

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANTHONY SLOWIK,

Complainant,

vs.

CITY OF OAK HARBOR,

Respondent.

CASE 27017-U-15-6894

DECISION 12337 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On February 13, 2015, Anthony Slowik (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Oak Harbor (employer) as respondent. The allegations of the complaint concern:

1. Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] by issuing a written warning to Anthony Slowik on August 15, 2014, in reprisal for union activities protected by Chapter 41.56 RCW, and by refusing to process a grievance filed by Slowik over the August 15, 2014, written reprimand in reprisal for union activities protected by Chapter 41.56 RCW.
2. Employer violations of the Collective Bargaining Agreement (CBA).
3. Employer denial of access to the grievance procedure for military personnel by counting Uniformed Services Employment and Reemployment Rights Act (USERRA) protected military leave as part of the "10 working day" limitation period for filing a grievance.

The complaint was reviewed under WAC 391-45-110,¹ and a notice of partial deficiency was issued on March 6, 2015. The notice explained that the first allegation concerning discrimination against Slowik in reprisal for his protected union activity states a cause of action. The notice also explained that it wasn't possible to conclude that a cause of action exists for the allegations concerning violations of the CBA or USERRA protected military leave. The Commission does

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.

not have jurisdiction over contract interpretation disputes or USERRA. The complainant was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective portions of the complaint. The complainant requested an extension of time to file an amended complaint and I granted an extension until April 17, 2015.

The complainant did not file an amended complaint but submitted a letter on April 17, 2015,² which I reviewed.

The complaint states a cause of action for:

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] by issuing a written warning to Anthony Slowik on August 15, 2014, in reprisal for union activities protected by Chapter 41.56 RCW, and by refusing to process a grievance filed by Slowik over the August 15, 2014, written reprimand in reprisal for union activities protected by Chapter 41.56 RCW.

The allegations concerning violations of the CBA, USERRA protected military leave, and employer refusal to bargain in violation of RCW 41.56.140(4) are dismissed for failure to state a cause of action.

The employer must file and serve its answer to the complaint within 21 days following the date of this decision.

DISCUSSION

Violations of CBA

The complainant's letter of April 17, 2015, repeatedly alleges violations of the parties' CBA. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). Allegations that the employer or the union violated a CBA are not matters that the

² The complainant's letter was submitted by e-mail and sent after close of business on April 17, 2015, and therefore was considered received on April 20, 2015.

Commission can address. Remedies for contract violations must be sought through the grievance and arbitration machinery within the contract or through the courts. Thus, the portions of the complaint and the complainant's subsequent letter alleging violations of the CBA by the employer do not state a cause of action with the Commission. *Lake Washington School District*, Decision 6312 (EDUC, 1998).

USERRA Military Leave

The Commission does not have jurisdiction over the Uniformed Services Employment and Reemployment Rights Act. The U.S. Department of Labor, Veterans' Employment and Training Service (DOL-VETS) provides assistance to persons having claims of violations under USERRA.

April 17, 2015, Letter in Response to Notice of Partial Deficiency

The complainant did not file an amended complaint but sent in a letter on April 17, 2015, in response to the Notice of Partial Deficiency. The letter raised additional arguments about the processing of Slowik's grievance. The complainant also made a new argument that the employer was refusing to bargain over discipline.

Only Unions and Employers Can File a Refusal to Bargain Unfair Labor Practice Case

The complainant alleges that the employer unilaterally changed a past practice by prohibiting employees from grieving a written warning. In support of his position, the complainant cites case law on discipline being a mandatory subject of bargaining.

Unilateral change is a type of refusal to bargain violation. Only exclusive bargaining representatives (unions) and employers may pursue refusal to bargain claims because they are the parties subject to bargaining obligations under Chapter 41.56 RCW. *Island County (Island County Deputy Sheriffs' Guild)*, Decision 11003 (PECB, 2011). As an individual employee, Slowik cannot file a refusal to bargain case. If the union believes a unilateral change occurred it would need to be the party to file a refusal to bargain complaint against the employer.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the complaint stating a cause of action are:

Employer discrimination in violation of RCW 41.56.140(1) [and if so derivative interference in violation of RCW 41.56.140(1)] by issuing a written warning to Anthony Slowik on August 15, 2014, in reprisal for union activities protected by Chapter 41.56 RCW, and by refusing to process a grievance filed by Slowik over the August 15, 2014, written reprimand in reprisal for union activities protected by Chapter 41.56 RCW.

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

The employer 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, as set forth in paragraph 1 of this Order, 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 and the supplemental letter filed on April 17, 2015, concerning violations of the CBA, USERRA protected military leave, and refusal to bargain in violation of RCW 41.56.140(4) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 20th day of May, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 2 of this order 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/ VANESSA SMITH

CASE NUMBER: 27017-U-15-06894 FILED: 02/13/2015 FILED BY: PARTY 2
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BAR UNIT: LAW ENFORCE
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