City of Shelton, Decision 12948 (PECB, 2018)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHARLES TAYLOR, Complainant, vs. CITY OF SHELTON, Respondent.	CASE 130812-U-18 DECISION 12948 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On August 8, 2018, Charles Taylor (Taylor or complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Shelton (employer) as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on September 18, 2018, indicating that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The complainant was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. On October 10, 2018, Taylor filed an amended complaint.

Taylor's original complaint alleges:

> Employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, making false statements to union officers about the costs of arbitration.
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> Employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, interfering with protected employee rights through statements made in meetings with employees.

[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 interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, by sending a July 2, 2018, e-mail that instructed employees not to discuss an internal investigation with anyone.
>
> Employer general contract violations.

The amended complaint reasserted the allegations of the original complaint. The amended complaint also alleges a new interference allegation as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, by informing the union that it would not proceed with an arbitration.

Taylor's claim that the employer interfered with protected employee rights by instructing employees not to discuss an internal investigation with anyone remains the only allegation in the complaint that states a cause of action. All other allegations of the original and amended complaints are dismissed for failure to state causes of action. The employer must file and serve its answer to the interference allegation within 21 days following the date of this Order.

BACKGROUND

Original Complaint

Taylor is employed as a police officer with the employer. The Shelton Police Officers Guild (union) represents the employer's law enforcement officers, including Taylor, for purposes of collective bargaining. The union's executive board consists of a president, vice-president, and secretary. The union is affiliated with the Fraternal Order of Police, Lodge 23 (F.O.P.).

The employer and union are parties to a collective bargaining agreement that contained a grievance process. Step 4 of the grievance process allowed the union to submit unresolved grievance to arbitration for resolution.

At some point prior to the filing of the complaint, the employer terminated the employment of two bargaining unit members, Matthew Dickinson and Justin Doherty. The union filed a grievance

regarding Dickinson's and Doherty's termination. On January 25, 2018, union president Chris Kostad decided to submit the grievances to arbitration for resolution.

On February 7, 2018, Kostad allegedly held an unscheduled membership meeting. The meeting was allegedly held in violation of the union's bylaws. The union vice president Calvin Moran and union secretary Brent Denning were not in attendance at the meeting. Additionally, not all of the union's membership attended the meeting.

During the meeting, Kostad allegedly stated that the employer's legal counsel had advised union members on some unspecified date and time that the union would not pay for the costs of arbitrating the complainant's termination. The complaint does not identify who actually made the statement. It does not appear that Taylor was present when the statement was made to the union members. Kostad allegedly contacted a F.O.P. representative who stated that the F.O.P. would pay the costs for arbitration. Kostad communicated that information to the membership present at the meeting.

Following the meeting, Kostad and union member Daniel Patton allegedly informed F.O.P. president Timothy Ripp during a phone call that the employer's legal counsel had advised union members that the F.O.P. would not pay for the costs of arbitrating the complainant's termination.

On February 8, 2018, Kostad allegedly sent a letter to the employer's legal counsel indicated that the union's membership had decided to withdraw its request to submit the grievance to arbitration. On February 28, 2018,[2] Moran and Denning allegedly sent a letter to the employer's legal counsel stating that they were not aware of Kostad's February 8, 2018, letter. The letter also allegedly stated that due to improper procedures committed by Kostad, the union now wished to submit the

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[2] Taylor's amended complaint claims this letter was sent on February 28, 2018. Paragraph 17 of Taylor's original complaint states that Denning and Morgan's letter was sent on February 23, 2018. WAC 391-45-050 requires the complainant to describe, in separately numbered paragraphs, a clear and concise statement of facts, including times, dates, places, and participants in occurrences. When determining whether a complaint states a cause of action under WAC 391-45-110, the actual complaint is the only document reviewed as part of the preliminary ruling process. Supporting documents submitted with the complaint are not reviewed.

complainant's grievance to arbitration. The employer allegedly closed the grievances without submitting them to arbitration.

On June 1, 2018, Taylor was allegedly instructed by Chief Darrin Moody to monitor a parade in downtown Shelton on the following day. On June 2, 2018, Taylor was allegedly patrolling the parade on foot when he encountered Dickinson. Taylor allegedly greeted Dickinson and his family and took a picture with them. During the encounter with Dickinson, Taylor allegedly notices Moody monitoring his activity. When Taylor returned to his car, Moody allegedly approached him and stated that he "could leave now, if you want. I think we got it." Taylor then allegedly sent the photo of himself and Dickinson to Doherty.

Taylor allegedly remained in the area and continued his foot patrol. When he returned to his vehicle for a second time, Moody allegedly approached Taylor's vehicle and instructed him to leave the area.

On June 4, 2018, Taylor was working as a school resource officer when he was summoned to Moody's office to discuss a recent social media posting. Upon arriving at Moody's office, Taylor was shown the photo of Taylor and Dickinson. Moody allegedly reminded Taylor of the employer's policy of not posting photos of police officers in uniform on social media. Moody also commented on the June 2, 2018, picture by allegedly stating to Taylor that "Sometimes it has a bad impression that you'd take one with Matt [Dickinson]." Moody allegedly concluded the conversation by stating "just be careful" and tore up the picture.

Amended Complaint

Taylor's amended complaint reasserts all of the allegations in his original complaint. Taylor also claims that on February 12, 2018, he viewed an e-mail from Shannon Phillips, the employer's legal counsel, addressed to Kostad which stated that Kostad's communication about an arbitration was not received in a timely manner and therefore the employer decided to terminate the arbitration. The complaint alleges that this statement impacted Taylor's ability to engage in any redress with his union.

Finally, the amended complaint claims that Taylor served as a representative for Dickinson, Doherty, and Virgil Pentz and that they were collectively engaged in concerted activities during the time period described in the complaint. The complaint reasserts the allegation in the original complaint that Moody monitored Taylor's activities due to his alleged representation of Dickinson, Doherty, and Pentz.

ANALYSIS

Statute of Limitations

There is a six-month statute of limitations for unfair labor practice complaints. "[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), *citing City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice of" the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

Taylor filed his original complaint on August 8, 2018. All events described in the complaint that occurred before February 8, 2018, are not timely and will be used for background information only. Taylor filed his amended complaint on October 10, 2018. Any facts newly alleged in the amended complaint that occurred before April 10, 2018, are not timely and will be used for background information only.

Interference with Protected Employee Rights

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). The Commission recently clarified the standard for employer interference in *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). To prove interference, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Grays Harbor College*,

Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd, Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). 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. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A.

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. *Id.*

Contract Violations

The original complaint alleges the employer violated unidentified provisions of the collective bargaining agreement. The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), *citing City of Walla Walla*, Decision 104 (PECB, 1976). The Commission interprets and administers collective bargaining statutes but does not act in the role of arbitrator to interpret or enforce collective bargaining agreements. *State – Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004), *citing Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Application of Standards

The allegations in Taylor's original complaint claiming the employer interfered with protected rights when its legal counsel made statements to unidentified bargaining unit employees advising them that the union would not pay for the costs of arbitrating the complainant's termination are dismissed for failure to state a cause of action. Nowhere in the complaints does Taylor allege that these statements were made directly to him. The original complaint also clearly alleges that the union's leadership took steps to verify whether the F.O.P. would pay for the costs of arbitration before deciding whether to support the complainant's grievance.

Taylor's original complaint alleged that the union violated its bylaws during the February 7, 2018, meeting. Taylor's complaint was specifically filed against the employer. Even if the complainant had properly alleged that the union violated its bylaws, those allegations would have been dismissed. The constitutions and bylaws of unions are the contracts among their members, controlling how their private organizations are to be operated. Because the Commission generally lacks jurisdiction over disputes concerning violations of union constitutions and bylaws, those claims must be adjudicated under procedures internal to those organizations or through the courts. *Lake Washington School District*, Decision 6891 (PECB, 1999).

The allegations in the amended complaint asserting the employer interfered with Taylor's right when Phillips sent a February 12, 2018, e-mail stating the employer would not be processing a grievance fails to state a cause of action. The complainant did not allege that the Phillip's statement could reasonably be perceived as a threat of reprisal or promise of benefit associated with protected activity. Rather, the amended complaint simply alleges that the employer's decision precluded the arbitration from going forward in a manner consistent with Taylor's desires.

Finally, Taylor's original and amended complaints claim that he and other employees were engaged in concerted protected activities. Chapter 41.56 RCW does not contain a concerted activities clause and this agency has no statutory jurisdiction over such claims. *City of Seattle*, Decision 9439-B (PECB, 2009).

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the amended complaint in Case 130812-U-18 state a cause of action, summarized as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, by sending a July 2, 2018, e-mail that instructed employees not to discuss an internal investigation with anyone.

The interference 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 complaint in Case 130812-U-18 concerning employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, making false statements to union officers about the costs of arbitration; employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, interfering with protected employee rights through statements made in meetings with employees; employer general contract violations; and employer interference with employee rights in violation of RCW 41.56.140(1) by, within six months of the date the complaint was filed, by informing the union that it would not proceed with an arbitration are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 3rd day of December, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 12/03/2018

DECISION 12948 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 130812-U-18

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