

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

OKANOGAN COUNTY SHERIFF'S)	
EMPLOYEES ASSOCIATION,)	
)	
Complainant,)	CASE 14694-U-99-3689
)	
vs.)	DECISION 6872 - PECB
)	
OKANOGAN COUNTY,)	PARTIAL DISMISSAL
)	AND ORDER FOR
Respondent.)	FURTHER PROCEEDINGS
)	
)	

On July 7, 1999, the Okanogan County Sheriff's Employees Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Okanogan County had violated RCW 41.56.140(1) and (4). The complaint was considered under WAC 391-45-110,¹ and a deficiency notice issued on August 23, 1999, pointed out problems with part of the allegations. The union was given a 14-day period in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the defective allegations. Nothing further has been heard or received from the union.

An order of partial dismissal is issued, and further proceedings are limited to the allegations which state a cause of action.

¹ At that 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, all components of the complaint state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

DISCUSSION

This controversy concerns the employer's implementation of certain personnel actions affecting employee Larry Schreckengast, who is the president, organizer, and chief negotiator for the union. Schreckengast views the disputed personnel action as being adverse to his interests, and in reprisal for his activities on behalf of the union. The deficiency notice indicated that the complaint states a cause of action with respect to certain allegations of employer interference with employee rights and discrimination, in violation of RCW 41.56.140(1), and with respect to certain allegations of refusal to bargain, in violation of RCW 41.56.140 (4), by: Removing Schreckengast from the position of detective; declining to promote Schreckengast to the position of sergeant; unilaterally changing the manner of assigning employees to the position of detective; and unilaterally changing the manner in which the employer assigns employees to the position of sergeant and acting sergeant. Those allegations are being referred to an Examiner for further proceedings under Chapter 391-45 WAC.

Insufficient Facts

The deficiency notice pointed out that the union's complaint set forth insufficient facts with respect to an allegation that the employer discriminated against Schreckengast by sending him out of town for training just before the promotional decision was announced. The timing of the employer's directive was not sufficiently detailed to suggest any causal connection. Further, a conclusionary allegation the employer was attempting to deprive Schreckengast of prompt notice of the adverse decision fell short of alleging that the employee was deprived of some ascertainable right, status, or benefit.

The employer was alleged to have made a unilateral change and/or discriminated against bargaining unit employees by denying the sergeant's position to the vice president of the union, who scored second on the promotional examination. The complaint was internally inconsistent, however. In alleging that the past practice was to appoint the employee with the highest score, the union contradicted the existence of a past practice of next moving the employee with the second-highest score.

The employer was alleged to have denied Schreckengast's request to review and obtain a copy of his personnel file, but it was unclear from the context whether Shreckengast was acting as a union representative investigating a grievance, or as an individual acting on his own behalf. The duty to bargain exists only between an employer and the exclusive bargaining representative, and only those parties can assert rights under RCW 41.56.140(4). Hence, the duty to provide information which arises under the collective bargaining statute only applies to requests made by the employer and union of one another. Individual employees have no legal standing to file or pursue "refusal to bargain charges. Grant County, Decision 2703 (PECB, 1987).

The deficiency notice further pointed out that the statement of facts accompanying the complaint form failed to provide names, dates, and other relevant information necessary to intelligently evaluate the merits of the foregoing deficient components of the complaint. The Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic.

The union has not responded to the deficiency notice. Accordingly, it is not possible to conclude from the materials on file that a

cause of action exists with respect to the three foregoing elements of the complaint.

NOW, THEREFORE, it is

ORDERED

1. The complaint states a cause of action, and shall be the subject of further proceedings under Chapter 391-45 WAC, only with respect to allegations of:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by:

- Removing Shreckengast from the position of detective, and
- declining to promote Shreckengast to the position of sergeant; and

Employer refusal to bargain in violation of RCW 41.56.140 (4), by:

- Unilaterally changing the manner of assigning employees to the position of detective, and
- unilaterally changing the manner in which the employer assigns employees to the position of sergeant and acting sergeant.

- a. PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice shall:

File and serve its answer to the complaint within 21 days following the date of this letter.

The original answer and one copy 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. An answer shall:

- 1) Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- 2) Assert any affirmative defenses that are claimed to exist in the matter.

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.

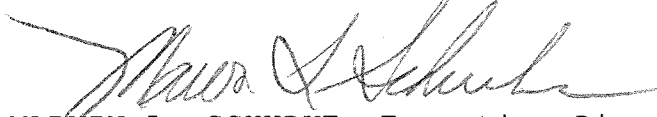
- b. Examiner Frederick J. Rosenberry of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. The Examiner will be issuing a notice of hearing in the near future. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 391-08-180, including making contact to determine the position of

the other party prior to presenting the request to the Examiner.

2. Except as specified in paragraph 1 of this order, all of the other allegations of this complaint are DISMISSED as failing to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

ISSUED at Olympia, Washington, on the 2nd day of November, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order will be the final order of the agency on the matters covered thereby, unless notice of appeal is filed with the Commission under WAC 391-45-350.