Kitsap County, Decision 12022-A (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY SHERIFF'S SUPPORT GUILD, Complainant, vs. KITSAP COUNTY, Respondent.	CASE 26328-U-14-6720 DECISION 12022-A - PECB DECISION OF COMMISSION

Cline & Associates, by *Christopher J. Casillas*, Attorney at Law, for the union.

Prosecuting Attorney Russell D. Hauge, by *Deborah A. Boe*, Deputy Prosecuting Attorney, for the employer.

The Kitsap County Sheriff's Support Guild (union) filed an unfair labor practice complaint against Kitsap County (employer) alleging that the employer interfered with employee rights and discriminated against an employee. The Unfair Labor Practice Manager reviewed the complaint and issued a deficiency notice. The union filed an amended complaint. After reviewing the amended complaint, the Unfair Labor Practice Manager concluded a cause of action did not exist and dismissed the complaint.[1] The union appealed.

The issue on appeal is whether the union's complaint states a cause of action. We conclude the complaint states a cause of action for interference. In reviewing the complaints, the Unfair Labor Practice Manager went beyond assuming whether the facts as alleged were true and provable and considered possible arguments that would arise before an Examiner. At the preliminary ruling phase of the proceeding, the only relevant inquiry is whether based on the facts as alleged a cause of action exists. It is the burden of the parties to present their cases, and the job of the Examiner to determine whether the parties have met their respective burdens.

[1] *Kitsap County*, Decision 12022 (PECB, 2014).

ANALYSIS

Legal Standards

Standard of Review

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011), *citing City of Seattle*, Decision 8313-B (PECB, 2004). The party filing a complaint must include a clear and concise statement of the facts constituting the alleged unfair labor practice, including the time, place, date, and participants in all occurrences. WAC 391-45-050(2). An unfair labor practice complaint will be reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. When a complaint is reviewed under WAC 391-45-110, all alleged facts are assumed to be true and provable. *Whatcom County*, Decision 8246-A (PECB, 2004).

Interference

Employees covered by Chapter 41.56 RCW have the right to organize and designate representatives of their own choosing for purposes of collective bargaining or exercise other rights under the chapter free from interference, restraint, coercion, or discrimination. RCW 41.56.040. It is an unfair labor practice for an employer to interfere with, restrain or coerce a public employee in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.140(1). It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.56 RCW. RCW 41.56.150(1).

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Washington State Patrol*, Decision 11863-A (PECB, 2014); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000) (remedy affirmed). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Washington State Patrol*, Decision 11863-A; *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Washington State Patrol*, Decision 11863-A; *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *aff'd*, 98 Wn. App. 809 (2000)(remedy affirmed).

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

Discrimination

It is an unfair labor practice for an employer to discriminate against employees for engaging in union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.80 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a *prima facie* case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish the *prima facie* case because respondents do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to the common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

In response to a complainant's *prima facie* case of discrimination, the respondent need only articulate its non-discriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

Application of Standards

The union alleged that when employee Pamela Morris retired, she discovered a discrepancy in her paycheck. The union filed a grievance on Morris's behalf. The employer denied the grievance. The union sought arbitration of the grievance.

The union and employer communicated about the arbitration. During the course of the communication, the employer told the union that the employer believed it had improperly overpaid Morris. The employer offered to "forgive the debt" if the union withdrew the grievance and paid the arbitrator's cancellation fees. If the union did not withdraw the grievance, the employer would institute collections actions against Morris.

The union alleged that the employer's communication was a threat that unreasonably burdened the grievance process and interfered with the union's ability to enforce the collective bargaining agreement. The employer argued the union's complaints do not state a cause of action, that it is not reasonable to perceive the settlement offer as a threat, and the offer was related to the grievance and an overpayment, not associated with union activity.

A party must allege facts addressing the basic elements of a cause of action. Those facts are assumed true and provable. While there may be gaps in any case filed, the preliminary ruling process is designed to eliminate complaints that do not meet the basic elements of a legal claim. If a cause of action exists, the parties are responsible for presenting a full evidentiary hearing and any defenses.

In this case, the union met its burden of establishing a cause of action. The union alleged that the employer made a threat that it would pursue collections against Morris, if the union did not

withdraw the grievance. That threat was associated with Morris's union activity, *i.e.*, filing a grievance over a pay discrepancy. Whether the union can prove interference by a preponderance of the evidence is a question for hearing. Similarly, the determination of whether the alleged threat was a settlement offer is a matter to be determined at hearing.

The union did not allege sufficient facts to state a cause of action for discrimination. The union alleged that Morris filed a grievance, which is a protected activity. However, from the facts alleged, it is not possible to conclude that the employer deprived Morris of a right, benefit, or status.

Assuming the alleged facts are true and provable, the union's complaint states a cause of action for interference. We affirm the Unfair Labor Practice Manager's order of dismissal for discrimination.

NOW, THEREFORE, it is

ORDERED

1. The Order of Dismissal issued by Unfair Labor Practice Manager David I. Gedrose is VACATED.

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

    a. Employer interference with employee rights in violation of RCW 41.56.140(1) by threats of reprisal or force or promises of benefits made to the union and Pamela Morris if the union did not withdraw a pending grievance; and

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

Kitsap County shall:

> File and serve their answers to the allegations listed in paragraphs 1 and 2 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 concerning employer discrimination in violation of RCW 41.56.140(1), and other unfair labor practices, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of July, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

MARK E. BRENNAN, Commissioner