STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MOUNTLAKE TERRACE POLICE OFFICERS' GUILD, Complainant, vs. CITY OF MOUNTLAKE TERRACE, Respondent.	CASE 25304-U-12-6477 DECISION 11617 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On November 27, 2012, the Mountlake Terrace Police Officers' Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Mountlake Terrace (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on December 7, 2012, indicated that it was not possible to conclude that a cause of action existed at that time for some of the 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 defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for the allegations of the complaint set forth in the preliminary ruling below. The employer must file and serve its answer to the complaint within 21 days following the date of this Decision.

DISCUSSION

The deficiency notice dealt with the procedural history of the complaint and pointed out its defects.

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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.

Procedural history

This claim has been docketed as Case 25304-U-12-6477. The union originally included this claim in a motion to amend the complaint relative to Case 24665-U-12-6303. The latter case is currently in processing before Examiner Kristi Aravena (consolidated with Case 24669-U-12-6307). On November 27, 2012, Examiner Arevana denied the motion to amend. Under WAC 391-45-070(3), this claim is being processed as a separate case.

Case 25304-U-12-6477 includes the face page from the earlier filings in Case 24665-U-12-6303, as well as information in the statement of facts from those filings. In the present case, Paragraphs 1, 3, 4, 5, and 6 of the face page, and Paragraphs 1.58 through 1.84 and 2.16 through 2.19 of the statement of facts are relevant to the proceedings in Case 25304-U-12-6477 (hereinafter, complaint). Paragraphs 2.16 through 2.19 set forth the union's allegations concerning employer violations and substitute for Paragraph 2 of the face page. The employer need answer only the allegations contained in Paragraphs 1.58 through 1.84 and 2.16 through 2.19.

The allegations of the complaint concern employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by suspending Tim Krahn in reprisal for union activities protected by Chapter 41.56 RCW; employer discrimination in violation of RCW 41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)], by suspending Krahn in reprisal for his giving testimony before the Commission; 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 Eric Jones in connection with Jones' union activities; employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by its investigation of Jones in reprisal for union activities protected by Chapter 41.56 RCW; 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 Daniel MacKenzie in connection with MacKenzie's 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 unlawful interference with internal union affairs, in ordering MacKenzie to answer questions related to a conversation between MacKenzie and Jones that concerned union business.

Most of the allegations of the complaint state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission; however, it is not possible to conclude that a cause of action exists at this time for the allegations of the complaint claiming discrimination for the employer's investigation of Jones. That aspect of the complaint is defective.

Defects to the complaint

A cause of action for discrimination will be given if the statement of facts indicates that an employer has deprived an employee of ascertainable rights, benefits, or status, in reprisal for the employee's protected union activities. In the present case, causes of action for discrimination apply to the claim regarding Krahn because the union alleges that Krahn was suspended in reprisal for his union activities and for giving testimony in an unfair labor practice hearing. The union claims employer discrimination regarding Jones based upon the employer's investigation of Jones. However, there are no facts indicating that the investigation resulted in discipline or otherwise deprived Jones of ascertainable rights, benefits or status. Although the union states a cause of action for employer interference regarding the employer's alleged actions toward Jones, there is no cause of action for discrimination based upon the same alleged actions.

NOW, THEREFORE, it is

ORDERED

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

   [1] Employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by suspending Tim Krahn in reprisal for union activities protected by Chapter 41.56 RCW;

[2] Employer discrimination in violation of RCW 41.56.140(3) [and if so, derivative interference in violation of RCW 41.56.140(1)], by suspending Krahn in reprisal for his giving testimony before the Commission;

[3] 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 Eric Jones in connection with Jones' union activities;

[4] 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 Daniel MacKenzie in connection with MacKenzie's union activities; and

[5] 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 unlawful interference with internal union affairs, in ordering MacKenzie to answer questions related to a conversation between MacKenzie and Jones that concerned union business.

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

The City of Mountlake Terrace 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 complaint, 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 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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

2. The allegations of the complaint concerning employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by its investigation of Eric Jones in reprisal for union activities protected by Chapter 41.56. RCW, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of January, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	25304-U-12-06477	FILED:	11/27/2012	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	LAW ENFORCE				
DETAILS:	-				
COMMENTS:					

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