

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	Employer.	
GARREN CLARK,	Complainant,	CASE 130934-U-18
vs.		DECISION 12943 - PECB
KING COUNTY CORRECTIONS GUILD,	Respondent.	SECOND CORRECTED PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On September 10, 2018, Garren Clark (Clark 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 October 2, 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 Clark'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 Clark be disciplined in retaliation for Clark filing a bar complaint against the union's former legal counsel.

Clark'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.

Clark was an active member of the union. On January 26, 2016, Clark learned of alleged thefts from the guild. Clark and other union members discussed the thefts on the union's Facebook page.

On February 23, 2016, Clark allegedly learned that Karstetter was calling for a meeting to discuss renewing his contract for legal services with the union. Clark e-mailed the union's membership objecting to the meeting. The complainant claims that he also specifically objected to the renewal of Karstetter's legal services contract prior to the union's investigation of the thefts.

Clark alleges that during a membership meeting, he learned that Karstetter wrote an e-mail in which Karstetter allegedly attempted to plan a secret meeting and threatened to sue union members

and to report members to the employer's internal investigations unit. Clark confronted Karstetter about the allegations in the e-mail, and he demanded that Karstetter resign immediately as the union's legal counsel. On April 22, 2016,² Clark filed a complaint against Karstetter with the Washington State Bar Association (bar).

On April 27, 2016, the union president, Randy Weaver, received a legal memorandum recommending that Karstetter's services be terminated. That same day the executive board voted to terminate Karstetter's legal services. Karstetter was notified of the decision on April 28, 2016. The executive board notified the membership of its decision on April 28, 2016, by providing the membership with a copy of the legal memorandum.

On May 24, 2016, Karstetter filed a lawsuit (Karstetter lawsuit) against Clark, alleging that Clark posted slanderous and defamatory messages about Karstetter on the union's Facebook page. On June 1, 2016, the union adopted a resolution to provide legal representation to Clark in the Karstetter lawsuit. On November 8, 2017, the union reaffirmed its commitment to provide Clark 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 Clark in the Karstetter lawsuit.

The complaint alleged that the union and its agents reported false, unsubstantiated, or exaggerated claims about Clark to the employer's internal investigations unit. Clark also alleged that the union and its agents also requested that the employer discipline Clark in retaliation for filing a bar complaint against Karstetter. The complaint did not describe the date of these occurrences or who was involved in filing the claims against Clark.

² The complaint states that Clark filed a bar complaint on April 22, 2018. The complaint describes a chronological sequence of events, and the 2018 date appears to be a typographical error. The complainant should amend the complaint in this case to correct the error.

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

Clark's complaint lacks supporting facts for a union inducement of the employer to commit an unfair labor practice allegation. Although the complaint makes general assertions that the union attempted to induce the employer into disciplining Clark, there are no specific facts in the complaint describing instances where the union attempted to induce the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). WAC 391-45-050(2) requires the complainant to identify alleged participants. The identity of the employer official is information that the respondent needs in order to respond to the complaint. 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 130934-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 Clark'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 130934-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 Clark be disciplined in retaliation for Clark 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 12943 - 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 130934-U-18

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