STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BENTON COUNTY COMMAND STAFF GUILD, Complainant, vs. BENTON COUNTY, Respondent.	CASE 133436-U-21 DECISION 13365 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

Alan E. Harvey, Attorney at Law, Northwest Legal Advocates, LLC, for the Benton County Command Staff Guild.

Benton County Commissioners, for Benton County.

On April 6, 2021, Benton County Command Staff Guild (union) filed an unfair labor practice complaint against Benton County (employer). The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice issued on April 27, 2021, notified the union that a cause of action could not be found at that time. The union 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 19, 2021, the union filed an amended complaint. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the amended complaint.

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[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.

ISSUES

The amended complaint alleges the following:

> Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to the union president and vice president during negotiations for a collective bargaining agreement.
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> Employer refusal to bargain in violation of RCE 41.56 140 (4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by breaching its good faith bargaining obligations during the parties' negotiations for a collective bargaining agreement.
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> 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, for unidentified employer actions.
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> 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 unidentified deprivation of the union president and vice president in reprisal for union activities protected by chapter 41.56 RCW.

The interference and refusal to bargain allegations of the amended complaint state a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The domination and discrimination allegations of the amended complaint do not state a cause of action and are dismissed.

BACKGROUND

The Benton County Command Staff Guild (union) represents the command staff at the Benton County Sheriff's Office (employer). Between February 2020 and September 2020, the union president and vice president had various interactions with the Sheriff.

On October 13, 2020, the parties scheduled dates for bargaining including: December 9, 14, and 16, 2020. On December 8, 2020, the employer sent an email containing a draft of the proposed ground rules for the upcoming bargaining sessions. The parties began the December 9 bargaining session discussing the ground rules. The employer allegedly needed to take a caucus to update the Sheriff on the ground rules prior to tentatively agreeing to the ground rules.

During the December 9 meeting, the union allegedly suggested the parties adopt language from the Benton County Deputy Sheriff's Guild collective bargaining agreement to be efficient. The union also identified the articles of the collective bargaining agreement it was proposing to adopt including any minor changes. Also during the December 9 bargaining session the Sheriff allegedly began talking about why he allowed the union to form. He had only allowed it to form to "allow them to ask for more money" and the other aspects of bargaining "were not part of what he agreed to in the process." At the end of the December 9 meeting the union indicated it would provide proposed contract language by close of business on December 11.

On December 11 the union emailed the employer a copy of the proposed language. The employer stated it needed more time to review the proposal and canceled the December 14 meeting. On December 15 the employer canceled the December 16 bargaining session so it could work on an all-inclusive initial proposal.

On an unidentified date the Sheriff sent a referral to Benton County Prosecuting Attorney to have both the union president and vice president placed upon the *Brady* list for their actions related to the events between February 2020 and September 2020. The complaint alleges the Sheriff's actions were discovered by an unidentified individual in late December 2020 via a public records request. The request was found to be without merit and the union president and vice president were not placed on the *Brady* list.

The parties scheduled additional bargaining sessions on February 10, 18, 24, and 25, 2021. The employer canceled the bargaining session on February 10, so the employer could allegedly continue working on an all-inclusive initial proposal. The employer provided the union a written proposal that allegedly was not an all-inclusive proposal. The employer's proposal was almost identical to the proposal the union had provided on December 11.

On February 18 the union and employer met to bargain. The employer also provided a financial offer of an opening. The Sheriff was not in attendance, and the employer would not be able to tentatively agree to anything without the Sheriff.

The union canceled the February 24 bargaining session due to a medical issue. The parties met the following day on February 25 to bargain. The Sheriff was in attendance that day. The employer was not prepared to tentatively agree to anything and the parties had to allegedly review what had occurred up to that point. The union provided a wage compensation package proposal during the meeting. The employer provided a counter proposal, which included the fact that it did not want the union to keep the VEBA part of their current compensation package. During discussions regarding the employer's proposal the employer allegedly acknowledged that the union had been offered a reduction in pay.

ANALYSIS

The amended complaint included numbered paragraphs which corrected the deficiencies related to the interference and good faith bargaining allegations. Thus those allegations state a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The deficiency notice issued on April 27, 2021, identified the deficiencies and explained what the union needed to do to correct the deficiencies. Other than adding paragraph 33 and a remedies section, no additional facts were included in the amended complaint. Because additional facts, related to the domination and discrimination allegations, were not included, those allegations must be dismissed.

Timeliness

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).

To determine timeliness, the Commission looks at the dates of events in the complaint or amended complaint in relation to the filing date. The complaint was filed on April 6, 2021. In order to be timely, the complainant or amended complaint needed to describe events that took place on or after October 6, 2020. The complaint and amended complaint identified events that occurred between February 2020 and September 2020. Those facts are untimely filed and will be considered as background information only.

Domination

The amended complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). Other than referencing this statute, the amended complaint did not explain or develop this allegation. None of the facts alleged in the original complaint suggested 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." The union did not include any new or additional facts related to the domination allegation in the amended complaint. 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 or comments 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.

In this case, the facts alleged do not describe employer domination of the union. The union is the exclusive bargaining representative of the employees. *Benton County*, Decision 13037 (PECB, 2019). The parties were involved in negotiations for a collective bargaining agreement. The Sheriff allegedly made statements alleging he only agreed to allow the employees to organize so they could bargain for more money. These facts do not allege the employer actually controlled or attempted to control the union. The amended complaint does not describe facts alleging the employer intended to control or interfere with the formation or administration of a union, intended to dominate the internal affairs of a union, intended to contribute financially, bargaining with a union that was not established, or showed preference between unions competing to represent particular employees. Thus the domination allegation must be dismissed.

Discrimination

The amended complaint alleges employer discrimination in violation of RCW 41.56.140(1). The amended complaint did not include facts necessary to allege this type of violation. The facts in the original complaint alleged the union president and vice president participated in activity protected under RCW 41.56. The complaint lacked facts alleging the union president and vice president were deprived of an ascertainable right, status, or benefit. The union included additional information in paragraph 33 of its amended complaint related to its discrimination allegation. That paragraph

states, "In paragraphs 34- A account of incidents withing(sic) of the six months required to file a ULP includes a continuation of conduct related to those issues set out in the background and history of actions by management toward the BCCSG membership set out form(sic) paragraphs 10-32." There are no other additional or new facts provided in the amended complaint related to the discrimination allegation.

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 (AFGE Local 1170)*, 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. *Port of Tacoma*, Decision 4626-A.

The amended complaint lacks facts alleging a discrimination violation. The amended complaint alleges the union president and vice president were representing the union, alleged protected activity, in several actions between February 2020 and February 2021. The complaint alleges that the Sheriff requested that the president and vice president be placed on the *Brady* list, but the request was denied and found to be without merit. The union president and vice president were not placed on the *Brady* list. There are no additional facts alleging the union president and vice president were deprived of an ascertainable right, benefit, or status. The union did not include any additional facts related to the discrimination allegation in the amended complaint. Because the amended complaint lacks facts related to the elements necessary to allege a discrimination allegation, the discrimination allegation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain 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 threats of reprisal or force or promises of benefit made to the union president and vice president during negotiations for a collective bargaining agreement.
>
> Employer refusal to bargain in violation of RCW 41.56 140 (4) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by breaching its good faith bargaining obligations during the parties' negotiations for a collective bargaining agreement.

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 allegations of the amended complaint concerning domination and discrimination are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 15th day of June, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, 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 06/15/2021

DECISION 13365 - 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 133436-U-21

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