

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,

Employer

DARRELL MERKER,

Complainant,

vs.

WASHINGTON STATE COUNCIL OF  
COUNTY AND CITY EMPLOYEES,  
COUNCIL 2, LOCAL 21,

Respondent.

CASE 25039-U-12-6403

DECISION 11466 - PECB

ORDER OF DISMISSAL

On August 7, 2012, Darrell Merkel (Merkel) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Council of County and City Employees, Council 2, Local 21 (union) as respondent. The employer is not a party to this case. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on August 15, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. Merkel was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

Merkel has not filed any further information. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1), inducing the employer to commit an unfair labor practice in violation of RCW

<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.

41.56.150(2) [and if so, derivative interference in violation of RCW 41.56.150(1)], and refusal to bargain in violation of RCW 41.56.150(4) [and if so, derivative interference in violation of RCW 41.56.150(1)], by its actions toward Darrell Merkel (Merkel).

The deficiency notice pointed out the defects to the complaint.

First, WAC 391-45-050(2) (rule) requires complaints to contain clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences. The statement of facts does not fully conform to the rule, since it relies substantially on exhibits. References to exhibits do not provide sufficient information under the rule.

Second, RCW 41.56.160(1) provides for a six month statute of limitations for unfair labor practice complaints. The complaint was filed on August 7, 2012; thus, occurrences subject to remedy by the Commission must have taken place on or after February 7, 2012. Many of the allegations involve claims from 2011, and many of the claims within the relevant time period give dates referencing letters, but no dates on the underlying occurrences. The complaint appears to be untimely.

Third, the Public Employment Relations Commission does not assert jurisdiction to remedy contract disputes, including disputes arising out of grievances, and does not have jurisdiction over internal union disputes between union members and the union.

Finally, individual employees do not have standing to file refusal to bargain claims—only employers or unions may process such claims.

Individual employees have standing to file claims for interference and union inducement, but the complaint contains only allegations of breaches of the collective bargaining agreement, allegations of the union's failures in representation, including grievance representation, and allegations of impropriety in internal union matters. None of those claims state a cause of action. Even if the statement of facts conformed to the rule and was revised to include only timely allegations, the

Commission would not have jurisdiction and could not process Merkel's complaint. Merkel must seek remedies through internal union procedures or the courts.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 25039-U-12-6403 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 17th day of September, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written in a cursive style.

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  
MIKE SELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 09/17/2012

The attached document identified as: **DECISION 11466 - 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: 25039-U-12-06403 FILED: 08/07/2012 FILED BY: PARTY 2  
DISPUTE: UN MULTIPLE ULP  
BAR UNIT: WATER/SEWER  
DETAILS: -  
COMMENTS:

EMPLOYER: CITY OF SEATTLE  
ATTN: DAVID BRACILANO  
700 5TH AVE 55TH FL  
PO BOX 34028  
SEATTLE, WA 98124-4028  
Ph1: 206-684-7874 Ph2: 206-684-7999

PARTY 2: DARRELL MERKEL  
ATTN:  
11256 10TH AVE SO  
SEATTLE, WA 98168  
Ph1: 206-243-1483

PARTY 3: WSCCCE  
ATTN: CHRIS DUGOVICH  
PO BOX 750  
EVERETT, WA 98206-0750  
Ph1: 425-303-8818

REP BY: AUDREY EIDE  
WSCCCE  
PO BOX 750  
EVERETT, WA 98206-0750  
Ph1: 425-303-8818 Ph2: 800-775-6418