

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF BELLINGHAM,

Employer.

KIP DUNLAP,

Complainant,

vs.

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

Respondent.

CASE 24855-U-12-6343

DECISION 11422 - PECB

ORDER OF DISMISSAL

On June 6, 2012, Kip Dunlap (Dunlap) 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 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 12, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. Dunlap was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On June 27, 2012, Dunlap filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

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 allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1) and inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) [and if so, derivative interference in violation of RCW 41.56.140(1)], in relation to the ratification of a collective bargaining agreement.

The deficiency notice pointed out the defects to the complaint.

The complaint alleges that the union did not follow its constitution and procedures for contract ratification. Unions are private organizations and their constitutions and procedures constitute contracts with their members for the conduct of union affairs. The Commission has exceedingly limited jurisdiction concerning internal union affairs; disputes over those affairs must be resolved through internal union procedures or the courts. *Lake Washington School District*, Decision 6891 (PECB, 1999); *City of Bellingham*, Decision 6950 (PECB, 2000).

The complaint restricts itself to allegations concerning contract ratification and does not provide other information indicting union interference in violation of RCW 41.56.150(1), or inducing the employer to commit an unfair labor practice in violation of RCW 41.56.150(2). The Commission does not have jurisdiction.

Amended Complaint

Dunlap did not check the box on the amended complaint form for “union interference.” In any event, the amended complaint does not cure the defects to the complaint. The amended complaint appears to shift the unfair labor practice claims away from the contract ratification toward the union’s alleged actions against Dunlap. Dunlap states that he sent an e-mail to union members on the employer’s e-mail system concerning the contract ratification, including a charge that union leaders had violated the union constitution. Dunlap alleges that the evidence for union interference and inducing the employer to commit a violation against him is, in part, that the union president and business agent “apparently had discussions with the [employer] regarding Mr. Dunlap’s email and the violation of city email policy in an effort to have the employer take action against Mr. Dunlap.” An unsubstantiated claim does not state a cause of action. Furthermore, it is not clear—even if the allegations concerning “apparent” discussions were substantiated—that

the union's alleged discussions would constitute a request to the employer to commit a violation of RCW 41.56.150(2). Based upon the information supplied by Dunlap, there is no indication that his use of the employer's e-mail system was protected activity under Chapter 41.56 RCW.

The remaining aspect of the amended complaint is an allegation that the union president refused to act as Dunlap's union representative during a possible investigatory meeting between Dunlap and the employer on May 1, 2012. However, the amended complaint does not allege that Dunlap did not have representation, or that the union refused to provide Dunlap with any representation during the May 1 meeting. Dunlap also refers to a meeting with the employer of May 4, 2012, but does not make any allegations concerning union representation regarding that meeting. The amended complaint does not provide sufficient information to state a cause of action for union interference in violation of RCW 41.56.150(1).

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices Case 24855-U-12-6343 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 10th day of July, 2012.

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/ ROBBIE DUFFIELD

CASE NUMBER: 24855-U-12-06343 FILED: 06/06/2012 FILED BY: PARTY 2
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BAR UNIT: ALL EMPLOYEES
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