

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,)	
Employer.)	
-----)	
KEITH STONER,)	CASE 11672-U-95-2745
)	
Complainant,)	DECISION 5244 - PECB
)	
vs.)	
)	
TEAMSTERS UNION, LOCAL 763,)	
)	ORDER DENYING MOTION
Respondent.)	FOR SUMMARY JUDGEMENT
)	
)	

Keith Stoner appeared pro se.

Davies Roberts and Reid, by Michael R. McCarthy, Attorney at Law, appeared on behalf of the union.

Mark H. Sidran, City Attorney, by Leigh Ann Tift, Assistant City Attorney, appeared on behalf of the employer.

On March 29, 1995, Keith Stoner filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Teamsters Union, Local 763 had interfered with employee rights in violation of RCW 41.56.150(1), by failing to honor his request to apportion union dues to that amount chargeable to collective bargaining and contract administration.

The case was processed by the Executive Director under the "preliminary ruling" procedure of WAC 391-45-110.¹ On April, 7, 1995, a cause of action was found to exist with respect to Stoner's

¹ At this stage of the proceedings, all of the facts alleged in the complaint were assumed to be true and provable. The question at hand there was whether, as a matter of law, the complaint stated a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

complaint. The union was given 21 days from the date of the preliminary ruling letter to file an answer which specifically admitted or denied or explained each fact alleged in the complaint. The union was also directed to state whether deferral to arbitration was requested, and to assert any affirmative defenses that were going to be claimed.

The union filed a timely answer to the complaint against it. The union's answer admitted that Stoner was a dues paying member in good standing since February of 1988 and to date had not made a written request for a change of membership status. The union also stated that should Keith Stoner desire to change his full membership status to attain "financial core status", the union would act on such a request submitted in writing over his signature. The matter was set for hearing before the undersigned Examiner for August 14, 1995.

On August 11, 1995, the union filed a Motion for a Continuance and for Summary Judgment, which was accompanied by briefs and affidavits on the factual background of the complaint. On August 11, 1995, the parties were informed that a continuance was granted and Stoner was granted 14 days in which to file and serve a written response to the Motion for Summary Judgment. On August 22, 1995, the complainant filed reply briefs with the Commission.

POSITION OF THE PARTIES

The complainant argues that he has requested an apportionment of dues, verbally by telephone and in writing, on several occasions, and that the union has failed to respond to his requests.

The union's briefs and affidavits asserted that it has never received a written or verbal request for financial core status or a request from the complainant to resign from union membership

which is a condition precedent to the attaining non-association status.

DISCUSSION

The Commission's rules provide for summary judgments at WAC 391-08-230, as follows:

WAC 391-08-230 SUMMARY JUDGMENT. A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed with the agency and served on all other parties to the proceeding.

The summary judgment procedure is clearly inapposite to cases where there are contested issues of fact.

A close review of the affidavits and briefs filed in this matter indicates the existence of contested issues of fact:

* The union's affidavits claim that the complainant's assertions that he had made verbal and written requests for reduced dues status is in error because their files do not show such a request has been made and that office staff does not recall any such verbal requests by telephone.

* The complaint's answer contested the union's allegations that he had not made the request and that the union had not received his communications.

The motion for summary judgment and the complainant's response indicate that there are still facts in contention which touch on the basic question on whether the union has failed to honor the

complainant's desire for non-association status. Because material facts are in dispute, an evidentiary hearing would be needed.

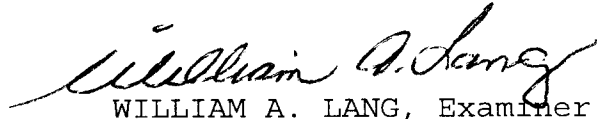
ORDER

1. The motion for summary judgment made by Teamsters Union, Local 763 is DENIED.

2. Further proceedings in this matter shall be CONDUCTED on September 21, 1995 in accordance with the attached notice of hearing.

ISSUED at Olympia, Washington, this 1st day of September, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


WILLIAM A. LANG, Examiner