

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FAIR WASHINGTON LABOR ASSOCIATION,)	
)	CONSOLIDATED
Complainant,)	CASE 22364-U-09-5705 and
)	CASE 22367-U-09-5706
vs.)	
)	DECISION 10415 - PSRA
STATE - REVENUE,)	DECISION 10416 - PSRA
)	
Respondent.)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
_____)	DISMISSAL

On March 31, 2009, the Fair Washington Labor Association (FWLA) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Revenue (employer) as respondent. The complaints were consolidated and reviewed under WAC 391-45-110.¹ A deficiency notice issued on April 14, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. The mailing was delayed by two days, and FWLA was ultimately given a period of 23 days in which to file and serve an amended complaint or face dismissal of the complaint.

On May 7, 2009, FWLA filed an amended complaint. The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning interference and discrimination involving employer health insurance proposals. A cause of action is found for

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.

employer interference and discrimination regarding disseminating decertification information by the FWLA and holding an employee rally, and interference and domination or assistance of a union regarding the employee rally. The employer must file and serve its answer to the amended complaint within 21 days following the date of this decision.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and discrimination in violation of RCW 41.80.110(1)(c), by its health insurance proposals, and actions regarding the Fair Washington Labor Association (FWLA) disseminating information on decertification and holding an employee rally concerning decertification.

The deficiency notice pointed out the defects to the complaint. Regarding interference and discrimination over health insurance proposals, the FLWA alleges employer interference with employee rights in violation of RCW 41.80.110(1)(a) and discrimination in violation of RCW 41.80.110(1)(c), concerning health insurance proposals related to collective bargaining between the employer and other unions, as well as proposed legislation on health insurance. It is not an unfair labor practice for an employer to consider legislation or engage in collective bargaining over terms and conditions of employment, including health insurance.

The Amended Complaint

The amended complaint apparently applies to multiple cases involving multiple employers, including the Department of Revenue.

Regarding allegations of discrimination over the employer offering different healthcare benefits to represented and non-represented employees, it is not an unfair labor practice for an employer to offer different terms and conditions of employment to represented and non-represented employees. The amended complaint does not state a cause of action by arguing that the Commission should reverse this long-standing legal conclusion.

Regarding allegations of domination or assistance of a union, the amended complaint alleges that evidence of the employer assisting the union is found in the employer releasing employee names to the union, but denying release of the names to FWLA. This would constitute an unfair labor practice if, in violation of WAC 391-25-130, the employer refused or failed to submit to the agency a list of employee names after the filing of a representation petition by FWLA and following the determination of a sufficient showing of interest. However, the amended complaint does not allege those facts. The allegation that the union, upon obtaining employee names from the employer, releases those names to credit card companies does not indicate an unfair labor practice by the employer.

The FWLA alleges that evidence of domination is found in the employer allowing the union to distribute of union materials, while restricting access by FWLA and interfering with FWLA's organizing efforts. This does not present sufficient evidence indicating that the employer favors the union over FWLA. It is not an unfair labor practice for an employer, under a collective bargaining agreement, to provide a bulletin board for the exclusive use of an incumbent bargaining representative. The allegations pertain instead to the interference and discrimination claim regarding dissemination of decertification information.

The cause of action for employer domination or assistance of a union is restricted to allegations pertaining to the employer's comments and actions regarding an employee rally sponsored by FWLA.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the amended complaint in Consolidated Cases 22364-U-09-5705 and 22367-U-09-5706 state a cause of action, summarized as follows:

[1] Employer interference with employee rights in violation of RCW 41.80.110(1)(a) and discrimination in violation of RCW 41.80.110(1)(c), by its actions regarding the Fair Washington Labor Association disseminating information on decertification and holding an employee rally concerning decertification; and [2] employer interference with employee rights in violation of RCW 41.80.110(1)(a) and domination or assistance of a union in violation of RCW 41.80.110(1)(b), by showing a preference between unions in an organization campaign regarding an employee rally sponsored by the Fair Washington Labor Association.

These allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. The Washington State Department of Revenue shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order within 21 days following the date of this Order.

An answer shall:

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

The answer 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 amended complaint. Service shall be completed no later than the day of filing. 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the amended complaint in Consolidated Cases 22364-U-09-5705 and 22367-U-09-5706 concerning employer interference in violation of RCW 41.80.110(1)(a) and discrimi-

nation in violation of RCW 41.80.110(1)(c), by its health insurance proposals, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of May, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.