

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF	)	
FIRE FIGHTERS, LOCAL 2903,	)	
	)	
Complainant,	)	CASE 8915-U-90-1962
	)	
vs.	)	DECISION 3830 - PECB
	)	
THURSTON COUNTY FIRE DISTRICT 3,	)	
	)	
Respondent.	)	CORRECTED
	)	PRELIMINARY RULING
	)	
	)	

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The complaint charging unfair labor practices in the above-entitled matter was filed by International Association of Fire Fighters, Local 2903, on November 21, 1990. The matter was reviewed by the Executive Director for the purposes of making a preliminary ruling under WAC 391-45-110, and a letter was directed to the parties on December 20, 1990, noting certain problems with the complaint. In particular, the complaint lacked sufficient detail to form an opinion as to the sufficiency of the allegations. The complainant was given 14 days to file and serve an amended complaint stating a cause of action. That period was subsequently extended.

An amended complaint filed on January 16, 1991, is now before the Executive Director for preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is assumed that all of the facts alleged in the complaint are true and provable. It remains to be determined whether an unfair labor practice could be found.

The amended complaint alleges that the employer first suspended and then dismissed resident firefighter Suzanne Rowe for: (1) pursuing claims under RCW 41.24.150, which pertains to disability payments for "volunteer" firefighters; and (2) assisting unrepresentative

sented employees of the employer in their efforts to organize for purposes of collective bargaining.

Sufficiency of Detail in Allegations

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is generally patterned after the National Labor Relations Act (NLRA). In particular, the unfair labor practice provisions found in RCW 41.56.140 are similar to the employer unfair labor practices proscribed by Section 8(a) of the NLRA. There are major differences, however, in the way the state and federal statutes are administered. A party need only file a general "charge" with the National Labor Relations Board (NLRB), after which the NLRB staff conducts a detailed investigation and issues a "complaint", where appropriate, prior to prosecuting the complaint on behalf of the injured party. In contrast, the Public Employment Relations Commission has never been funded or staffed to conduct investigation or prosecution of complaints, and parties are called upon to file and serve a "complaint". WAC 391-45-050. Such a complaint must be sufficient for the Executive Director to discern the existence of a cause of action,<sup>1</sup> and then sufficient to put the respondent on notice of the charges that it will be expected to meet at hearing.<sup>2</sup>

Substantial delay has occurred in this case, due to the need to set the case aside for special handling. The original complaint in

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<sup>1</sup> Looked at in another way, the facts set forth in a complaint filed under WAC 391-45-050 must be sufficient to make intelligible findings of fact in a "default" situation.

<sup>2</sup> A safety valve for a respondent in the event of a too-liberal reading of vague allegations by the Executive Director is the provision for a "motion to make more definite and certain" in WAC 391-45-250. See, also, RCW 34.05.434(2)(h) and (3) incorporating similar requirements in the recently-adopted Administrative Procedures Act.

this case was much more in the nature of an NLRA/NLRB "charge" than a "complaint". Apart from adding a citation of RCW 41.24.150, the amended complaint adds little in the way of factual details as called for by the Commission's rules and the earlier preliminary ruling letter.

#### Processing of Individual Claims

Chapter 41.56 RCW does not contain a "concerted activities" clause similar to that found in Section 7 of the NLRA, as amended by the Labor Management Relations ACT of 1947. That distinction was found to be important, if not determinative, in City of Seattle, Decision 489 (PECB, 1978), where an individual protested employment terms on behalf of himself and other employees.

Examination of RCW 41.24.150 suggests that the holding of City of Seattle, supra, is controlling here as well. PERC does not administer or enforce Chapter 41.24 RCW. The chapter is titled "Volunteer Firefighters' Relief and Pensions". Enrollment is required for all firefighters other than those covered by the Law Enforcement Officers and Firefighters Retirement System created by Chapter 41.26 RCW. A fund and an administrative board are created. RCW 41.24.150, .160 and .170 provide rights to covered individuals to make claims for payments from the fund. On the extremely limited facts provided, the allegations contained in paragraph 1 of the complaint are insufficient to state a cause of action.

#### Discrimination for Union Activity

It is well established, and beyond serious debate, that discharge and other adverse actions taken against public employees in reprisal for their efforts to organize or bargain collectively is prohibited by RCW 41.56.040 and .140(1). This complaint identifies a particular "resident firefighter", and there is precedent for finding that such persons are public employees within the meaning

and coverage of Chapter 41.56 RCW. Thurston County Fire District 9, Decision 461 (PECB, 1978). Although not set forth by the complaint to the extent desirable, the details of a suspension and discharge of the named individual should be available to the employer from its business records. Allowing that this analysis fills in some gaps, the allegations contained in paragraph 2 of the complaint appear to be sufficient to state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. The portions of the complaint alleging discrimination for pursuit of rights under RCW 41.24.150 are DISMISSED for failure to state a cause of action.
2. The portions of the complaint concerning discrimination for pursuit of organizational activity under RCW 41.56.040 are assigned to Examiner William A. Lang of the Commission staff to conduct further proceedings pursuant to Chapter 391-45 WAC.

Issued at Olympia, Washington, on the 2nd day of August, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the commission pursuant to WAC 391-45-350.

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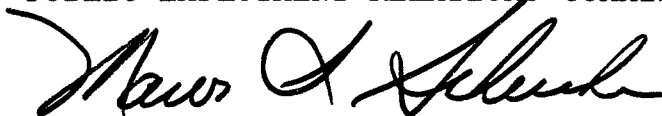
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Issued at Olympia, Washington, on the 29th day of July, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the commission pursuant to WAC 391-45-350.