

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION,
LOCAL 1599

Complainant,

vs.

BEN FRANKLIN TRANSIT,

Respondent.

CASE 23390-U-10-5956

DECISION 10861 - PECB

ORDER OF DISMISSAL

On July 22, 2010, the Amalgamated Transit Union, Local 1599 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Ben Franklin Transit (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 29, 2010, indicated that it was not possible to conclude that a cause of action existed at that time for 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. On August 9, the union filed a brief statement in reply to the deficiency notice. The statement did not conform to the requirements of WAC 391-45-050 and did not constitute an amended complaint under WAC 391-45-070. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1), by denial of Robert Islias' (Islias) right to union representation in a meeting with the employer.

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(5)(c)(ii) requires a complaint to include a copy of a current or the most recent collective bargaining agreement, but no contract was attached to the complaint.

Two, it is an unfair labor practice in violation of RCW 41.56.140(1) for an employer to deny union representation to an employee in connection with an investigatory interview (*Weingarten* right). However, the statement of facts does not identify the nature of the meeting between the employer and Islias.

Response to the Deficiency Notice

On August 9, 2010, the union did provide a copy of the collective bargaining agreement. As of July 30, 2010, the union no longer represents the employees of this bargaining unit. *Ben Franklin Transit*, Decision 10816 (PECB, 2010). Because the union did not file a valid amended complaint, it is not necessary to discuss the issue of whether the union would have standing to pursue an unfair labor practice proceeding for a former bargaining unit member. Further, the statement provided by the union does not show that the meeting between the employer and Islias was intended to be or became an investigatory interview.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 23390-U-10-5956 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 15th day of September, 2010.

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.