

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOSE L. NUNEZ,

Complainant,

vs.

CITY OF PASCO,

Respondent.

CASE 23756-U-11-6060

DECISION 11017 - PECB

ORDER OF DISMISSAL

On January 24, 2011, Jose L. Nunez (Nunez) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Pasco (employer) as respondent. The complaint was docketed by the Commission as Case 23756-U-11-6060. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on February 10, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Nunez was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint.

On February 25, 2011, Nunez filed a rebuttal to the deficiency notice. The rebuttal was apparently intended to serve as 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 concerned: Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1); domination or assistance of a union in violation

---

<sup>1</sup> 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.

of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)]; and discrimination for filing charges or giving testimony before the Commission in violation of RCW 41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its actions toward Nunez.

The deficiency notice pointed out the defects to the complaint.

One, RCW 41.56.160(1) applies to the filing of unfair labor practice complaints.

The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

Nunez filed his complaint on January 24, 2011. The Commission has jurisdiction to remedy only those allegations of the complaint occurring on or after July 24, 2010. The claims occurring after that date as set forth in the statement of facts are termination of Nunez's employment, and following his termination: delay in his deferred compensation payout, denial of his unemployment compensation, denial of his ability to purchase a firearm, denial by the union president of Nunez's ability to attend a union meeting, and the employer stating it would arrest him if he attended the union meeting. Allegations of the complaint occurring prior to July 24 may be considered only as background information.

Two, the name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions. Nunez alleged that racial discrimination was a motivation for the employer's actions. The Commission has no jurisdiction over claims of race-based discrimination. Nunez must seek relief through human rights agencies or the courts.

Three, Nunez stated that he was a union officer between 2000 and 2005, and that he was instrumental in the union's filing an unfair labor practice complaint against the employer, which was filed in 2004 and resolved in the union's favor in 2009. Nunez stated that he was terminated on August 17, 2010. The statement of facts indicated that the events directly leading up to Nunez's termination began in May 2010; however, the statement of facts did not include evidence of Nunez' union activities after 2005, and specifically from May through August 2010. The statement of facts did not indicate employer interference and discrimination against Nunez as a result of recent union activities. His earlier union activities are too remote to indicate a nexus between union activities in 2005 and his termination in 2010.

Four, Nunez claimed employer discrimination for filing charges or giving testimony before the Commission in violation of RCW 41.56.140(3). A cause of action for this violation will be given only where the facts show that a complainant previously has filed an unfair labor practice complaint with, or given testimony before, the Commission. The claim does not apply to the filing of union grievances, No Contact/Restraining Orders, or charges filed with any other agency. There was no indication that Nunez has testified before the Commission. Nunez claimed several times that the employer discriminated against him for filing a No Contact Order with the court against another police officer. Nunez did not allege that the employer retaliated against him as a result of the 2009 unfair labor practice ruling and did not provide any facts indicating retaliation based on that decision.

Five, Nunez claimed that following his termination his deferred compensation payments were delayed, and that the employer also denied his claim for unemployment compensation. Nunez presented no facts indicating that those actions were based on reprisals for his union activities.

Six, Nunez claimed that the employer prevented him from purchasing a firearm. The Commission has no jurisdiction in this area; Nunez must seek relief through the courts.

Seven, Nunez claimed employer domination or assistance of a union in violation of RCW 41.56.140(2). In order to state a cause of action, the statement of facts must indicate that the

employer has intentionally involved itself in the internal affairs or finances of the union, or that the employer has intentionally attempted to create, fund, or control a company union. Nunez's claims in this regard appear to relate in part to the union denying him the ability to attend a union meeting on September 23, 2010, and the union's decision not to pursue a grievance over his termination. He presented no evidence that the employer influenced the union's actions; in fact, Nunez stated that a union officer told him he could not attend the meeting because Nunez was no longer a bargaining unit member, and stated that a union committee voted not to pursue the grievance.

Nunez made general claims that appear to suggest that the employer's domination of the union is manifested through the creation and control of a company union. A company union violation could be found where an employer has restricted its employees' rights to select the bargaining representative of their choice. The Pasco Police Officers' Association (union) represents the non-supervisory commissioned officers in the Pasco Police Department. Nunez has provided no facts indicating that bargaining unit members have not freely selected their bargaining representative. The union has not filed a claim alleging that the employer has interfered with its independence, nor have any bargaining unit members filed such claims. Nunez appeared to assert that the city manager and police department management have created a company union through such methods as granting bargaining unit members certain benefits, including giving promotions through unfair tactics, disparately enforcing discipline, and even disparately enforcing criminal and civil law, with all the aforementioned actions based upon loyalty to management. Nunez's unsubstantiated views on the employer's motives involving promotions and other benefits for bargaining unit members, and the union's reasons for its actions regarding the meeting and grievance, did not provide sufficient information to state a cause of action for employer domination of the Pasco Police Officers' Association as a company union.

Eight, Nunez claimed that he heard that the employer intended to arrest him if he attended the union meeting. (Nunez did not attend the meeting.) Nunez claimed that the employer's alleged threat to arrest him was evidence of employer domination of the union. However, not only was

the allegation unsubstantiated, but as noted above, Nunez was told by the union that he could not attend. This allegation did not indicate employer domination of the union.

Nine, WAC 391-45-050(2) requires complaints to contain “Clear and concise statements of facts constituting unfair labor practices, including times, dates, places, and participants in occurrences.” The statement of facts was not clear and concise, and at its conclusion Nunez provided the names and brief histories of over fifty persons that he claimed have benefited from or been the victim of the employer’s alleged disparate enforcement of criminal and civil law, including collective bargaining laws, specifically domination of the union. The list included bargaining unit members, former bargaining unit members, other employees and former employees of the City of Pasco, and private citizens. Nunez generally identified the racial or ethnic backgrounds of those named. The purpose of this list and its contents was and remains unclear, including the racial and ethnic background references. The Commission’s jurisdiction is restricted to the enforcement of collective bargaining statutes in the State of Washington. The Commission has no jurisdiction over any other local, state, or federal civil or criminal laws. Nunez was—and is—solely responsible for the information given by him concerning the individuals named. The aforesaid information was not solicited by the Commission, and the Commission made no comment or ruling on the information, other than to find that it was and continues to be irrelevant to the unfair labor practice complaint filed by Nunez.

#### Rebuttal/Amended Complaint

Nunez’s rebuttal claims that the employer violated its collective bargaining agreement (CBA) with the union, including violating the CBA over his termination. However, Nunez does not have standing to bring that claim: Only the union has standing to do so. In addition, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. Claims regarding violations of collective bargaining agreements must be dealt with through arbitration or the courts.

The remainder of the rebuttal restates the claims of the complaint. The rebuttal substantially consists of argument, does not provide additional facts to support Nunez's claims, and does not cure the defects to the complaint. Nunez does not provide any evidence of his union activity after 2005. Although not alleged or substantiated in the complaint, the rebuttal states that his termination was in retaliation for filing an unfair labor practice complaint in 2004, with the final decision rendered in the union's favor in 2009. The action Nunez refers to is Case 18431-U-04-4696. There, the examiner found an unfair labor practice violation concerning compensatory time. The employer appealed the examiner's decision to the Commission; the Commission issued its decision on February 13, 2008, affirming the examiner. *City of Pasco*, Decision 9181-A (2008). The case was closed on February 20, 2009, after the employer completed compliance with the terms of the order.

Here, the complaint stated that the employer's actions against Nunez began in May 2010. The rebuttal states that the employer, "when given 'an opportunity' fired [Nunez] in retaliation" for the union's prevailing in the unfair labor practice proceeding. Nunez states that in 2004 the police chief challenged Nunez when Nunez confronted him over the compensatory time issue, and that Nunez then had the union file the unfair labor practice complaint. Nunez also claims that the delay in his deferred compensation, and the employer preventing him from purchasing a firearm, were also in retaliation for the unfair labor practice complaint (the rebuttal does not mention the claim regarding denial of unemployment compensation). The rebuttal re-alleges employer retaliation by denying Nunez the "right" to attend the September 23 union meeting as a citizen of Pasco and a union member, although the rebuttal does not mention the alleged threat to arrest him.

However, the rebuttal offers no evidence of any employer actions against Nunez between 2004 and May of 2010. The complaint described in detail the employer's 2010 actions against Nunez as a result of Nunez filing a No Contact Order, as well as various events related to the No Contact Order. The complaint also stated that the union "dropped my grievance over my protest." Nunez filed a separate complaint against the union alleging, among other claims, that the union breached its duty of fair representation in specifically deciding not to file a grievance on his behalf over the termination. Case 23757-U-11-6061. Nunez now apparently requests the agency to infer that the union's prevailing in an unfair labor practice complaint, filed in 2004 and closed in

2009, was a substantial motivating factor for his termination, delay of his deferred compensation, and the employer's preventing him from purchasing a firearm. However, in the absence of any supporting facts, such inferences cannot reasonably be made and do not support a cause of action. Neither the complaint nor the rebuttal offer any evidence supporting Nunez's claim that the employer's motives were pretextual. The absence of a union challenge to Nunez's termination lends support to that conclusion. Regarding the September 23 union meeting, the union told Nunez he could not attend the meeting because he was no longer a union member, and private citizens do not have the "right" to attend union meetings. Nunez's conclusory statements in the rebuttal do not state causes of action for employer interference and discrimination in violation of RCW 41.56.140(1), or discrimination for filing charges in violation of RCW 41.56.140(3) [and derivative interference in violation of RCW 41.56.140(1)].

Finally, the rebuttal repeats the allegation concerning employer domination of the union, but as in the complaint, the rebuttal offers no corroboration for Nunez's conclusory claims, and thus fails to state a cause of action for employer domination of the union in violation of RCW 41.56.140(2) [and derivative interference in violation of RCW 41.56.140(1)].

NOW, THEREFORE, it is

ORDERED

The allegations of the amended complaint in Case 23756-U-11-6060 are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of March, 2011.

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

112 HENRY STREET NE SUITE 300  
PO BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 03/08/2011

The attached document identified as: **DECISION 11017 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS  
COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 23756-U-11-06060 FILED: 01/24/2011 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: LAW ENFORCE  
DETAILS: -  
COMMENTS:

EMPLOYER: CITY OF PASCO  
ATTN: MATT WATKINS  
525 N 3RD AVE  
PO BOX 293  
PASCO, WA 99301-0293  
Ph1: 509-545-3404

REP BY: OTTO KLEIN III  
SUMMIT LAW GROUP  
315 5TH AVE S STE 1000  
SEATTLE, WA 98104-2679  
Ph1: 206-676-7034 Ph2: 206-281-9881

PARTY 2: JOSE L NUNEZ  
ATTN:  
123 CAMARGO LANE  
PASCO, WA 99301  
Ph1: 509-727-6585

PARTY 3: PASCO POLICE OFFICERS ASSN  
ATTN: DEAN PERRY  
PO BOX 822  
PASCO, WA 99301  
Ph1: 509-545-3421