

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TUMWATER POLICE OFFICERS GUILD,)	
)	
Complainant,)	CASE 10229-U-93-2344
)	
vs.)	DECISION 4430 - PECB
)	
CITY OF TUMWATER,)	
)	
Respondent.)	PARTIAL ORDER OF DISMISSAL
)	
)	

On January 29, 1993, the Tumwater Police Officers Guild filed a complaint charging unfair labor practices with the Public Employment Relations Commission, claiming that the City of Tumwater had interfered with the rights of an employee, by certain ratings given him on a performance evaluation. The employee involved is identified as a former president of the union, who is now a member of the union's bargaining team.

A preliminary ruling letter, issued under WAC 391-45-110 on May 11, 1993,¹ concluded that a cause of action exists under Chapter 41.56 RCW, with respect to a low rating given to Gary on "Factor L" of his December 8, 1992 performance evaluation because of his conducting union activities on coffee breaks. That allegation will be assigned to an Examiner for further proceedings under Chapter 391-45 WAC.

¹ At that 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.

The preliminary ruling letter concluded that the complaint failed to state a cause of action with respect to an allegation that a low rating of Gary on "Factor K" of his December 8, 1992 performance evaluation was based on an "unsubstantiated and false allegation" against him by the assistant police chief. It was noted that such an allegation would state a cause of action only if it were somehow connected to Gary's union activity, and that nothing made such a connection in the complaint as filed. The complainant was advised that, if the performance rating in that category were simply to reflect a difference of opinion between the parties, the proper forum for resolution of the dispute would be the mechanism agreed upon by the parties in their collective bargaining agreement to resolve disciplinary matters.

The complainant was given a period of 14 days following the date of the preliminary ruling letter in which to file and serve an amended complaint which stated a cause of action on the allegation regarding "Factor K", or face dismissal of that allegation. Nothing further has been heard or received from the complainant, and the specified time period has expired.

NOW, THEREFORE, it is


ORDERED

1. The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED for failure to state a cause of action, with respect to the allegation regarding the rating given Thor Gary on "Factor K" of his December 8, 1992, performance evaluation.

2. The complaint charging unfair labor practices filed in the above-captioned matter shall be referred to an Examiner for further proceedings with respect to the allegation regarding the rating given Thor Gary on "Factor L" of his December 8, 1992 performance evaluation.

DATED at Olympia, Washington, this 29th day of June, 1993.

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.