STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 130949-U-18 DECISION 12932 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On September 14, 2018, the Seattle Parking Enforcement Officers' Guild (union) filed a complaint alleging the City of Seattle (employer) interfered with protected employee rights and discriminated against employees for exercising protected activity in violation of Chapter 41.56 RCW. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on October 11, 2018, indicated that it was not possible to conclude that a cause of action existed at that time for the discrimination allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. Nothing further has been received from the union.

The defective discrimination allegations of the complaint are dismissed for failure to state a cause of action. The interference allegations of the complaint state a cause of action and the employer must file and serve its answer to the refusal to bargain allegations within 21 days following the date of this Decision.

[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.

BACKGROUND

The Seattle Parking Enforcement Officers' Guild (union) represents a bargaining unit of parking enforcement officers employed by the City of Seattle (employer). Nanette Toyoshima is the union's president.

On August 1, 2018, Toyoshima allegedly sent an e-mail to Education and Training Sergeant Kevin Runolfson regarding the applicability of active shooter training for members of the parking enforcement officers bargaining unit. The complaint claims that Toyoshima was seeking information about trainings that could make her bargaining unit members safer in an active shooter situation.

On August 3, 2018, Captain Eric Sano allegedly sent an e-mail to Toyoshima ordering her to cease and desist from independently contacting units or sections regarding issues that should be brought through Toyoshima's chain of command or through monthly joint labor-management meetings. Sano also allegedly stated that Toyoshima's role as union president was to represent her members on issues of wages, hours, and working conditions and not training issues directed to sworn personnel.

Toyoshima responded to Sano that same day by acknowledging receipt of Sano's e-mail and by stating that she would respond to him once she consulted with her union's legal counsel. Sano responded by cautioning Toyoshima that disobeying a direct order would constitute insubordination. According to the complaint, Toyoshima interpreted Sano's statement in two ways. First, she allegedly interpreted Sano's statement as a threat that she may be disciplined or investigated if she consulted with legal counsel prior to obeying the order. Second, she allegedly interpreted the directive as requiring her to not to engage in any discussions concerning mandatory subjects of bargaining other than through her chain of command or in joint-labor management meetings. Since August 3, 2018, Toyoshima has allegedly been too fearful to engage in protected activity due to the threat of discipline.

On August 13, 2018, the union sent a letter to the employer claiming Sano's order to Toyoshima was unlawful. The union asked the employer to rescind the order no later than August 15, 2018. According to the complaint, the employer did not rescind the order. On August 28, 2018, Toyoshima and the union's legal counsel met with the employer to discuss the order. The union once again asked that the order be rescinded.

Finally, the union alleges that Toyoshima was denied access and attendance to meetings in retaliation for her advocacy on behalf of her bargaining unit. The complaint does not state when these meetings occurred or which employer specifically precluded Toyoshima's attendance at these meetings.

ANALYSIS

The union's claim that the employer discriminated against Toyoshima in violation of Chapter 41.56 RCW lacks facts demonstrating that she was actually deprived of a right, benefit, or status based upon her union activity.

Applicable Legal Standard

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.56 RCW. *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a prima facie case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute or communicated to the employer an intent to do so;

2. The employer deprived the employee of some ascertainable right, benefit, or status; and

3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Id.*

Application of Standard

The union's complaint lacks specific facts demonstrating that Toyoshima was actually deprived of a right, benefit, or status. While the complaint suggests that Toyoshima feared being disciplined if she acted outside of Sano's directive, the complaint lacks does not allege that the employer took adverse action against Toyoshima for violating Sano's directive and that a causal connection exists between the denial of those opportunities and the exercise of protected activity.

The complaint also claims that Toyoshima was denied access and attendance to meetings in retaliation for her advocacy on behalf of her bargaining unit. However, the complaint lacks specific facts as to when those meetings actually occurred, the identity of the individuals who precluded her from attending those meeting, and facts demonstrating how this claim is causally connected to Toyoshima's union activity. Because the union failed to cure the defects with its discrimination claim, that allegation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the complaints' interference allegations in Case 130949-U-18 state causes of action, summarized as follows:

> Employer interference in violation of RCW 41.56.140(1) by, within six months of the date of the complaint, threatening to discipline Nanette Toyoshima with discipline for engaging in protected activity on behalf of bargaining unit employees.

2. The City of Seattle shall:

> File and serve its answer to the allegations listed in paragraph 1 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 complaint, 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 complaint. 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 complaint, 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.

3. The allegations of the complaints concerning employer discrimination in violation of RCW 41.46.140(1) by denying Nanette Toyoshima an unspecified right, status, or benefit,

in reprisal for engaging in protected activity on behalf of bargaining unit employees are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of November, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

Paragraph 3 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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 11/06/2018

DECISION 12932 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 130949-U-18

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