complaint states a cause of action. The decision about who a union allows to vote on the ratification of a collective bargaining agreement is an internal union affair over which the Commission does not assert jurisdiction. *See Western Washington University (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006); *King County (Washington State Council of County and City Employees, Local 2084)*, Decision 7139 (PECB, 2000).

In her amended complaint, Steele-Klein cites *State - Revenue (Washington Public Employees Association*), Decision 8972-A (PSRA, 2007). The facts and circumstances of *State - Revenue (Washington Public Employees Association*), Decision 8972-A, are distinguishable. In that case, the employer and union agreed to allow all bargaining unit employees, regardless of union membership, to vote on ratification of the collective bargaining agreement. The union then failed to notify bargaining unit employees who were not union members of the ratification. On appeal, the Commission reiterated that a ratification election for a collective bargaining agreement is usually an internal union matter outside of the Commission's jurisdiction. *State - Revenue (Washington Public Employees Association*), Decision 8972-B (PSRA, 2008). Thus, it was the agreement that all bargaining unit employees could vote on ratification that subjected the ratification vote to the Commission's scrutiny.

Fourth, Steel-Klein alleged the employer interfered with her right to organize employees to protest the pension trust deduction. Chapter 41.56 RCW protects employee rights to organize employees for purposes of collective bargaining, including the right to change union representation. Based on the complaint, Steele-Klein's attempt to organize employees in protest of the pension benefit trust deduction was not organizing employees for the purposes of collective bargaining. Therefore, the complaint does not state a cause of action.

Fifth, Steele-Klein alleged the employer and union interfered with her rights by causing dues to be deducted from her paycheck. Under RCW 41.56.110, an employer may deduct union dues from an employee's pay check with the employee's authorization. Steele-Klein alleged that the

union did not use the dues to bargain in good faith, that dues should not be mandated, and that she should not have to pay dues because she was not allowed to be part of the bargaining process. RCW 41.56.122 allows union security provisions in collective bargaining agreements. It is not unlawful for an employer and union to agree on union dues deductions with an employee's consent that dues be deducted. Though the complaint seems to allege that dues were improperly deducted, Steele-Klein did not allege facts that the deductions were made without her authorization. The complaint does not state a cause of action.

Unit Clarification Proceedings

In her amended complaint, Steele-Klein filed a unit clarification case (case 26307-C-14-1584). The Unfair Labor Practice Manager dismissed Steele-Klein's unit clarification case because only "the employer, the exclusive representative, or their agents," or the parties jointly can file a unit clarification petition. *King County*, Decision 12016 (PECB, 2014). Steele-Klein did not have standing to file a unit clarification petition.

In her appeal brief, Steele-Klein asserts that she filed a timely appeal of Decision 12016 and an appeal brief. The agency has no record of an appeal of Decision 12016. The appeal documents filed with the Commission reference cases 26205-U-14-6696 and 26225-U-14-6699. The only appeal before the agency is in cases 26205-U-14-6696 and 26225-U-14-6699.

The Commission did not certify the bargaining unit because neither party filed a representation petition. At this time, we decline to comment on the propriety of the unit.

Conclusion

The Public Employment Relations Commission only has jurisdiction over certain employer-employee relationships. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District*, Decision 5086-A (EDUC, 1995). If the allegations do not rise to the level of an unfair labor practice, that does not necessarily mean the allegations involve lawful activity. It means that the issues are not matters within the purview of the Commission. *Tacoma School District*, Decision 5086-A.

Assuming all the facts were true and provable, the complaints do not state a cause of action. The complaints contain inconsistent factual allegations, lack specificity, and cannot be read to form the basis of an actionable complaint.

NOW, THEREFORE, it is

ORDERED

The Order of Dismissal issued by Unfair Labor Practice Manager David I. Gedrose is AFFIRMED.

ISSUED at Olympia, Washington, this 24th day of July, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

MARK E. BRENNAN, Commissioner