City of Vancouver, Decision 5677 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VANCOUVER FIRE FIGHTERS UNION, LOCAL 452, IAFF, Complainant,	)	CASE 12425-U-96-2948
vs.	)	DECISION 5677 - PECB
CITY OF VANCOUVER, Respondent.	)	ORDER OF DISMISSAL

On April 1, 1996, Vancouver Fire Fighters Union, Local 452, (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The union alleged that the City of Vancouver (employer) had interfered with employee rights, in violation of RCW 41.56.140(1). The complaint was reviewed for the purpose of making a preliminary ruling under WAC 391-45-110,[1] and letter issued to the parties on May 30, 1996 noted that certain problems existed with the complaint, as filed. The union was given 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint. An amended complaint filed on June 7, 1996 has now been reviewed under WAC 391-45-110.

The Operative Allegation

Paragraph 11 of the amended complaint details a letter from the chief of the employer's fire department, Dan Fraijo, to the president of the local union, Mike Phillips, in which the chief

[1] At this stage of the proceedings, all facts alleged in a 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 Commission.

complained about the tactics of union officers and of the union's executive board in some recent disputes. The chief stated that he expected the union would discontinue "heavy handed" and "harrassing" tactics aimed at department management.

The certification or recognition of an organization as exclusive bargaining representative of an appropriate bargaining unit marks the beginning of a direct relationship between the employer and union which is separate and apart from the employment relationship (i.e., between the employer and individual employees) and from the membership relationship (i.e., between the union and individual employees). It is precisely because the chief's letter was directed to the union official that no cause of action is stated here. The head of the department and the head of the union are expected to communicate with one another on matters affecting the direct relationship between the employer and union. While two union officials who are bargaining unit employees seem to have borne the brunt of the chief's broadside, it was directed to them in their capacities as union officials. Reading the express language of the chief's letter does not support an inference that any threat was directed at either of them as individuals.

Background Regarding Training Methods and Procedures

Paragraphs 1 through 3 of the original complaint were understood to be background and introductory materials only. The amendment did not change those paragraphs.

A new set of allegations appearing as paragraphs 4, 5 and 6 in the amended complaint, state that: (a) Bargaining unit employees Mike Phillips, Jim Flaherty, and Mike Lyons are members of the union's executive board; (b) Chief Dan Fraijo is head of the department and has authority to discipline employees; and (c) the chain of command in the department allows lieutenants and captains to exercise "some supervisory authority over fire fighters and fire inspectors", even

though all of those ranks are within the bargaining unit. This is also taken to be background material only.

Paragraph 6 of the amended complaint describes conversations between Phillips, Flaherty, and Captain Curt Anderson regarding training practices for new hires. None of these facts could constitute a violation of the statute.

Paragraph 7 of the amended complaint describes a meeting between Phillips, Flaherty, Captain Eldred, and a bargaining unit employee named Gaines. This discourse between bargaining unit members did not involve the department management. The union alleges it had "legitimate union concerns" about training practices, but no grievances were filed and no threats or reprisals are alleged. These facts could not constitute a violation of the statute.

Paragraph 8 of the amended complaint is a conclusionary statement that "union representatives raising concerns regarding an employer's training policies are engaged in protected activity under RCW 41.56."[2] In the absence of facts indicating there was either a request to bargain a specific topic, a request for information needed by the union to perform its functions, a grievance, or an unfair labor practice, allegations of general griping and whining are not sufficient to state a cause of action.

Background Regarding Terminated Probationary Employee

Paragraphs 9 and 10 of the amended complaint relate to a meeting between employer and union officials in February of 1996, when the termination of a probationary employee was discussed. Captain

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[2] The term "concerted activities" does not appear in Chapter 41.56 RCW. That omission (as compared to the National Labor Relations Act at Section 7) may have implications beyond the withholding of the right to strike in RCW 41.56.120, but that need not be fully explored in this decision.

Anderson acted on behalf of the employer during the pre-termination meetings, and two division chiefs acted as management officials in the chain of command. These facts could not constitute a violation of the statute.[3]

Paragraph 10 of the amended complaint is a conclusionary statement that union officials representing employees on termination issues are involved in protected activity under Chapter 41.56 RCW. For the same reasons stated in relation to paragraph 8, above, no cause of action is stated here.[4]

Interpretation of Chief's Letter

Paragraphs 12, 13, and 14 of the amended complaint attempt to interpret the chief's letter:

* Paragraph 12 alleges that comments regarding "recruiting practices" in the chief's letter referred to activities of Phillips and Flaherty;

* Paragraph 13 alleges that the chief's use of "tormenting" referred to activities of Phillips and Lyons;

* Paragraph 14 alleges that the chief addressed his letters to Phillips as president of the local union, and through him to the union's executive board.

The fundamental problem remains that there is nothing which takes this case outside the realm of employer/union dialogue. Union

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[3] Evidence that a bargaining unit employee has and exercises authority as a "supervisor" could be a basis for a unit clarification petition to have that individual (and others similarly situated) removed from the bargaining unit to avoid potential for conflicts of interest within the unit. See, City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). If the union meant to allege that Anderson's role or conduct was an unfair labor practice, that is not made clear.

[4] Conduct is reviewed on a case-by-case basis. See, Seattle School District, Decision 5237 (EDUC, 1995).

officials are expected to be cognizant of the separation between their roles as union officials and as bargaining unit employees.[5] Pierce County Fire District 9, Decision 3334 (PECB, 1989) describes the limits on the protection accorded to union officials when acting in that role. Absent any suggestion of a threat made against individual employees, these conclusionary allegations do not state a cause of action.

Paragraph 15 alleges the union representatives acted "reasonably" in an effort to advance the union's interests. Even if true, that does not state a cause of action. The unfenced arena of "union interests" is not contiguous with the rights secured by Chapters 41.56 and 41.58 RCW, which protect the interests of the public and the rights of public employees. RCW 41.56.010; 41.58.005(1). Nothing in the collective bargaining statutes guarantee protection of a labor organization's political or business interests.[6]

An employee makes out a prima facie case under Chapter 41.56 RCW upon a showing that he or she has been deprived of some ascertain-

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[5] As noted by the Examiner in Lewis County, Decision 4691 (PECB, 1994):

> No one can contend that the history of unions and union organizing drives in America is a pleasant, artistic, sublime or inspirational journey. Rather, such events have often been loud and surly, and their history is replete with violence, angry words, and enmities that destroy friendships ...."

Put another way, one who steps forward to accept office as a union official should be mindful of the advice of former President Harry Truman, to the effect: "If you can't take the heat, stay out of the kitchen."

[6] Castle Rock School District, Decision 4722-B (EDUC, 1995) presents an example of a union faced with a difficult choice. When it declined to represent an individual employee in order to avoid confronting a problem which threatened its institutional interests, the union was successfully challenged by the individual employee. A house of cards then fell down around it.

able right because of union animus,[7] but no such facts are alleged here. The language of the chief's letter does not support an inference that Phillips (or any other union official) **reasonably** perceived the chief's letter as a threat of reprisal or force or a promise of benefit directed at their individual employment relationship(s) with the employer.

Paragraph 16 alleges that fire fighters in the bargaining unit could "reasonably perceive Chief Fraijo's letter of February 6 ... as a threat of reprisal associated with their protected union activity ...." There is, however, no allegation that the chief disseminated his letter to bargaining unit members generally. Thus, the only way that the letter would have been made known to rank-and-file employees was by the union disseminating the information outside of the direct employer/union relationship in which it was written. The union has not alleged any **employer action** which could be reasonably be perceived by the rank-and-file employees as threatening.

Paragraphs 17 through 23 of the amended complaint detail an episode where the chief criticized the union leadership for the union's opposition to the hiring of Ms. Leslie Huntington as EMS coordinator. On close examination of the chief's February 29 letter, which is attached to the complaint, it appears to actually be the employer's response to a grievance protesting removal of the EMS coordinator position from the bargaining unit.[8] This contractual-

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[7] Asotin County Housing Authority, Decision 2471-A (PECB, 1987).

[8] The union could have filed a unit clarification petition under Chapter 391-35 WAC, if there was any controversy about the bargaining unit status of the EMS coordinator. There is no mention of such a filing in this complaint. Nor does the union state what it would do if it were to win the grievance in arbitration, since the Public Employment Relations Commission does not defer to the opinions of arbitrators on unit determination issues. See, Seattle School District, Decision 3979 (PECB, 1992).

ly-required communication was unsolicited, and it relates directly to the bargaining relationship between the employer and union. The union's complaint does not deny that it protested the hiring of Huntington, although it denies acting with a discriminatory motive. Whether the chief's claim of discrimination is correct, or whether the union has ever been discriminatory, is not the point. The employer and the chief are ultimately responsible for hiring decisions under Chapter 49.60 RCW and other laws prohibiting discrimination, even if local union representatives participate in the hiring process. Taken together, paragraphs 17 through 23 only point to a vague possibility that some bargaining unit personnel might be deterred from standing for election to union office because of criticism that they might receive if they disagree with management officials. Apart from the remote nature of the theory, the reasonability of such a proposition is defeated by the protection accorded to employees' individual employment under RCW 41.56.140(1). City of Bremerton, Decision 4738 (PECB, 1994).

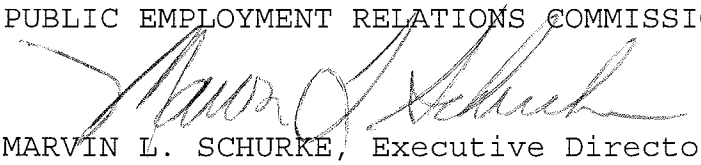
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Dated at Olympia, Washington, this 18th day of September, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.