

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
KATHERINE ORTH, Complainant, vs. KING COUNTY CORRECTIONS GUILD, Respondent.	CASE 131001-U-18 DECISION 12944 - PECB CORRECTED PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On October 4, 2018, Katherine Orth (Orth or complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the King County Corrections Guild (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 1, 2018, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The complainant 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 complainant.

The complaint alleges the following unfair labor practices against the union:

Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by breaching its duty of fair representation when the union ceased to provide and/or pay for Orth's legal representation in a lawsuit.

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.

Union discrimination in violation of RCW 41.56.150(2), by inducing the employer to commit an unfair labor practice by requesting that Orth be disciplined in retaliation for Orth filing a bar complaint against the union's former legal counsel.

Orth's interference allegation against the union remains the only allegation in the complaint that states a cause of action. The defective allegation of the complaint is dismissed for failure to state a cause of action. The union must file and serve its answer to the interference allegation within 21 days following the date of this Order.

BACKGROUND

The union represents a bargaining unit of nonsupervisory corrections officers at King County (employer). The leadership structure of the union includes a president, vice-president, secretary, treasurer, and eight shift representative positions. The president, vice-president, secretary, treasurer, and eight shift representative positions constitute the union's executive board.

The union's articles of incorporation vest the executive board with the management of the affairs of the corporation. The union's bylaws also vest the president, with the approval of the executive board, the "authority to engage such technical and professional services, including legal counsel. . . ." Jared Karstetter served as the union's legal advisor since at least 1998.

Orth was an active member of the union. Orth is married to bargaining unit member Leonard Orth, who served as the union's webmaster.

On January 21, 2016, Orth learned of alleged thefts from the guild. Orth and other union members discussed the thefts on the union's Facebook page. On February 27, 2018, Karstetter allegedly e-mailed Orth's husband asking him to delete Orth's comments and to direct Orth to cease discussing union business.

On May 24, 2016, Karstetter filed a lawsuit (Karstetter lawsuit) against Orth's husband that also named Orth as a defendant. The claims against Orth arise from her relationship with her husband, her participation in the union Facebook discussions, and as a member of the union.

On June 1, 2016, the union adopted a resolution to provide legal representation to Orth in the Karstetter lawsuit. On November 8, 2017, the union reaffirmed its commitment to provide Orth with representation in the Karstetter lawsuit.

On March 14, 2018, and April 11, 2018, the union held officer elections and a new executive board was seated. On April 25, 2018, the new executive board adopted a resolution ceasing payment of legal fees to Orth in the Karstetter lawsuit.

The complaint alleges that on an unspecified day in April 2018, the union and its agents reported false, unsubstantiated, or exaggerated claims about Orth to the employer's internal investigations unit and requested that Orth be disciplined.

ANALYSIS

Applicable Legal Standards

Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. “[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.” RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), citing *City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has “actual or constructive notice of” the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

Discrimination

Generally, there are two types of union discrimination violations that this agency will process. The first is where a union induces the public employer to take a negative action against a bargaining unit employee. RCW 41.56.150(2). 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 nonpayment 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).

The second is where a union discriminates against an employee for filing an unfair labor practice complaint with this agency or providing testimony at an agency-conducted hearing. RCW 41.56.150(3). A violation concerning discrimination for filing unfair labor practice charges cannot stand absent allegations that the complainant has previously filed an unfair labor practice complaint with the Commission. *Pierce Transit*, Decision 9074 (PECB, 2005).

Application of Standards

Orth's complaint lacks timely supporting facts for a union inducement of the employer to commit unfair labor practices. Orth filed her complaint on October 4, 2018. In order to be timely, the complainant would have needed to describe events that took place on or after April 4, 2018.

The complaint states the union and its agents attempted to induce the employer into committing an unfair labor practice during April 2018. Because the complaint does not indicate which specific day in April the alleged acts occurred, it is not possible to determine whether the allegations were filed within the six-month statute of limitations. Absent specific facts, including the dates of events, the names of the persons involved in the communication or interaction, and a clear description of what happened, this agency will not process an unfair labor practice complaint.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegation of the complaint in Case 131001-U-18 states a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), within six months of the date the complaint was filed, by breaching its duty

of fair representation when the union ceased to provide and/or pay for Orth's legal representation in a lawsuit.

The interference allegation will be the subject of further proceedings under Chapter 391-45 WAC.

2. The King County Corrections Guild shall:

File and serve its answer to the allegation 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, as set forth in paragraph 1 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 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 allegation of the complaint in Case 131001-U-18 concerning union discrimination in violation of RCW 41.56.150(2), by inducing the employer to commit an unfair labor practice by requesting that Orth be disciplined in retaliation for Orth filing a bar complaint

against the union's former legal counsel is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29th 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.



RECORD OF SERVICE

ISSUED ON 11/29/2018

DECISION 12944 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

A handwritten signature in blue ink, appearing to read "Amy Riggs", is positioned above the typed name.

BY: AMY RIGGS

CASE 131001-U-18

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