

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 2109,

Complainant,

vs.

CITY OF OCEAN SHORES,

Respondent.

CASE 134929-U

DECISION 13517 - PECB

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

*Corey Kuhl*, President, for International Association of Firefighters Local 2109.

*Michael C. Bolasina*, Attorney at Law, Summit Law Group PLLC, for the City of Ocean Shores.

On March 21, 2022, the International Association of Firefighters Local 2109 (union) filed an unfair labor practice complaint against the City of Ocean Shores (employer). The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on April 12, 2022, 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.

No further information has been filed by the union. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a preliminary ruling for other allegations of the complaint.

---

<sup>1</sup> 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 complaint alleges the following:

Employer interference with employee rights 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 bargaining unit members after the union filed an unfair labor practice complaint.

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 unidentified actions of the employer.

Employer discrimination in violation of RCW 41.56.140(3) [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 a right, benefit, or status for filing an unfair labor practice charge.

Violations of the parties' ground rules, RCW 42.41.030(1), and the City of Ocean Shores Personnel Manual.

The interference allegation of the complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The violations of the parties' ground rules, RCW 42.41.030(1), the City of Ocean Shores Personnel Manual, domination, and discrimination allegations of the complaint do not state a cause of action and are dismissed.

## BACKGROUND

The union represents firefighters for the employer. On February 7, 2022, the union filed an unfair labor practice complaint (ULP) against the employer. On February 14, 2022, Mayor Jon Martin allegedly sent a memo/press release to the Ocean Shores City Council, on the website, and to all city employees. The memo announced that the union had filed the ULP, a unit clarification petition, and a whistleblower protection retaliation claim.

In the memo Martin allegedly stated that the ULP deeply disheartened him and stated he wanted to discuss the matters. He also allegedly stated that in prior negotiations when the union had the opportunity to bargain for additional firefighters, it passed up the opportunity and instead bargained for higher salaries for the captains. Martin allegedly discussed specific arguments the union made during the previous collective bargaining negotiations.

Martin also allegedly made statements about the parties' discussions regarding the assistant fire chief position. Martin allegedly stated that the discussions were successful except that the union insisted that the assistant fire chief could not and should not respond to certain types of emergency calls regardless of the circumstances.

Finally, Martin allegedly disclosed information about a personnel complaint filed by the president of the union in his capacity as an employee through a whistleblower policy complaint.

## ANALYSIS

### Allegations outside PERC's Jurisdiction

The complaint includes some allegations that are not within the jurisdiction of the Commission. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment. *Tacoma School District (Tacoma Education Association)*, Decision 5086-A (EDUC, 1995). Just because the complaints do not state a cause of action for an unfair labor practice it does not necessarily mean the allegations involve lawful

activity. It means that the issues are not matters within the purview of the Commission. *Id.* The alleged violations of the ground rules, RCW 42.41.030(1), and the City of Ocean Shores Personnel Manual are not within the jurisdiction of the Commission. PERC does not have authority over whistleblower protection laws. The Washington State Human Rights Commission has jurisdiction over whistleblower workplace reprisal or retaliatory action. Additionally, PERC does not have authority over violations under chapter 42.41 RCW. Chapter 42.41 RCW describes the process for reporting alleged improper government action.

The Commission does not have jurisdiction over allegations concerning violation of ground rules. The Commission has long held that agreements made by parties on ground rules to guide their negotiations to become contracts (like any other agreement they reach in collective bargaining) and any remedies for alleged violations of agreed-upon ground rules must be sought through any applicable contractual procedures (e.g., grievance arbitration) or through the courts. The Public Employment Relations Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976); *City of Sumner*, Decision 6210 (PECB, 1998). Because the allegations are outside PERC's jurisdiction, the allegations must be dismissed.

### Domination

#### *Applicable Legal Standard*

The complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). Other than referencing this statute, 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 *Washington State Patrol*, Decision 2900 (PECB, 1988).

Commission decisions on employer domination 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 is 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.

#### *Application of Standard*

In this case, the facts alleged do not describe employer domination of the union. The complaint alleges the mayor made statements in a memo/press release. There are no facts alleging the employer intended to control or interfere with the administration of the union. The complaint does not describe employer domination of the union. Because the complaint lacks facts necessary to allege a domination violation, the domination allegation must be dismissed.

#### Discrimination for Filing Unfair Labor Practice Complaint

##### *Applicable Legal Standard*

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity or for filing charges with the Commission. RCW 41.56.140(1) and (3). 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. 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(s) participated in an activity protected by the collective bargaining statute, or communicated to the employer the intent to do so;

2. The employer deprived the employee(s) 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 that 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*, Decision 1911-C (PECB, 1984). A violation concerning discrimination for filing unfair labor practice charges cannot stand absent allegations that the discriminatee has previously filed an unfair labor practice complaint with the Commission. *Pierce Transit*, Decision 9074 (PECB, 2005).

#### *Application of Standard*

The complaint lacks facts alleging the employer discriminated against bargaining unit employees after the union filed a ULP complaint. The complaint alleges the union filed the ULP on February 7. The complaint lacks facts alleging the employer deprived the employees of some ascertainable right, benefit, or status and lacks facts alleging a causal connection exists between the filing of the ULP and the employer's deprivation. Because the complaint lacks facts necessary to allege a discrimination violation, the discrimination allegation must be dismissed.

#### ORDER

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

Employer interference with employee rights 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 bargaining unit members after the union filed an unfair labor practice complaint.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

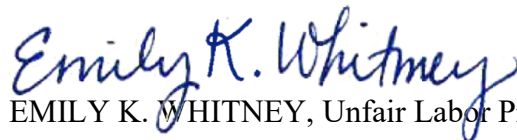
2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
  - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the respondent states it is without knowledge 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 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 complaint concerning violations of the parties' ground rules, RCW 42.41.030(1), the City of Ocean Shores Personnel Manual, domination, and discrimination allegations are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 3rd day of June, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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.



# RECORD OF SERVICE

---

ISSUED ON 06/03/2022

DECISION 13517 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 134929-U-22

EMPLOYER: CITY OF OCEAN SHORES

REP BY: JON MARTIN  
CITY OF OCEAN SHORES  
585 POINT BROWN AVE NW  
OCEAN SHORES, WA 98569  
jmartin@osgov.com

MICHAEL C. BOLASINA  
SUMMIT LAW GROUP PLLC  
315 5TH AVE S STE 1000  
SEATTLE, WA 98104-2682  
mikeb@summitlaw.com

PARTY 2: IAFF LOCAL 2109

REP BY: COREY KUHL  
IAFF LOCAL 2109  
PO BOX 2109  
OCEAN SHORES, WA 98569  
iaff2109@outlook.com