

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 252,)	
)	
Complainant,)	CASE 14717-U-99-3697
)	
vs.)	DECISION 6898 - PECB
)	
LEWIS COUNTY,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
)	

On August 2, 1999, Teamsters Union, Local 252 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Lewis County (employer) violated Chapter 41.56 RCW in connection with the job reassignment of bargaining unit member Deborah Kerr. The complaint was reviewed by the Executive Director under WAC 391-45-110,¹ and a deficiency notice issued on September 7, 1999, pointed out defects in the complaint as filed. The union was given a period of 14 days following the date of the deficiency notice in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

Nothing further has been heard or received from the union so that dismissal of the complaint is now in order.

¹ At this 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 the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

DISCUSSION

As background to the operative allegations, the complaint indicated the union was recently certified by the Commission as exclusive bargaining representative of a bargaining unit of accounting and clerical employees of the Lewis County Public Works Department. The complaint further indicated that the eligibility of the "accounting manager" was disputed in the representation proceeding,² and that the union and employer subsequently resolved the unit placement dispute by agreeing to place the accounting manager position in the bargaining unit. None of that information provided a basis for an unfair labor practice complaint.

The complaint generally alleges that the employer imposed an unfavorable job reassignment on the incumbent accounting manager, Deborah Krebs, and that Krebs resigned rather than accept it. The union claims the employer's actions constituted unlawful interference, domination, and a refusal to bargain, but it is not possible to conclude that a cause of action exists at this time.

Right to Union Representation -

The complaint alleged that Deborah Krebs was unlawfully deprived of union representation at a meeting held with her supervisor on June 9, 1999. In National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975), the Supreme Court of the United States held that union-represented employees have a right to the presence and assistance of a union representative in certain types of meetings with their employers. That principle has been embraced by the Public Employment Relations Commission in numerous cases but, like

² The union claimed the position should be included in the bargaining unit, while the employer claimed it should be excluded from that unit.

the federal precedents, does not provide employees unlimited access to union representation any time that an employer desires to discuss a matter. Rather, the right to union representation is limited to circumstances where an employee reasonably perceives that an employer's investigatory interview could lead to discipline. City of Seattle, Decision 6357 (PECB, 1998).

The deficiency notice pointed out that it is not at all clear that the June 9, 1999 meeting was an investigatory interview, or that the complainant could have reasonably perceived that discipline could result from the meeting. Although Kreb was allegedly told that she should consider a voluntary demotion from the accounting manager position to an accountant position, the information provided was not sufficient to conclude that a cause of action existed under Weingarten and its progeny.

Unilateral Change of Wages and Conditions -

Although the complaint alleges that the employer unilaterally changed employee wages and conditions of employment, the change of Kreb's classification from accounting manager to accountant is the only example cited. The deficiency notice pointed out that it appeared, from the limited information supplied, that the dispute regarded Kreb's reassignment from one existing job class to another, and that there was no indication in the complaint that the employer changed the job duties of the position of accounting manager. Under City of Seattle, Decision 6357 (PECB, 1998) and King County, Decision 4893-A (PECB, 1995), the unfair labor practice provisions of the statute do not provide a forum for litigating claimed violations or mis-application of existing employer policies and practices. The reference to "wages, hours and working conditions" contained in the definition of "collective bargaining" found in RCW 41.56.030(4) and the "unilateral change"

precedents refer to changes of practice affecting all or part of a bargaining unit.

Constructive Discharge -

Under North Valley Hospital, Decision 5809 (PECB, 1997), a constructive discharge will be only found where an employer's reprisals for the exercise of protected activity make the work environment so hostile for an employee that the employee resigns or abandons the job to end the miserable situation.

In this case, the complaint acknowledges that Kreb resigned her position, but the union has attempted to characterize the termination of her employment as a "constructive discharge". The deficiency notice pointed out that it is not at all clear that the reassignment is being alleged as a reprisal for lawful union activity. 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. Absent some allegation of union animus, this portion of the complaint did not address a subject matter within the jurisdiction of the Public Employment Relations Commission.

Domination of Union -

The union marked the box on the complaint form to indicate a "domination or assistance of union", which would be a violation of RCW 41.56.140(2). That provision of the statute prohibits "company unions" and employer involvement in the internal affairs of unions. See, Washington State Patrol, Decision 2900 (PECB, 1987).

The union did not allege any facts suggesting that the employer has involved itself in the internal affairs or finances of the union, or has attempted to create, fund or control a "company union".

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29th day of November, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.