

City of Granger, Decision 9987 (PECB, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LINDA BOWEN,	)	
	)	
Complainant,	)	CASE 21493-U-08-5474
	)	
vs.	)	DECISION 9987 - PECB
	)	
CITY OF GRANGER,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	
	)	
LINDA BOWEN,	)	
	)	
Complainant,	)	CASE 21494-U-08-5475
	)	
vs.	)	DECISION 9988 - PECB
	)	
TEAMSTERS LOCAL 760,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	

On January 28, 2008, Linda Bowen (Bowen) filed a complaint charging unfair labor practices with the Commission against the City of Granger (employer) and Teamsters Local 760 (union). The Commission docketed the complaints as two cases. Case 21493-U-08-5474 concerns allegations of the complaint against the employer, while Case 21494-U-08-5475 concerns allegations of the complaint against the union. A deficiency notice issued on January 31, 2008, indicated that it was not possible to conclude that causes of action existed at that time. Bowen was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

On February 20, 2008, Bowen filed amended complaints. The amended complaints were reviewed under WAC 391-45-110.<sup>1</sup> The Unfair Labor Practice Manager dismisses the amended complaints for failures to state causes of action.

### DISCUSSION

The deficiency notices pointed out the defects of the complaints.

#### Complaint against the Employer

The allegation of the complaint in Case 21493-U-08-5474 concerns employer domination or assistance of a union in violation of RCW 41.56.140(2). It is not possible to conclude that a cause of action exists at this time for the allegation of the complaint. The complaint has several defects.

One, Chapter 391-45 WAC governs the filing of unfair labor practice complaints and appeals. Complaints must conform to WAC 391-45-050.

#### WAC 391-45-050 CONTENTS OF COMPLAINT

Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the amended complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the amended complaints state claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the party filing the complaint (complainant), and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(3) A statement of the remedy sought by the complainant.

(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.

(5) Information concerning the parties' relationships, including:

(a) The employer's principal business;

(b) Identification of the employer department or division in which the dispute arises;

(c) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

(d) The status of related grievance proceedings between the parties, indicating that:

(i) no grievance has been filed on the dispute involved; or

(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or

(iii) An arbitration award has been issued on a related grievance;

(e) A description of the bargaining unit involved, specifying inclusions and exclusions; and

(f) The number of employees in the bargaining unit.

(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

The complaint does not comply with sections 1(a), 2, 3, and 5 of WAC 391-45-050.

Second, in relation to the allegation of employer domination or assistance of a union in violation of RCW 41.56.140(2), 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).

#### Complaint against the Union

The allegations of the complaint in Case 21494-U-08-5475 concern union interference with employee rights in violation of RCW 41.56.150(1), inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2), discrimination for filing charges in violation of RCW 41.56.150(3), refusal to bargain in violation of RCW 41.56.150(4), and "other violations."

It is not possible to conclude that causes of action exists at this time for the allegations of the complaint. The complaint has several defects.

One, the complaint does not comply with sections 1(a), 2, 3, and 5 of WAC 391-45-050.

Two, in relation to allegations of union interference with employee rights in violation of RCW 41.56.150(1), the complaint does not allege facts sufficient to conclude that a cause of action exists for union threats of reprisal or force or promises of benefit in relation to Bowen's union activity.

The complaint implies that Bowen has been improperly excluded from a bargaining unit represented by the union. It is an unfair labor practice for an employer and one or more bargaining units to agree to include or exclude employees from bargaining units contrary to a recognized right or status. Such actions constitute interference with employee rights in violation of RCW 41.56.140(1) and RCW 41.56.150(1). However, Bowen has failed to allege facts sufficient to conclude that a cause of action exists against the union for improper unit placement in violation of RCW 41.56.150(1).

Three, the complaint alleges that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). The sole unfair labor practice alleged against the employer is domination or assistance of a union. Bowen did not state a cause of action against the employer for a violation of RCW 41.56.140(2). The complaint does not contain other facts sufficient to conclude that a cause of action exists for a union violation of RCW 41.56.150(2).

Four, the complaint alleges union discrimination for filing charges in violation of RCW 41.56.150(3). In order to state a cause of action for this allegation, the complaint must state facts showing that Bowen has previously filed charges with the Commission. The complaint does not contain such an assertion.

Five, in relation to the allegation concerning union refusal to bargain in violation of RCW 41.56.150(4), Bowen does not have standing to pursue this claim. The duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees.

Six, the complaint alleges "other unfair labor practice," but does not identify the alleged violation and thus does not state an additional cause of action.

#### Amended Complaints

##### Amended Complaint against the Employer

The amended complaint in Case 21493-U-08-5474 withdraws allegations concerning "other unfair labor practices." The amended complaint re-alleges employer domination or assistance of a union in violation of RCW 41.56.140(2) and adds claims of employer interference with employee rights and discrimination in violation of RCW 41.56.140(1). The statement of facts attached to the amended complaint contains substantially the same facts as those in the complaint but adds facts concerning communication between Bowen and the police chief on November 8, 2007. The amended complaint has several defects and fails to state causes of action against the employer for unfair labor practices.

First, regarding the re-allegation of employer domination or assistance of a union, the amended complaint fails to provide sufficient facts suggesting that the employer has involved itself in the internal affairs of the union, or attempted to create, finance, or control a company union.

Second, RCW 41.56.140(1) prohibits employer interference with employee rights through threats of reprisal or force or promises of benefit associated with employees' union activities. However, the alleged facts contained in the amended complaint are insufficient to conclude that a cause of action exists for employer interference with Bowen's employee rights associated with Bowen's union activities.

It is an unfair labor practice for an employer and one or more bargaining units to agree to include or exclude employees from bargaining units contrary to a recognized right or status. Such actions constitute interference with employee rights in violation of RCW 41.56.140(1) and RCW 41.56.150(1). Bowen contends that the employer is excluding her from joining the union. However, Bowen provides no facts supporting that assertion. The Commission is presently processing a petition for representation by the Granger Professional Police Officers Association (Case 21443-E-07-3328) regarding commissioned law enforcement officers in the City of Granger. Bowen is not a commissioned law enforcement officer and is not eligible for inclusion in that unit. The respondent union (Teamsters Local 760) is not, and has not petitioned the Commission to become, the exclusive bargaining representative of any employees of the City of Granger. The employer cannot be charged with improperly excluding Bowen from a bargaining unit that does not yet exist within the provisions of Chapter 41.56 RCW.

Third, RCW 41.56.140(1) prohibits employer discrimination by actions against employees in reprisal for union activities protected under Chapter 41.56 RCW. The amended complaint contains no facts suggesting that the employer has discriminated against

Bowen by depriving her of an ascertainable right, status, or benefit in reprisal for her union activities.

Amended Complaint against the Union

The amended complaint in Case 21494-U-08-5475 withdraws the following claims: union inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2), discrimination for filing charges in violation of RCW 41.56.150(3), refusal to bargain in violation of RCW 41.56.150(4), and "other unfair labor practices."

The amended complaint re-alleges union interference with employee rights in violation of RCW 41.56.150(1). The amended complaint does not allege facts sufficient to conclude that a cause of action exists for union threats of reprisal or force or promises of benefit in relation to Bowen's union activity.

The amended complaint asserts that Bowen has been improperly excluded from a bargaining unit represented by the union. It is an unfair labor practice for an employer and one or more bargaining units to agree to include or exclude employees from bargaining units contrary to a recognized right or status. Such actions constitute interference with employee rights in violation of RCW 41.56.140(1) and RCW 41.56.150(1). However, Bowen has failed to allege facts sufficient to conclude that a cause of action exists against the union for improper unit placement in violation of RCW 41.56.150(1).

As previously noted, the union is not, and has not petitioned the Commission to become, the exclusive bargaining representative of



any employees of the City of Granger. As with the same allegation against the employer, the union cannot be charged with improperly excluding Bowen from a bargaining unit that does not yet exist within the provisions of Chapter 41.56 RCW. Bowen's apparent concern is that the employer and union will reach an agreement to establish a bargaining unit that will result in stranding her and so deprive her of access to collective bargaining rights protected under Chapter 41.56 RCW. The amended complaint provides no evidence of that occurring at the present time.

NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in Case 21493-U-08-5474 and Case 21494-U-08-5475 are DISMISSED for failures to state causes of action.

ISSUED at Olympia, Washington, this 27<sup>th</sup> day of February, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.