STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 452, Complainant, vs. CITY OF VANCOUVER, Respondent.	CASE 22842-U-09-5830 DECISION 10622 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

Captains and Firefighters

On November 9, 2009, the International Association of Fire Fighters, Local 452 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Vancouver (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on November 12, 2009, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning domination or assistance of a union and finds a cause of action for the interference and refusal to bargain allegations of the complaint. The employer must file and serve its answer to the allegations within 21 days following the date of this Decision.

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[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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), and refusal to bargain in violation of RCW 41.56.140(4), by (a) its unilateral change in implementing a furlough day program, without providing an opportunity for bargaining, and (b) circumventing the union through direct dealing with captains and firefighters represented by the union, in giving notice to and negotiating with bargaining unit members about the furlough day program, before presenting the notice to the union and without participation by the union.

The deficiency notice pointed out that the allegations of the complaint concerning domination or assistance of a union are defective.

The union alleges employer domination or assistance of a union. The test for a cause of action for a domination or assistance violation is whether the complainant provides facts showing that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a company union. A cause of action for this violation is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test's second clause; that is, whether an employer has attempted to create, fund, or control a company union. *See Washington State Patrol,* Decision 2900 (PECB, 1988). Although the Commission has issued few decisions on this issue, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. A few examples of such assistance are: allowing the free use of employer buildings and resources for union business, aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The term "domination" concerns an employer's involvement in the internal affairs or finances of a union, or its attempt to create, fund, or control a company union, and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer's actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees; however, those actions are distinct from interference, discrimination, and refusal to bargain violations. A union alleging that an employer is interfering with, discriminating against, or refusing to bargain with the union should file complaints based upon those allegations. A union should not file a complaint alleging employer domination or assistance of a union unless the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign.[2]

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain allegations of the complaint state a cause of action, summarized as follows:

   Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by:

   a. its unilateral change in implementing a furlough day program, without providing an opportunity for bargaining, and

   b. circumventing the union through direct dealing with captains and firefighters represented by the union, in giving notice to and negotiating with bargaining unit members about the furlough day

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2 This is not intended to be an exhaustive list. Parties should consult Commission precedent or the Commission staff manual for a more comprehensive view of this subject. (See the Commission's web site, at www.perc.wa.gov.)

program, before presenting the notice to the union and without participation by the union.

The allegations of the complaint concerning interference and refusal to bargain will be the subject of further proceedings under Chapter 391-45 WAC. The cause of action for circumvention of the union precludes deferral to arbitration. WAC 10-08-085 provides that multiple adjudicative proceedings involving common issues or parties may be consolidated. Cases 22842-U-09-5830 and 22845-U-09-5831 are consolidated for further proceedings.

The City of Vancouver shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

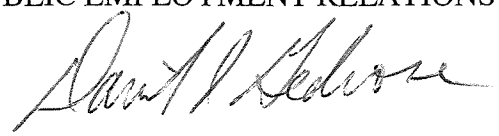
b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file 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.

2. The allegations of the complaint concerning employer domination or assistance of a union in violation of RCW 41.56.140(2) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14th day of December, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.