

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY DEPUTY SHERIFF)	
GUILD,)	
)	CASE 17583-U-03-4547
Complainant,)	
)	DECISION 8402 - PECB
vs.)	
)	
KITSAP COUNTY,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

On June 10, 2003, Kitsap County Deputy Sheriff Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Kitsap County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on January 9, 2004, indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of discrimination under RCW 41.56.140(1). The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. Nothing further has been received from the union.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action.

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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in monitoring of sick leave usage, without providing an opportunity for bargaining.

In relation to the allegations of discrimination under RCW 41.56.140(1), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW.

The deficiency notice indicated that the interference and refusal to bargain allegations of the complaint under RCW 41.56.140(1) and (4) concerning the employer's unilateral change appeared to state a cause of action, and would be the subject of further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain allegations of the complaint state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its unilateral change in monitoring of sick leave usage, without providing an opportunity for bargaining.

The interference and refusal to bargain allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Kitsap County 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:

1. 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
2. Specify whether "deferral to arbitration" is requested and, if so:
 - a. Identify the contract language requiring final and binding arbitration of grievances;
 - b. Identify the contract language which is claimed to protect the employer conduct alleged to be an unlawful unilateral change;
 - c. Provide information (and copies of documents) concerning any grievance being processed on the matter at issue in this unfair labor practice case; and

- d. State whether the employer is willing to waive any procedural defenses to arbitration.
- 3. Assert any other 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 concerning employer discrimination under RCW 41.56.140(1) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 13th day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, 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.