

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,	Employer.	
GREGORY SCHMIDT,	Complainant,	CASE 26497-U-14-6765
vs.		DECISION 12109 - PECB
SEATTLE POLICE MANAGEMENT ASSOCIATION,	Respondent.	ORDER OF DISMISSAL

On May 23, 2014, Gregory Schmidt (Schmidt) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Seattle Police Management Association (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 3, 2014, indicated that it was not possible to conclude that a cause of action existed at that time. Schmidt was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. Schmidt requested and was granted an extension of seven days to file an amended complaint.

On June 30, 2014, Schmidt filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended 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), and union inducement of the employer to commit an unfair labor practice in

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.

violation of RCW 41.56.150(2) [and derivative interference in violation of RCW 41.56.150(1)], by its actions toward Gregory Schmidt (Schmidt).

The deficiency notice pointed out the defects to the complaint. The employer is not a party to this complaint.

On April 24, 2013, Schmidt filed an unfair labor practice complaint against the union in Case 25660-U-13-6572. A preliminary ruling was issued, and the case was assigned to an examiner for further proceedings. On March 21, 2014, the union filed a motion for summary judgment. On April 23, 2014, Schmidt filed a proposed amended complaint in Case 25660-U-13-6572. On May 12, 2014, the examiner stated via e-mail that she intended to grant the union's summary judgment motion, but did not rule on the proposed amendment. On May 23, 2014, Schmidt filed a letter stating that he had intended to file his documents of April 23, 2014, as a new complaint, rather than as an amended complaint, and filed the same documents as a new complaint.

The complaint (present complaint) filed on May 23, 2014, was docketed as Case 26497-U-14-6765, and is the subject of this ruling. The proposed amendment to Case 25660-U-13-6572 is considered withdrawn. The causes of action in both cases are identical—alleged violations of RCW 41.56.150(1) and (2). Also, had Schmidt not withdrawn the proposed amendment, and had the examiner denied the amendment, it would have been processed as a separate case under the provisions of WAC 391-45-070(3). Thus, for administrative purposes, the outcome is the same: The proposed amendment/present complaint is being processed as a separate complaint.

The present complaint concerns testimony from a Public Safety Civil Service Commission (PSCSC) hearing for the City of Seattle, held on October 24 and 25, 2013. The present complaint makes reference to Case 25660-U-13-6572. That case provides facts concerning the basis for Schmidt's hearing before the PSCSC—his alleged reduction in rank in Spring 2012.

Unfair labor practice complaints must be filed within six months of the alleged violation. RCW 41.56.160(1). The Commission has held that the six month period begins when a complainant

knew or should have known of the alleged violation. *City of Bellevue*, Decision 9343-A (PECB, 2007). Regarding the reduction in rank, Schmidt knew of that alleged violation in the Spring of 2012, but did not file an unfair labor practice complaint within six months—any complaint should have been filed at least by the end of 2012. Schmidt's complaint in Case 25660-U-13-6572 applies to the six month period between October 24, 2012, and April 24, 2013; the statement of facts indicates Schmidt's knowledge of alleged violations during that period as well.

The present complaint concerns only the testimony at the October 2013 PSCSC hearing. Schmidt alleges that at the hearing he learned for the first time of certain facts that support his claims against the union, but knowledge of new information or alleged inconsistent statements is not the same as knowledge of alleged violations. As noted above, Schmidt knew of the alleged violations prior to October 2013. Testimony from the hearing that might relate back to events in the Spring of 2012, or between October 2012 and April 2013, would be relevant to an unfair labor practice proceeding only as possible supplementary evidence and/or for impeachment purposes. Standing alone, the testimonial evidence does not state a cause of action for unfair labor practice violations.

In addition, any claims regarding the events of Spring 2012 are untimely, and thus evidence from the PSCSC hearing would be irrelevant to the present complaint. Further, it is not apparent from the present complaint's statement of facts that the PSCSC hearing dealt with anything other than Schmidt's reduction in rank. There is no indication that the hearing concerned alleged violations between October 24, 2012, and April 24, 2013 (the time frame for Case 25660-U-13-6572). In any event, as with the Spring 2012 claims, the present complaint would have relevance only as supplementary information to the allegations in Case 25660-U-13-6572, but the examiner in that case intends to dismiss the complaint. Schmidt's allegations in Case 26497-U-14-6765 do not state a cause of action for violations of Chapter 41.56 RCW.

Amended Complaint

On June 20, 2014, Examiner Jamie Siegel granted summary judgment in favor of the union in Case 25660-U-13-6572, in *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014) (hereinafter, summary judgment). The facts in the present amended complaint,

Case 26497-U-14-6765, emanate from the same dispute between Schmidt and the union that has now been dismissed. The facts in the present amended complaint are dependent upon the allegations in Case 25660-U-13-6572 and do not form the basis for an independent cause of action. In the present amended complaint, Schmidt alleges that the PSCSC hearing transcript demonstrates that the union did not fairly represent him in his appeal before the PSCSC and contrasts the union's response to him with that given to union president Eric Sano, for whom the union filed and pursued a grievance over a promotional dispute. However, the summary judgment states that Schmidt elected not to file a grievance through the union, but went before the PSCSC. Thus, the present amended complaint does not concern alleged disparate treatment by the union over the filing of a grievance and is solely concerned with the contents of the PSCSC hearing transcript. The facts presented do not raise any issues that confer jurisdiction on the Public Employment Relation Commission and do not state a cause of action for unfair labor practices under Chapter 41.56 RCW.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 26497-U-14-6765 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 10th day of July, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This 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

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