STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 2170, Complainant, vs. CITY OF RENTON, Respondent.	CASE 25008-U-12-6396 DECISION 11453 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On July 26, 2012, the Washington State Council of County and City Employees, Local 2170 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Renton (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on August 2, 2012, indicated that it was not possible to conclude that a cause of action existed at that time for certain 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 complaint.

On August 20, 2012, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the defective allegations of the amended complaint for failure to state a cause of action, and finds a cause of action for allegations set forth in the preliminary ruling below. The employer must file and serve its answer to the amended complaint 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), by threats of reprisal or force or promises of benefit made to Bob Cavanaugh (Cavanaugh) in connection with his union activities; and employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)], by interference with internal union affairs.

The allegations of the complaint concerning independent interference state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out the defects to the complaint concerning the domination or assistance claim.

It is an unfair labor practice in violation of RCW 41.56.140(2) for an employer to interfere with the internal affairs or finances of a union, or attempt to create, fund, or control a company union. The statement of facts alleges that the employer interfered with Cavanaugh's employee rights, but does not provide facts indicating that the employer interfered with internal union affairs or finances, or attempted to create, fund, or control a company union. The union's allegation that the employer attempted to restrict or dictate arguments by the union and grievant during grievance meetings applies to the interference claim, but does not state a cause of action for interference with internal union affairs.

Amended Complaint

The amended complaint does not contain new facts showing that the employer interfered with internal union affairs or finances or attempted to create, fund, or control a company union. Rather, the union repeats at least six times the legal conclusion that the employer's actions were attempts to restrict or dictate the union's or grievant's rights or arguments during a grievance

meeting, and that those actions constituted not only interference in violation of RCW 41.56.140(1), but also domination or assistance of a union in violation of RCW 41.56.140(2).

No *Weingarten* violation

A cause of action for interference in violation of RCW 41.56.140(1) may be found where an employer allegedly interferes with an employee's union representation during an investigatory interview (*Weingarten* right). The amended complaint refers to a *Loudermill* hearing, but the Commission has no jurisdiction over *Loudermill* hearings. *City of Bellevue*, Decision 4324-A (PECB, 1994). The amended complaint does not refer to investigatory interviews, but only to grievance meetings; thus, Cavanaugh's *Weingarten* rights are not at issue here.

The amended complaint specifically alleges only interference in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2), by interference with internal union affairs. A cause of action exists for the allegations concerning employer interference with Cavanaugh's rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit in connection with his union activities. The remaining question is whether the same set of facts supports a cause of action for employer interference with internal union affairs. The union's repeated insistence that it does is not compelling evidence.

The amended complaint does not provide sufficient information to support a claim for employer interference with internal union affairs. Findings of violations for domination or assistance of a union have concerned such actions as: 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 or comments directed toward the union or union members, including alleged attempts to restrict or dictate arguments during grievance meetings. *See Washington State Patrol*, Decision 2900 (PECB, 1988); *North Thurston School District,* Decision 4765-B (EDUC, 1995); *City of Anacortes,* Decision 6863 (PECB, 1999).

NOW, THEREFORE, it is

ORDERED

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

> Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made to Bob Cavanaugh in connection with his union activities.

Those allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

The City of Renton 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 amended complaint, as set forth in Paragraph 1 of this Order, 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the amended complaint in Case 25008-U-12-6396 concerning employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)], by interference with internal union affairs, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of August, 2012.

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. An appeal will place the entire case on hold pending resolution of the appeal.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE QUFFIELD

CASE NUMBER:	25008-U-12-06396	FILED:	07/26/2012	FILED BY:	PARTY 2
DISPUTE:	ER INTERFERENCE				
BAR UNIT:	MIXED CLASSES				
DETAILS:	-				
COMMENTS:					

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