

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PETER LANDRY,

Complainant,

vs.

KING CONSERVATION DISTRICT,

Respondent.

CASE 133402-U-21

DECISION 13360 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

John G. Barton, Attorney at Law, The Barton Law Firm, for Peter Landry.

Sofia D. Mabee, Attorney at Law, Summit Law Group PLLC for the King Conservation District.

On March 23, 2021, Peter Landry (complainant) filed an unfair labor practice complaint against the King Conservation District (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on April 22, 2021, notified Landry that a cause of action could not be found at that time. Landry was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

On May 13, 2021, Landry filed an amended complaint. The amended complaint alleges the following:

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by denial of Peter Landry's right to union representation (*Weingarten* right) in connection with an investigatory interview.

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by retaliating against Peter Landry in reprisal for union activities protected by chapter 41.56 RCW.

Employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by trying to intimidate and terminate Peter Landry through its discriminatory acts.

Landry's interference and discrimination allegations of the amended complaint state causes of action under WAC 391-45-110(2) for further case proceedings before the Commission. The domination allegation of the amended complaint does not state a cause of action and is dismissed.

BACKGROUND

Landry works as the Director of Engineering for the King Conservation District (employer). At the time of his complaint, Landry's position was represented by the Washington Federation of State Employees.²

According to the amended complaint, Landry spearheaded the organizing campaign for the director level staff at the district and claims that he has been the only director to comment on the draft collective bargaining agreement.

² On May 21, 2021, the Washington Federation of State Employees filed a letter with this agency disclaiming interest in the director's and engineers bargaining unit. This agency accepted that letter and revoked the bargaining unit certification on June 3, 2021. *King Conservation District*, Decision 13359 (PECB, 2021).

Landry asserts that on December 17, 2020, former Executive Director Rebecca Lavigne compelled Landry to attend a phone meeting. Landry claims that the employer failed to disclose to him the intent of the meeting was to investigate facts to support discipline. Landry also claims that the employer ignored his requests for union representation during the meeting. Finally, Landry asserts that the disciplinary letter that was issued to him was in retaliation for his exercise of protected activity.

Landry asserts no facts demonstrating an intent on the employer's part to control or interfere with the formation or administration of a union or an attempt to dominate the internal affairs of a union. The complaint also alleges no facts demonstrating that the employer intended to contribute financial or other support to the union or showed a preference between unions competing to represent employees.

ANALYSIS

The complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). Other than referencing this statute and claiming that the employer discriminatory acts against Landry constitute domination, the complaint does not explain or develop this allegation. None of the facts alleged in the complaint suggest that the employer involved itself in the internal affairs or finances of the union or that the employer attempted to create, fund, or control a "company union." A cause of action for employer domination is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test's second clause, that is, whether an employer has attempted to create, fund, or control a company union. *See State – Washington State Patrol, Decision 2900 (PECB, 1988).*

Although the Commission has issued few decisions on employer domination, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The meaning of the term "domination" is thus directly

tied to the term “assistance” and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer’s actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference. It’s appropriate to file a complaint alleging employer domination or assistance of a union if the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign. Because these types of facts are not present in the amended complaint, the domination allegation must be dismissed.

ORDER

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

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by denial of Peter Landry’s right to union representation (*Weingarten* right) in connection with an investigatory interview.

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by retaliating against Peter Landry in reprisal for union activities protected by chapter 41.56 RCW.

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

2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall

- (a) specifically admit, deny, or explain each fact alleged in the amended complaint, except if the 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 and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the amended complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

- 3. The allegation of the amended complaint concerning employer domination in violation of RCW 41.56.140(2) is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of June, 2021.

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 06/08/2021

DECISION 13360 - 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 black ink, appearing to read "Debbie Bates", is written over a horizontal line.

BY: DEBBIE BATES

CASE 133402-U-21

EMPLOYER: KING CONSERVATION DISTRICT

REP BY: CYNTHIA SETEL
KING CONSERVATION DISTRICT
800 SW 39TH ST STE 150
RENTON, WA 98057
cynthia.setel@kingcd.org

SOFIA D. MABEE
SUMMIT LAW GROUP PLLC
315 5TH AVE S STE 1000
SEATTLE, WA 98104
sofiam@summitlaw.com

PARTY 2: PETER LANDRY

REP BY: PETER LANDRY
5825 S 2ND AVE
EVERETT, WA 98208
pete.landry@yahoo.com

JOHN G. BARTON
THE BARTON LAW FIRM
1567 HIGHLANDS DR NE STE 110-34
ISSAQUAH, WA 98029-6245
thebartonlawfirm@gmail.com