

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 46,

Complainant,

vs.

PORT OF SEATTLE,

Respondent.

CASE 25262-U-12-6467

DECISION 11593 - PECB

ORDER OF DISMISSAL

On November 1, 2012, the International Brotherhood of Electrical Workers, Local 46 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Port of Seattle (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on November 7, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

The union 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 employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made by employer

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<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.

official Dan Hytry (Hytry) to bargaining unit members and current and potential employees in connection with their union activities.

The deficiency notice pointed out the defect to the complaint. The complaint does not contain sufficient information to state a cause of action.

It is an unfair labor practice in violation of RCW 41.56.140(1) for an employer to make threats of reprisal or force or promises of benefit to employees in connection with those employees' union activities. The complaint alleges that on October 18, 2012, Hytry made comments concerning employees' union activities, "suggesting, that anyone who engaged in protected union activity should not be, or potentially would not be, employed by the Port." Whether Hytry's comments constituted interference is a question of fact to be decided through unfair labor practice proceedings. However, the statement of facts refers to the comments being allegedly directed to and affecting "bargaining unit members [electricians]," "anyone who engaged in protected union activity," "Union-represented workers . . . those two workers," "and other current and potential Port employees."

The union has standing to represent only the (apparently) two bargaining unit members who heard Hytry's comments, but those bargaining unit members are not identified as required by WAC 391-45-050(2), which mandates the identification of participants in occurrences. Should this case ultimately proceed to an unfair labor practice hearing, the two bargaining unit members would need to be named at that time, in order to testify, and must be named now, in order to state a cause of action.

The union does not have standing to represent "anyone who engaged in protected union activity" "and other current and potential Port employees." (Of course, no cause of action exists or could exist regarding "potential" employees.) Further, if the union intends to allege that Hytry's October 18 comments affected the entire bargaining unit represented by the union, rather than just the two bargaining unit members present at the meeting, then it must provide facts supporting that claim.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 25262-U-12-6467 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5<sup>th</sup> day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "David I. Gedrose".

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:  ROBBIE DUFFIELD

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