

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS
GUILD,

Complainant,

vs.

SNOHOMISH COUNTY,

Respondent.

CASE 128885-U-17

DECISION 12723 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On April 10, 2017, Snohomish County Corrections Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Snohomish County (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 2, 2017, indicated that it was not possible to conclude that a cause of action existed at that time for the employer domination 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. Nothing further has been received from the union.

The Unfair Labor Practice Manager dismisses the defective employer domination allegations for failure to state a cause of action, and finds causes of action for unilateral change, interference, and discrimination. The employer must file and serve its answer to these allegations within 21 days following the date of this Decision.

ISSUES

The allegations of the complaint concern:

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.

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)] by:

1. Unilaterally implementing a new directive on cell phone usage within the jail on or around October 11, 2016, without providing the union with an opportunity for bargaining.
2. Unilaterally implementing a new shift turnover policy on or around October 19, 2016, without providing the union with an opportunity for bargaining.

Employer interference with employee rights in violation of RCW 41.56.140(1) since October 19, 2016, by Chief Aston making statements that could reasonably be perceived as a threat of reprisal or force, or promise of benefit, in response to employee testimony during an interest arbitration hearing.

Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] since December 5, 2016, by its imposition of a disciplinary suspension of Carrell in reprisal for union activities protected by Chapter 41.56 RCW.

Employer domination or assistance of the union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)] by unilaterally changing policies and past practices, the proximity in time between the interest arbitration hearing and implementation of those changes, and subsequent disciplinary action against Carrell.

The allegations of the complaint concerning unilateral change, interference, and discrimination state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The complaint does not state a cause of action for allegations of employer domination in violation of RCW 41.56.140(2). The employer domination allegations are dismissed.

EMPLOYER DOMINATION*Legal Standard*

An employer violates RCW 41.56.140(2) when it controls, dominates, or interferes with a bargaining representative by involving itself in the internal affairs or finances of the union, or attempts to create, fund, or control a “company union.” *State – Patrol*, Decision 2900 (PECB, 1988); *City of Anacortes*, Decision 6863 (PECB, 1999). A domination violation requires proof of employer intent. *King County*, Decision 2553-A (PECB, 1987); *Snohomish County*, Decision 9834 (PECB, 2007).

Analysis

The complaint alleges employer unlawful control and interference with the union in violation of RCW 41.56.140(2) based on the cumulative actions of the county, including the unilateral change allegations, the proximity in time between the interest arbitration hearing and implementation, and disciplinary action against Guild President Carrell. 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 violations 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. 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.

CONCLUSION

In order to state a cause of action for employer domination the complaint would need to describe facts that 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. The employer domination allegation is dismissed for failure to state a cause of action.

ORDER

1. Assuming all of the facts alleged to be true and provable, the allegations of the complaint state causes 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)] by:

1. Unilaterally implementing a new directive on cell phone usage within the jail on or around October 11, 2016, without providing the union with an opportunity for bargaining.
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be perceived as a threat of reprisal or force, or promise of benefit, in response to employee testimony during an interest arbitration hearing.

Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative interference in violation of RCW 41.56.140(1)] since December 5, 2016, by its imposition of a disciplinary suspension of Carrell in reprisal for union activities protected by Chapter 41.56 RCW.

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

The respondent 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.
- 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.

3. The allegations of the complaint concerning employer domination or assistance of a union in violation of RCW 41.56.140(2), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of June, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Unfair Labor Practice Manager

Paragraph 1 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

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
MARK E. BRENNAN, COMMISSIONER
MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/8/2017

DECISION 12723 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128885-U-17

EMPLOYER: SNOHOMISH COUNTY
ATTN: SNOHOMISH COUNTY COUNCIL
3000 ROCKEFELLER AVE
M/S 609
EVERETT, WA 98201-4046
contact.council@snoco.org
(425) 388-3411

PARTY 2: SNOHOMISH COUNTY CORRECTIONS GUILD
ATTN: CHUCK CARRELL
2812 LOMBARD AVE STE 302
EVERETT, WA 98201
sccguild@gmail.com
(425) 452-0952

REP BY: CHRISTOPHER J. CASILLAS
CLINE & CASILLAS
520 PIKE ST STE 1125
SEATTLE, WA 98101
ccasillas@clinelawfirm.com
(206) 838-8770