

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHARLES WICKLANDER,	)	
	)	CASE 10826-U-93-2515
Complainant,	)	
	)	
vs.	)	DECISION 4860 - PECB
	)	
CITY OF PASCO,	)	
	)	
Respondent.	)	PARTIAL ORDER OF DISMISSAL
	)	
	)	

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On December 9, 1993, Charles Wicklander filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Pasco had engaged in a number of illegal actions against him arising out of a verbal confrontation involving Wicklander's acting foreman. The complaint was the subject of a preliminary ruling letter issued on May 2, 1994.<sup>1</sup>

The preliminary ruling letter noted several problems with the complaint as filed.

\* Paragraphs 1 through 6 of the complaint appeared to be background to the allegations which followed, rather than being separate allegations in themselves.

\* Paragraph 8 noted that Wicklander received a copy of a letter of reprimand which was placed in his personnel file. The allegation was not found to state a cause of action, absent any facts tying the reprimand to Wicklander's having engaged in protected activity. This paragraph goes on to note that, sometime

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<sup>1</sup> 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.

thereafter, the union changed its normal methodology of selecting a negotiating committee, with the result that Wicklander was the only union steward who was not selected for the bargaining team. It was noted that no cause of action existed against the employer with respect to this result of internal union affairs.

\* Paragraph 9 alleged that Wicklander's union representative had failed to represent him. The preliminary ruling letter noted that this paragraph contained no material which would state a cause of action against the employer.

\* Paragraph 10 alleged that the employer had forced grievants and stewards to attend grievance hearings on their own time, in retaliation for their having filed grievances, and that the employer and the union acted in collusion to prevent the filing of grievances. This allegation was insufficiently detailed to state a cause of action, and it was noted that the preliminary ruling process does not permit the Executive Director to make inferences as to a party's conduct. It was further noted that components of the allegation appeared to be contract violations, which would be for an arbitrator to determine.

\* Paragraph 11 alleged that the employer would not pay for Wicklander to attend certain training programs. The preliminary ruling letter noted that this paragraph lacked sufficient detail for a determination to be made that a cause of action existed.

\* Paragraph 12 claimed that the union informed Wicklander that the employer and the union were unable to determine what training might be appropriate for street division personnel, thus violating the collective bargaining agreement. It was noted that this paragraph was not sufficiently detailed for a determination to be made that the parties had engaged in collusion against Wicklander. Further, it appeared that this paragraph might involve a contract interpretation which would be for an arbitrator to determine.

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 with respect to any allegations found not to state a

cause of action, or face dismissal of those allegations. Nothing further has been heard or received from the complainant with respect to such allegations.

NOW, THEREFORE, it is

ORDERED

1. The allegations contained in Paragraphs 1 through 6, 8, 9, 10, 11, and 12 are hereby dismissed for failure to state a cause of action.
2. Paragraph 7 of the complaint, which alleges that the employer interrogated certain employees as to Wicklander's status as a union steward during the course of a June 23, 1993 meeting, is found to state a cause of action for employer interference with internal union affairs, and will be referred to an Examiner in due course.

The Commission recently directed that answers be required at an early stage of unfair labor practice cases, and the Executive Director is designated as Examiner for that purpose. The case will be reviewed after the answer is filed, to evaluate the propriety or efficiency of a settlement conference under WAC 391-45-260, deferral to arbitration under City of Yakima, Decision 3564-A (PECB, 1991), priority processing, or other special handling.

PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

**File and serve its answer to the allegations of paragraph 2 of this order within 21 days following the date of this letter.**

Except for good cause shown, a failure to file an answer within the time specified, or the failure of an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

An answer filed by a respondent shall:

1. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.
2. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.
3. Assert any other affirmative defenses that are claimed to exist in the matter.

The original answer and three copies shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

DATED at Olympia, Washington, on the 30th day of September, 1994.

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.