

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT T. KINNUNE,

Complainant,

vs.

SPOKANE COUNTY,

Respondent.

CASE 22629-U-09-5789

DECISION 10537 - PECB

ORDER OF DISMISSAL

On August 7, 2009, Robert T. Kinnune (Kinnune) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Spokane County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 11, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Kinnune was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. Kinnune requested and was granted a one week extension to file an amended complaint.

On September 8, 2009, Kinnune filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and domination or assistance of a union in violation of RCW 41.56.140(2), by its actions toward Kinnune.

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.

The deficiency notice pointed out the defects to the complaint. One, WAC 391-45-050(2) requires that each complaint charging unfair labor practices shall contain, in separate numbered paragraphs "clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences;" WAC 391-45-050(3) requires a statement of the remedy sought by the complainant. The complaint is written in a narrative format. It is not clear if it is discussing one or more meetings. The signature lines indicate a termination was involved, but the body of the complaint does not. There is no remedy request. The complaint does not conform to the requirements of WAC 391-45-050.

Two, the statement attached to the complaint refers to a *Loudermill* letter and implies a violation of Kinnune's *Loudermill* rights. The Commission has declined to extend the collective bargaining process and its unfair labor practice procedures to enforce the constitutional "due process" rights on which *Loudermill* is based. The Commission has jurisdiction involving investigatory interviews of union members (*Weingarten* rights), but the statement does not make clear the nature of the meeting of March 2, 2009.

Three, the complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2); however, none of the facts alleged in the complaint suggest 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.

Four, it is an unfair labor practice under RCW 41.56.140(1) for employers to discriminate against employees in reprisal for union activities protected under Chapter 41.56 RCW. Termination of employment is a form of discrimination. However, the complaint does not provide information on Kinnune's termination and its relation to the March 2 meeting. While Kinnune alleges union activities and employer retaliation for his union activities, both the form of the complaint and the lack of clarity preclude a cause of action.

Amended Complaint

Kinnune requests that he be assigned “competent representation.” The Commission adjudicates disputes between parties and does not aid either complainants or respondents in the presentation of their respective cases. Kinnune is responsible for the presentation of his case and must either retain his own counsel or act pro se.

Kinnune did not check the boxes on the amended complaint form for employer interference, discrimination, or domination or assistance of a union; however, the amended statement of facts continues to allege interference and domination or assistance of a union. As noted below, the amended complaint withdraws the discrimination claim.

Regarding the first deficiency, Kinnune clarifies that the amended complaint concerns one meeting on March 2, 2009. However, the amended complaint does not include a remedy request.

Regarding the second deficiency, the amended complaint does identify the March 2 meeting as a *Loudermill* hearing and not an investigative proceeding that would have triggered protections under *Weingarten*. *Weingarten* rights pertain only to investigatory interviews, whereas here the employer had already decided on disciplinary action. The Commission does not have jurisdiction concerning this claim.

Regarding the third deficiency, Kinnune’s allegations that the employer took adverse action against him as a union officer are not sufficient to indicate a cause of action for the employer controlling a company union.

Regarding the fourth deficiency, Kinnune states that he intends to file a separate unfair labor practice complaint concerning his termination. This statement effectively withdraws the discrimination claim in this case.

Kinnune checked the boxes on the amended complaint form for employer refusal to bargain and “other” unfair labor practice. The duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by a union. Individual employees such as Kinnune do not have standing to process refusal to bargain allegations. Regarding “other” violations, the amended complaint does not specify the nature and statute of “other” alleged unfair labor practices. The amended complaint does not state a cause of action for the allegations concerning refusal to bargain or “other” violations.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 22629-U-09-5789 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 16th day of September, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ ROBBRE DUFFIELD

CASE NUMBER: 22629-U-09-05789 FILED: 08/07/2009 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: COURT SUPPORT
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