

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KEVIN KEMP,)	
)	
Complainant,)	CASE 20958-U-07-5349
)	
vs.)	DECISION 9659 - PECB
)	
KING FIRE DISTRICT 16,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
_____)	

On March 7, 2007, Kevin Kemp (Kemp) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County Fire District 16 (employer) as respondent. The complaint was docketed by the Commission as Case 20958-U-07-5349. The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1), discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by retaliatory actions of management officials against Kevin Kemp. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 22, 2007, indicated that it was not possible to conclude that a cause of action existed at that time. Kemp was given a period of

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.

21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On April 12, 2007, Kemp filed an amended complaint. The Unfair Labor Practice Manager dismisses defective allegations of the complaint and amended complaint for failure to state a cause of action. A cause of action is found for allegations of the amended complaint concerning employer interference and discrimination in cancelling Kemp's previously assigned overtime, in reprisal for filing a grievance.

The employer must file and serve its answer to the complaint and amended complaint within 21 days following the date of this Decision.

DISCUSSION

The deficiency notice pointed out several defects with the complaint. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160--COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of employer misconduct occurring on or after September 7, 2006.

Two, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

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

The complaint does not conform to the requirements of WAC 391-45-050.

Three, RCW 41.56.140(1) prohibits employer interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by employer officials are unlawful. However, the alleged facts are insufficient to conclude that the employer made any threats of reprisal or force or promise of benefit in violation of RCW 41.56.140(1).

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

Five, in relation to allegations 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).

Six, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Kemp has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Seven, the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by a union. Individual employees such as Kemp do not have standing to process refusal to bargain allegations.

Eight, the complaint refers to allegations of age discrimination. The Commission does not have jurisdiction to adjudicate claims involving age discrimination.

The Amended Complaint

Regarding defect one, the amended complaint alleges that the employer retaliated against Kemp for filing a grievance on or after November 16, 2006. However, in addressing timeliness, the amended complaint confuses grievance arbitration with unfair labor practice proceedings. A collective bargaining agreement may allow the parties to ask the Commission to provide an arbitrator, but that contractual process is distinct from the provisions of Chapter 41.56 RCW and does not affect the timeliness requirements of RCW 41.56.160.

Regarding defects two, three, and four, the amended complaint cures these defects only in relation to the cause of action noted above,

that the employer interfered with employee rights and discriminated against Kemp in reprisal for filing a grievance.

The amended complaint fails to address defects five, six, and eight. The allegations referenced in those defects are dismissed.

Regarding defect seven, the amended complaint continues to allege employer failure to bargain with Kemp as an individual employee. Those allegations are dismissed, as Kemp does not have standing to process refusal to bargain allegations.

The amended complaint makes new allegations of employer violations of the collective bargaining agreement. The 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 Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979).

NOW, THEREFORE, it is

ORDERED

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

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by cancelling Kevin Kemp's

previously assigned overtime in reprisal for union activities protected under Chapter 41.56 RCW.

The interference and discrimination allegations of the complaint and amended complaint as specified in this paragraph will be the subject of further proceedings under Chapter 391-45 WAC.

2. King County Fire District 16 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 and amended 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 and amended complaint, will be deemed to be

an admission that the fact is true as alleged in the complaint and amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint and amended complaint concerning employer interference and discrimination in violation of RCW 41.56.140(1), other than as alleged in paragraph 1 of this Order are DISMISSED for failure to state a cause of action. The allegations of the complaint and amended complaint concerning employer domination or assistance of union in violation of RCW 41.56.140(2); discrimination for filing charges in violation of RCW 41.56.140(3); and refusal to bargain in violation of RCW 41.56.140(4) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 30th day of April, 2007.

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.