

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	
CREGAN NEWHOUSE, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128057-U-16 DECISION 12600 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
SAM PICH, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128059-U-16 DECISION 12601 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL
JESSE HILGERS, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.	CASE 128160-U-16 DECISION 12602 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

<p>YUSUF JIBRIL, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.</p>	<p>CASE 128163-U-16 DECISION 12603 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL</p>
<p>ISAIAH GRAHAM, Complainant, vs. SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Respondent.</p>	<p>CASE 128164-U-16 DECISION 12604 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL</p>

On March 22, 2016, Cregan Newhouse filed a complaint (Case 128057-U-16) alleging unfair labor practices under Chapter 391-45 WAC against the Seattle Parking Enforcement Officers' Guild (union). On March 23, 2016, Sam Pich filed a nearly identical complaint (Case 128059-U-16) against the union over the same allegations. On May 4, 2016, three additional complaints were filed against the union over the same allegations. These complaints were filed by Jesse Hilgers (Case 128160-U-16), Yusuf Jibril (Case 128163-U-16), and Isaiah Graham (Case 128164-U-16).

All five cases involve charges filed by individual employees against the union. Because the complaints concern the same general allegations against the same union, they were consolidated for further case processing. The employer, the City of Seattle, is not a party to the issues directly before the Commission in this case. However, the employer's name is used to identify the case because every case processed by the Commission must arise out of an employment relationship that is subject to the Commission's jurisdiction.

The consolidated complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 3, 2016, indicated that it was not possible to conclude a cause of action existed for union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). The complainants were given a period of 21 days in which to file and serve amended complaints or face dismissal of the defective allegations.

No further information has been filed by the complainants. The allegations of union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) are dismissed.

The allegations concerning the union's duty of fair representation or union interference with employee rights in violation of RCW 41.56.150(1) state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

ISSUES

The allegations of the complaints concern:

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

1. Since September 23, 2015, breaching its duty of fair representation by excluding Cregan Newhouse from access to the guild committee determining proper back wage distribution and excluding Newhouse from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Newhouse was a bargaining unit employee.
2. Since September 23, 2015, breaching its duty of fair representation by excluding Sam Pich from access to the guild committee determining proper back wage distribution and excluding Pich from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice

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.

- complaint that was filed seeking back wages for time that Pich was a bargaining unit employee.
3. Since November 6, 2015, breaching its duty of fair representation by excluding Jesse Hilgers from access to the guild committee determining proper back wage distribution and excluding Hilgers from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Hilgers was a bargaining unit employee.
 4. Since November 6, 2015, breaching its duty of fair representation by excluding Yusuf Jibril from access to the guild committee determining proper back wage distribution and excluding Jibril from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Jibril was a bargaining unit employee.
 5. Since November 6, 2015, breaching its duty of fair representation by excluding Isaiah Graham from access to the guild committee determining proper back wage distribution and excluding Graham from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Graham was a bargaining unit employee.

Union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) by directing the employer to deposit settlement funds for back wages only into currently employed Parking Enforcement Officers' accounts.

The allegations of the complaints concerning the union's duty of fair representation or union interference with employee rights in violation of RCW 41.56.150(1) state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The complaints do not describe necessary facts supporting the allegations of union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). These allegations are dismissed.

ANALYSIS

Applicable Legal Standard

Union Inducement of Employer to Commit an Unfair Labor Practice

RCW 41.56.150(2) makes it an unfair labor practice for a union to “induce the public employer to commit an unfair labor practice.” To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for non-payment of a union political action fee or based upon the employee’s race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

In *Municipality of Metropolitan Seattle* the union was seeking limitations on assignments that were made available to part-time drivers. At the bargaining table, the employer could legally agree to restrict part-time drivers’ shifts. The Commission explained that the mere designation of “part-time” status does not bring an employee into a classification protected from invidious discrimination.

Application of Standard

The complaints presently at issue allege that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) by directing the employer to deposit settlement funds for back wages only into currently employed Parking Enforcement Officers’ accounts. There are no facts in the complaints indicating a connection between the complainants’ protected union activities or other legally protected status and the union’s decision to exclude them from the opportunity to provide input to the guild’s committee determining proper back wage distribution or from receiving a portion of the back pay settlement monies. Since the employer ultimately could have legally agreed to do what the union was requesting, the union was not asking the employer to commit an unlawful act. The complaints do not contain facts describing union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2).

CONCLUSION

The allegations of the complaints against the union concerning the union's duty of fair representation or union interference with employee rights in violation of RCW 41.56.150(1) state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The complaints do not describe conduct that could constitute a violation of RCW 41.56.150(2). The allegations of union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) are dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the consolidated complaints state a cause of action, summarized as follows:

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

1. Since September 23, 2015, breaching its duty of fair representation by excluding Cregan Newhouse from access to the guild committee determining proper back wage distribution and excluding Newhouse from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Newhouse was a bargaining unit employee.
2. Since September 23, 2015, breaching its duty of fair representation by excluding Sam Pich from access to the guild committee determining proper back wage distribution and excluding Pich from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Pich was a bargaining unit employee.
3. Since November 6, 2015, breaching its duty of fair representation by excluding Jesse Hilgers from access to the guild committee determining proper back wage distribution and excluding Hilgers from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Hilgers was a bargaining unit employee.

4. Since November 6, 2015, breaching its duty of fair representation by excluding Yusuf Jibril from access to the guild committee determining proper back wage distribution and excluding Jibril from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Jibril was a bargaining unit employee.
5. Since November 6, 2015, breaching its duty of fair representation by excluding Isaiah Graham from access to the guild committee determining proper back wage distribution and excluding Graham from receiving a portion of the settlement monies paid to the union to resolve an unfair labor practice complaint that was filed seeking back wages for time that Graham was a bargaining unit employee.

These allegations will be the subject of further proceedings under Chapter 391-45 WAC.

The respondent shall:

File and serve its answers to the allegations listed in paragraph 1 of this order, within 21 days following the date of this order.²

An answer shall:

- a. Specifically admit, deny, or explain each fact alleged in the complaints, 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 answers shall be filed with the Commission at its Olympia office. Copies of the answers shall be served on the attorney or principal representative of the person or organization that filed each complaint. Service shall be completed no later than the day of

² The union already filed answers on June 6, 2016, to the complaints in cases 128057-U-16 and 128059-U-16 and is not required to refile those answers.

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 any fact alleged in the complaints, will be deemed to be an admission that the fact is true as alleged in the complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the consolidated complaints concerning union inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 27th day of July, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 2 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.