

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 77,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 127664-U-15

DECISION 12504 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On October 13, 2015, International Brotherhood of Electrical Workers, Local 77 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming City of Seattle (employer) as respondent. The complaint was docketed by the Commission as case 127664-U-15. On October 21, 2015, the union filed an amended complaint.

The allegations of the amended complaint concern:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] since August, 2015, by contracting out of bargaining unit web project work for the Conversation Resource Division (CRD) and Automated Metering Initiative (AMI), without providing an opportunity for bargaining.

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)].

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 2, 2015, indicated that it was not possible to conclude that a cause of action existed at that time for the employer domination allegation. The complainant was given a period of 21 days in which to file and serve a second amended complaint, or face dismissal of the employer

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.

domination allegation. The complainant did not file a second amendment or withdraw the defective allegation.

The allegations of the amended complaint concerning refusal to bargain the contracting out of bargaining unit work state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. The employer is directed to file an answer to these allegations within 21 days of this decision.

The amended complaint does not state a cause of action for employer domination in violation of RCW 41.56.140(2). This allegation is dismissed.

DISCUSSION

Employer Domination

The complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). However, none of the facts alleged in the complaint suggest that the employer involved itself in the internal affairs or finances of the union or that the employer attempted to create, fund, or control a "company union." A cause of action for this violation is provided for in all statutes administered by the Commission. The origins of the violation are based upon the concerns set forth in the test's second clause, that is, whether an employer has attempted to create, fund, or control a company union. See *Washington State Patrol*, Decision 2900 (PECB, 1988). Although the Commission has issued few decisions on this issue, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. Examples of such assistance are allowing the free use of employer buildings and resources for union business, providing aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The meaning of the term "domination" is thus directly tied to the term "assistance" and does not imply a cause of action for alleged negative acts directed toward the union or union members.

An employer's actual or attempted control of a union through assistance, ranging from favoritism to a full-fledged company union, is deleterious to the collective bargaining rights of employees;

however, those actions are distinct from interference. It's appropriate to file a complaint alleging employer domination or assistance of a union if the facts suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign. In this case, the facts alleged do not describe employer domination of the union.

CONCLUSION

The Unfair Labor Practice Manager dismisses defective employer domination allegation for failure to state a cause of action, and finds a cause of action for refusal to bargain/contracting out allegations. The employer must file and serve its answer to the amended complaint within 21 days following the date of this Decision.

ORDER

1. Assuming all of the facts alleged to be true and provable, the amended complaint in Case 127664-U-15 states a cause of action, summarized as follows:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] since August 2015, by contracting out of bargaining unit web project work for the Conversation Resource Division (CRD) and Automated Metering Initiative (AMI), without providing an opportunity for bargaining.

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

2. The employer shall:

File and serve their answers 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 amended 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the amended complaint in Case 127664-U-15 concerning employer domination in violation of RCW 41.56.140(2), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11th day of December, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 3 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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DECISION 12504 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


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