City of Seattle, Decision 5852 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANDREW APOSTOLIS, Complainant,	)	CASE 12854-U-96-3096
vs.	)	DECISION 5852 - PECB
CITY OF SEATTLE, Respondent.	)	ORDER OF PARTIAL DISMISSAL

On December 3, 1996, Andrew Apostolis filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had interfered with his rights under Chapter 41.56 RCW. Specifically, the complaint alleged that the employer discharged him because he advocated excluding crew chiefs from his bargaining unit and because he objected to unfair discipline.

In a deficiency notice issued on January 21, 1997, pursuant to WAC 391-45-110,[1] Apostolis was advised of several problems with his complaint and was given a period of 14 days in which to file and

[1] At this 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.

serve an amended complaint. Apostolis filed a timely amendment on February 4, 1997, and that amended complaint is now before the Executive Director for a preliminary ruling under WAC 391-45-110. Some difficulties still persist.

Paragraph A of the statement of facts alleges that Apostolis was denied union representation during questioning over a possible disciplinary action on December 22, 1995. The time has long passed to state a cause of action for this event,[2] so this information can only be taken as background to other allegations.

Paragraphs B, C, D, and E concern statements made by Apostolis in meetings of Public Service & Industrial, Local 1239 that were held between February 20 and July 16, 1996. Apostolis objected to certain actions of crew chiefs, and suggested their positions should be excluded from the bargaining unit. The deficiency called attention to the absence of any facts from which it could be concluded that the employer was aware of those statements. The amended complaint does not contain any such facts, but asserts that management knowledge of those statements can be inferred because the Seattle Center is a "small plant". Employer knowledge of union activities has been inferred in cases involving small workforces. City of Winlock, Decision 4784-A (PECB, 1995)[unit of eight employees]; Kitsap County Fire Protection District 7, Decision 3610 (PECB, 1990)[unit of 15 employees]; City of Seattle, Decision 3066 (PECB, 1988)[unit of about 18 employees]; Asotin County Housing

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[2] The Legislature has imposed a six month statute of limitations on the Commission's unfair labor practice jurisdiction. RCW 41.56.160(1).

Authority, Decision 2471 (PECB, 1986)[unit of three employees]. This complaint alleges, however, that the bargaining unit comprises "about 800" employees. A bargaining unit of that large size does not qualify for application of the "small plant doctrine" as a substitute for actual employer knowledge of union activities. Without a factual basis to suggest employer knowledge, paragraphs B, D, and E fail to state a cause of action.

Paragraph C also alleges that Apostolis was "written up" on May 17 and July 13, 1996, because he insisted on union representation during interrogations. This complaint is untimely as to the incident which is alleged to have occurred on May 17, 1996, but may state a cause of action as to the incident of July 13, 1996. The term "written up" is taken to mean some form of disciplinary action imposed by an employer official. If that was done in reprisal for the employee exercising his right under RCW 41.56.040 to insist on union representation during an investigatory interview, a violation of RCW 41.56.140(1) could be found.

Paragraph F describes unsuccessful efforts by Apostolis to have the earlier discipline removed from his record. The facts are insufficient to state a cause of action, and this material is taken as background information only.

Paragraph G alleges that Apostolis objected to what he thought was unfair discipline by crew chiefs upon bargaining unit members. This is alleged to have involved informal grievance sessions, a brown bag lunch, and a meeting with a supervisor, all occurring between July and September, 1996. Although the deficiency notice

informed Apostolis the original complaint lacked names of employer officials participating in these meetings and facts relating these events to the discharge, the amended complaint fails to correct these problems. Apostolis alleges that he notified a named individual of the alleged unfair treatment at a staff meeting, but only alleges that individual was "a supervisor". Since supervisors are themselves employees within the coverage of Chapter 41.56 RCW,[3] identifying an individual as a supervisor is not sufficient to base an inference that the person was acting as an employer official. Nor has Apostolis remedied the absence of factual details that permit the Executive Director to conclude the employer was (or would be) upset by Apostolis' criticism of crew chiefs' actions. The Executive Director must act on the basis of what is contained within the four corners of a statement of facts, and is not at liberty to fill in gaps or make leaps of logic. It is not possible to conclude from the allegations of paragraph G that a cause of action exists.

NOW, THEREFORE, it is

ORDERED

1. The allegation in Paragraph C of the amended complaint that Apostolis was disciplined in reprisal for his insistence upon union representation in an investigatory interview is referred

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[3] Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

to Examiner Pamela G. Bradburn for further proceedings under Chapter 391-45 WAC.

2. Except as provided in paragraph 1 of this order, all of the allegations of the complaint filed in the above-captioned matter are DISMISSED as failing to state a cause of action.

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

File and serve its answer to the complaint within 21 days following the date of this letter.

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.

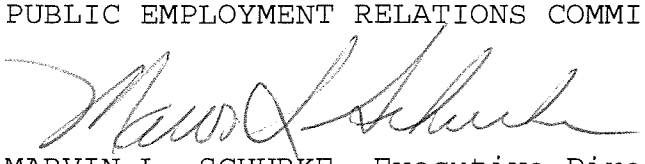
The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal

representative of the person or organization that filed the complaint.

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.

Issued at Olympia, Washington, on the 27th day of February, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.