

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,	)	
	)	
Employer.	)	
-----	)	
DOUGLAS MORRISON,	)	
	)	
Complainant,	)	CASE 15426-U-00-3901
	)	
vs.	)	DECISION 7278 - PECB
	)	
INTERNATIONAL ALLIANCE OF	)	PARTIAL DISMISSAL AND
THEATRICAL STAGE EMPLOYEES,	)	ORDER FOR FURTHER
LOCAL 15,	)	PROCEEDINGS
	)	
Respondent.	)	
_____	)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by Douglas Morrison (Morrison) on October 6, 2000. The complaint alleged that International Alliance of Theatrical Stage Employees, Local 15 (union) interfered with employee rights in violation of RCW 41.56.150(1), by dispatching Diana Gervais (Gervais) ahead of Morrison on the Experience Music Project at Seattle Center.

The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on December 21, 2000, indicating that it is 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 exists at this time. The deficiency notice indicated the following four concerns:

Complaint Appears to be Untimely -

This controversy concerns Douglas Morrison's position on the dispatch list used by the union. A dispatch to the City of Seattle in June of 2000 is cited, but other portions of the statement of facts attribute the problem to "the new 2000 list" and indicate the problem never occurred "until the year 2000". RCW 41.56.160 imposes a six-month statute of limitations on unfair labor practice complaints. This complaint filed October 6, 2000, cannot be considered timely absent detailed allegations explaining why Morrison first knew or reasonably should have known of the alleged change of his ranking on the seniority list on or after April 2, 2000.<sup>2</sup>

No Cause of Action on Internal Union Affairs -

A copy of the union's constitution and bylaws was filed with the complaint. Such documents are the contract among the union members for how their organization is to be operated, and disputes concerning alleged violations of those documents must be pursued through either procedures contained within the documents themselves or through the courts. The Public Employment Relations Commission has no authority to determine or remedy violations of the union's documents.

Absence of Connection with Protected Activity -

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, protects the right of public employees to organize unions and their right to bargain collectively with their public employers. RCW 41.56.040. The statute prohibits union interference with the right of public employees to organize and bargain. RCW 41.56.150(1). In this case, however, nothing in the documents on file suggests this controversy is somehow related to the exercise of rights protected by Chapter 41.56 RCW. There is no reference to either Morrison or the employee who has moved ahead of him on the dispatch list having any involvement with union activity or internal union politics, nor is there any indication that Morrison has exercised his right to refrain from any or all union activities.

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<sup>2</sup> The April 2, 2000, reference should read April 6, 2000, or six months prior to filing of the complaint.

Concurrent Jurisdiction with Federal Law and Agency - Accompanying the complaint filed with the Commission is a copy of a "Charge Against Labor Organization" which Morrison apparently filed with the National Labor Relations Board (NLRB) on October 3, 2000. Its citation of a dispatch to the Paramount Theatre, which is neither claimed nor known to be operated by the City of Seattle, provides basis to infer that the union operates in both the public sector and the private sector, and that the Commission should defer to the NLRB as the administrator of a federal law which preempts state laws.

The deficiency notice advised Morrison that an amended complaint could be filed and served within 21 days following such notice and that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed.

On January 2, 2001, Morrison filed an amended complaint withdrawing the allegations addressed in the deficiency notice as "internal union affairs" and "concurrent jurisdiction with federal law and agency." In response to the "complaint appears to be untimely" concern of the deficiency notice, the amended complaint alleges that June 20, 2000, was the first occasion in 2000 when the dispatching problem arose. In relation to the "absence of connection with protected activity" concern of the deficiency notice, the amended complaint alleges that Gervais is the secretary of the union. The amended complaint has cured the "complaint appears to be untimely" and the "absence of connection with protected activity" concerns of the deficiency notice.

The amended complaint addresses several other issues. Morrison requests copies of any correspondence between the union and the Commission regarding the complaint. The union has not filed any papers with the Commission concerning Case 15426-U-00-3901. The amended complaint also seeks a definition of seniority from the Commission. Neither the statutes administered by the Commission

nor the rules promulgated by the Commission interpreting those statutes include a definition of seniority. That term is typically defined by the collective bargaining agreement between a public employer and the representative of its employees. However, the Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976).

The amended complaint inquires as to why a copy of the December 21, 2000 deficiency notice was sent to Gerrard Crangi (Crangi). At that time, Crangi's name appeared in the Commission's docket records as president of the union. The Commission has subsequently learned that Laurel Horton now serves as president of the union, and the Commission's docket records have been corrected to reflect that information. Crangi has not filed any papers with the Commission concerning Case 15426-U-00-3901.

NOW THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the amended complaint states a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.56.150(1), by dispatching Diana Gervais ahead of Douglas Morrison on the Experience Music Project at Seattle Center on June 20, 2000.

The complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. International Alliance of Theatrical Stage Employees, Local 15 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 complaint, 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 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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. See, WAC 391-45-210.

3. The allegations of the complaint addressed in the December 21, 2000, deficiency notice as "internal union affairs" and

"concurrent jurisdiction with federal law and agency" are  
DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1<sup>st</sup> day of February, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'M.S. Downing', is written over the printed name.

MARK S. DOWNING, Director of Administration

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.