

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID LAZAR,)	
)	
Complainant,)	CASE 20364-U-06-5187
)	
vs.)	DECISION 9675 - PSRA
)	
WASHINGTON STATE - REVENUE,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On May 1, 2006, David Lazar (Lazar) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 41.80 RCW, naming the Washington State Department of Revenue (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 27, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Lazar was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On July 24, 2006, Lazar filed an amended complaint. The Executive Director dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer domination or assistance of a union in violation of RCW 41.80.110(1)(b), by preparing to open negotiations for a successor collective bargain-

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

ing agreement with the incumbent exclusive bargaining representative. The deficiency notice pointed out several defects with the complaint:

One, the complaint did not conform to the requirements of WAC 391-45-050 in that it did not contain clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences.

Two, the complaint failed to state a cause of action for employer domination or assistance of a union. None of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." *City of Anacortes*, Decision 6863 (PECB, 1999).

Three, a cover sheet accompanying the complaint describes the subject matter of the complaint as "Employer Preparing to Negotiate with Bad Faith Entity." The good faith bargaining obligations of RCW 41.80.005(2) exist only between an employer and the incumbent exclusive bargaining representative. Individual employees do not have standing to process refusal to bargain allegations.

Amended Complaint

With respect to the first deficiency, the amended complaint did not specifically remedy the requirements of WAC 391-45-050 as it did not contain clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences.

With respect to the second deficiency, Lazar stated, inter alia, in his amended complaint: "I do not contend [that] the employer has involved itself in the internal affairs of finances of the union..." In sum, the amended complaint failed to provide any further information that the employer has involved itself in the

internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." Such a showing is necessary in order to establish employer domination or assistance of a union under *City of Anacortes*, Decision 6863.

In response to the third deficiency, Lazar's amended complaint contends that the employer continues to meet for collective bargaining purposes with the union, despite the fact that he asserts the union has acted in bad faith.

While Lazar would clearly prefer that the employer not engage in collective bargaining with the union, the employer is obligated to do so as the union remains the exclusive collective bargaining representative of the bargaining unit employees employed by the Department of Revenue. Despite Lazar's assertions that the union acted in bad faith, there is no cause of action against the employer that would overcome the employer's obligation to bargain in good faith under RCW 41.80.005(2).

NOW, THEREFORE, it is

ORDERED

The amended 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 16th day of May, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CATHLEEN CALLAHAN, Executive Director

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.