

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	)	
	)	
Employer.	)	
-----	)	
BILL ELLEBY,	)	
	)	
Complainant,	)	CASE 16337-U-02-4181
	)	
vs.	)	DECISION 7740 - PECB
	)	
KING COUNTY JUVENILE	)	ORDER OF DISMISSAL
DETENTION GUILD,	)	
	)	
Respondent.	)	
_____	)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by Bill Elleby (Elleby) on April 10, 2002. Elleby is employed by King County (employer), and is represented for the purposes of collective bargaining by the King County Juvenile Detention Guild (union). The complaint alleged that the union interfered with employee rights in violation of RCW 41.56.150(1), and committed other unspecified unfair labor practices, by failing to respond to questions from non-members concerning union dues, failing to provide applications to join the union to non-members, and by requiring non-members to pay back dues as a condition of joining the union.

The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on May 13, 2002, indicating that it was not

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<sup>1</sup> 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, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

possible to conclude that a cause of action existed at that time. The deficiency notice pointed out several defects with the complaint. First, the payment of union dues is controlled by the constitution and bylaws of a union. The constitution and bylaws of a union are the contracts among the members of the union as to how the organization is to be operated. Disputes concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts. *Enumclaw School District*, Decision 5979 (PECB, 1997).

Second, the complaint referred to the exclusion of non-members from union meetings. Unions have the right to exclude non-members from participation in union business, including meetings in which bargaining strategy or proposed collective bargaining agreements are discussed. *Pe Ell School District (Pe Ell Education Association)*, Decision 3801 (EDUC, 1991); *Lewis County*, Decision 464-A (PECB, 1978).

Third, several portions of the complaint appeared to be untimely. The Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That 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. . . .

The complaint referred to events beginning in March 2001. Only allegations of the complaint concerning union misconduct occurring on or after October 10, 2001, are timely under RCW 41.56.160.

Fourth, there is a question as to sufficiency of service. In a letter filed with the Commission on April 23, 2002, the attorney for the union contests sufficiency of service of the complaint. The provisions of WAC 391-08-120(3) concerning service of papers, and WAC 391-08-120(4) and (5) concerning proof of service read as follows:

WAC 391-08-120 FILING AND SERVICE OF PAPERS.

Service on Other Parties

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of

this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

The deficiency notice inquired as to whether the complaint had been served on all parties under WAC 391-08-120(3). If so, Elleby was requested to provide the Commission and all parties with proof of service as required by WAC 391-08-120(4) and (5).

Fifth, Elleby checked the box on the complaint form entitled "Other Unfair Labor Practice." However, the complaint failed to explain and specify what "other" statute had been violated by the union's actions.

The payment of union dues is covered by two sections of Chapter 41.56 RCW. RCW 41.56.110 provides as follows:

RCW 41.56.110 DUES--DEDUCTION FROM PAY.  
Upon the written authorization of any public employee within the bargaining unit and after

the certification or recognition of such bargaining representative, the public employer shall deduct from the pay of such public employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

The deficiency notice indicated that under RCW 41.56.110, if an employee signs a written authorization for the deduction of union dues after the union has been certified by the Commission or recognized by the employer as the bargaining representative, the employer is required to deduct union dues from an employee's pay.

The deficiency notice stated that a bargaining representative and employer may agree on union security provisions in their collective bargaining agreement as provided in RCW 41.56.122:

RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS--AUTHORIZED PROVISIONS. A collective bargaining agreement may:

(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. . . .

Union security provisions in a collective bargaining agreement may require that all employees become members of the union or pay the equivalent of union dues.

The deficiency notice advised Elleby that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Elleby that in the absence of

a timely amendment stating a cause of action, the complaint would be dismissed. Nothing further has been received from Elleby.

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 6<sup>th</sup> day of June, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.