

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY CORRECTIONS GUILD,

Complainant,

vs.

PIERCE COUNTY,

Respondent.

CASE 132633-U-20

DECISION 13171 - PECB

ORDER DENYING MOTION

Troy Thornton, Attorney at Law, Cline & Associates, for Pierce County Corrections Guild.

Andrew L. Logerwell, Pierce County Prosecutor/Civil, Prosecuting Attorney Mary E. Robnett, for Pierce County.

On February 28, 2020, the Pierce County Corrections Guild (union) filed an unfair labor practice complaint alleging that the employer was investigating three union officers and failed to provide requested information. On March 10, 2020, the union filed a Notice of Intent to File Motion for Temporary Relief. On that same date, before the Unfair Labor Practice Administrator issued a preliminary ruling, the union filed a motion for temporary relief. The employer filed a response on March 11, 2020.

The Unfair Labor Practice Administrator issued a preliminary ruling finding a colorable cause of action for employer failure to provide information and interference with employee rights. He issued a deficiency notice for the allegations that the employer discriminated against the union officers by subjecting them to an investigation and dominated the union. The union has until April 3, 2020, to file an amended complaint. As of March 15, 2020, the union has not filed an amended complaint.

ISSUES

The issue is whether the Commission should grant the union's motion and seek temporary relief in the superior court. We deny the union's motion as not timely filed under WAC 391-45-430. Further, the union did not supply the Commission with the supporting documentation required by the rule to permit the Commission to determine whether to seek temporary relief.

BACKGROUND

In its motion for temporary relief, the union alleges that the employer ordered three union officers to participate in an investigatory interview on March 17, 2020. The union contends that absent temporary relief, the union will suffer "damage" and the interview will have occurred. The union argues that the interview will chill the union officers' and other bargaining unit members protected activity.

The union asks the Commission to seek an injunction in superior court to stop the interviews and the investigation.

ANALYSIS

Applicable Legal Standard(s)

WAC 391-45-430 governs motions for temporary relief. A complainant must file notice of its intent to file a motion for temporary relief when the complaint is filed "or as soon thereafter as facts giving rise to the request for temporary relief become known . . ." WAC 391-45-430(1). Once notice of intent to file a motion for temporary relief is received, the agency expedites case processing under WAC 391-45-110. WAC 391-45-430(2).

After the agency issues a determination that "the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-

120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.” WAC 391-45-430(3).

The Commission does not grant temporary relief unless it appears that one or more of the allegations in the unfair labor practice complaint “is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo” is preserved pending the completion of the administrative proceedings. WAC 391-45-430(5). If the Commission determines that temporary relief should be sought, the Executive Director, with the assistance of the Attorney General, petitions the superior court for an injunction pendent lite. WAC 391-45-430(5)(a). An injunction is an extraordinary remedy and one that should be used sparingly, “and only in a clear and concise case.” *Kucera v. State Dept. of Transp.*, 140 Wn.2d 200, 209 (2000) (citing 42 Am.Jur.2d Injunctions § 2, at 728 (1969)). “Accordingly, injunctive relief will not be granted where there is a plain, complete, speedy and adequate remedy at law.” *Id.* (citing *State v. Ralph Williams’ N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 312 (1976)).

Application of Standard(s)

The motion for temporary relief is premature

The union filed its complaint on February 28, 2020. The union filed its notice of intent to file a motion for temporary relief and a motion for temporary relief on March 10, 2020. At the time the union filed its motion for temporary relief, the agency had not yet issued a preliminary ruling finding a cause of action existed. The motion for temporary relief is untimely and did not comply with procedural requirements of WAC 391-45-430.

A cause of action has not been found for discrimination in relation to the investigations. While a cause of action has issued for the failure to provide information and interference, the union did not wait for the agency to complete its process and did not comply with the rule.

The motion for temporary relief provided inadequate information

WAC 391-45-430(3) requires the complainant to file affidavits addressing the risk of irreparable harm and establishing that the Commission's traditional legal remedies would be inadequate. The union's motion contains unsworn allegations and argument from the union's attorney, which is not evidence. The union has failed to establish that the employees would suffer irreparable harm absent temporary relief.

The union failed to explain how the Commission's usual remedies are inadequate. Even assuming the union's motion were not deficient, the only cause of action that has issued is for failure to provide information and interference. The union has presented no evidence to indicate that special facts exist that render the Commission's standard remedies inadequate.

CONCLUSION

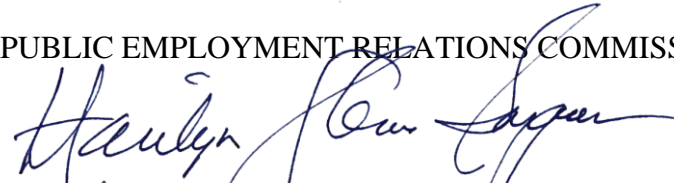
The union's motion for temporary relief does not comply with WAC 391-45-430. The motion is premature. The union has failed to establish that it lacks an adequate remedy for the alleged unfair labor practice complaint and would suffer irreparable harm before the administrative proceeding could be completed.

ORDER


The motion for temporary relief is DENIED.

ISSUED at Olympia, Washington, this 16th day of March, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner



KENNETH J. PEDERSEN, Commissioner