

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WILLIAM GLOVER,)	
)	
Complainant,)	CASE 16079-U-01-4104
)	
vs.)	DECISION 7603-B - PECB
)	
PORT OF SEATTLE,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

Peter G. Cogan, Attorney at Law, for the complainant.

Craig R. Watson, Attorney at Law, for the respondent.

On October 29, 2001, William Glover filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Seattle (employer) as respondent. A deficiency notice was issued under WAC 391-45-110, and Glover filed an amended complaint on January 7, 2002. An order for further proceedings was issued on January 17, 2002, finding a cause of action to exist against the employer on an allegation limited to:¹

Employer interference with employee rights in violation of RCW 41.56.140(1), and discrimination for filing an unfair labor practice charge in violation of RCW

¹ A companion case in which Glover named as respondent the union which had represented him (International Brotherhood of Electrical Workers, Local 46) was dismissed at that time. *Port of Seattle*, Decision 7604 (PECB, 2002).

41.56.140(3), by terminating William Glover in reprisal for his union activities protected by Chapter 41.56 RCW.

The employer timely filed its answer to the complaint, and a hearing was set for May 22, 2002.

The processing of the case was thereafter affected by numerous delays. The complainant requested a continuance, and the hearing was continued for an indefinite period. The employer filed a motion for summary judgment on September 10, 2002, and the complainant filed a response to that motion. The employer's motion was denied on January 13, 2003.² A hearing was then set for March 18 and 19, 2003. At the complainant's request, the hearing was rescheduled as a one day hearing set for March 19, 2003. Upon the complainant's further request, the hearing was continued to April 29, 2003.

The hearing was held on April 29, 2003, before Examiner David I. Gedrose. At the conclusion of the complainant's case-in-chief, the employer moved for dismissal for failure of the complainant to make out a prima facie case. The Examiner granted that motion, and this order is issued to confirm that ruling.

DISCUSSION

The complaint alleged that the employer's termination of Glover's employment on October 26, 2001, was discrimination in reprisal for his union activities, specifically for filing of an unfair labor practice complaint against the employer on February 20, 2001.³

² *Port of Seattle*, Decision 7603-A (PECB, 2003).

³ See RCW 41.56.140(3).

The Commission decides discrimination allegations under standards drawn from the decisions of the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). Those decisions set forth the need for a complainant to make a prima facie case for discrimination by showing: (1) the exercise of a statutorily protected right, or communicating to the employer an intent to do so; (2) that he or she was deprived of some ascertainable right, status, or benefit; and (3) that there was a causal connection between the exercise of the legal right and the discriminatory action.

The employer's answer asserted that the termination of employment resulted from enforcement of union security obligations under a collective bargaining agreement between the employer and International Brotherhood of Electrical Workers, Local 46, after Glover ceased paying dues to IBEW Local 46 (union) in May 2001, and that the union had requested the termination of Glover's employment on October 11, 2001, under the collective bargaining agreement.

In his response to the employer's motion for summary judgment, Glover admitted that he stopped paying union dues, but he asserted that he knew of no one else whose employment had been terminated for not paying union dues. Glover also alleged that the employer's defense was a pretext, and that he had been singled out. In denying the motion for summary judgment and in convening the hearing in this matter, the Examiner gave Glover the opportunity to establish a prima facie case of discrimination at a hearing.

In his opening statement at the hearing, the complainant stated that he would provide evidence in his case-in-chief that "no one else had ever been terminated for failure to pay union dues as part

of the bargaining unit" In actual fact, however, the complainant presented no testimony or documentary evidence to support that contention. Rather, the complainant only provided testimony concerning the employer's alleged actions relative to an on-the-job injury sustained by the complainant, and his medical status in 2001 resulting from that injury, including an assertion that he was on leave under the federal Family Medical Leave Act (FMLA) when he was discharged. The implication was that the employer violated worker compensation or related laws and/or the FMLA.

The complainant's case rose or fell on his ability to provide evidence that he had been singled out for his acknowledged failure to pay union dues. The Commission has no jurisdiction to interpret or enforce the laws pertaining to matters actually discussed by the complainant at the hearing in this case. The complainant's silence concerning the crucial issue (particularly in contradistinction to his own opening statement) was the basis for the Examiner's conclusion that he demonstrated that he had not even a scintilla of proof of this central element of his claim.

Although the complainant in this case provided evidence of his exercise of a statutorily-protected right in filing his previous unfair labor practice complaint, and it is clear that he has been discharged from employment, he provided no evidence of a causal connection between the filing of his unfair labor practice complaint and his discharge.

FINDINGS OF FACT

1. The Port of Seattle is a municipal corporation of the state of Washington, and is a public employer within the meaning of RCW 41.56.020 and .030(1).

2. William Glover was an employee of the Port of Seattle, working within a bargaining unit represented by International Brotherhood of Electrical Workers, Local 46, and subject to union security obligations under the collective bargaining agreement covering that employment.
3. On February 20, 2001, Glover filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the Port of Seattle as respondent.
4. During or about May 2001, Glover ceased paying union dues as required by the union security provisions of the collective bargaining agreement applicable to his employment.
5. On October 26, 2001, acting in response to a request from the union for enforcement of the union security provision of the applicable collective bargaining agreement, the employer terminated Glover's employment.
6. The evidence fails to establish the existence of any causal connection between the exercise of protected activity described in paragraph 3 of these findings of fact and the termination of employment described in paragraph 5 of these findings of fact.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission had jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. The complainant failed to establish a prima facie case of discrimination when given the opportunity to do so at an evidentiary hearing, so that there is no basis to find that

the Port of Seattle committed any unfair labor practice in violation of RCW 41.56.140(1) and the employer was entitled to dismissal of the complaint at the close of the complainant's case-in-chief.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED on its merits.

Issued at Olympia, Washington, this 19th day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "David I. Gedrose", written in black ink.

DAVID I. GEDROSE, Examiner

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.