STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LAKEWOOD POLICE INDEPENDENT GUILD, Complainant, vs. CITY OF LAKEWOOD, Respondent.	CASE 131503-U-19 DECISION 13044 - PECB **CORRECTED** PRELIMINARY RULING AND PARTIAL ORDER OF DISMISSAL

On May 14, 2019, Jeremy Vahle filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the City of Lakewood (employer) as respondent. Vahle is currently the President of the Lakewood Police Independent Guild (union). The allegations of the complaint concerned employer interference and refusal to bargain in violation of chapter 41.56 RCW as well as other allegations concerning statements made by bargaining unit employees. Because Vahle named himself – and not the union – as the complainant of record, this agency treated the complaint as having been filed by an individual employee.

Vahle's complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on June 6, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Vahle was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint. On June 27, 2019, Vahle amended the complaint to claim that the union, and not Vahle, is the entity alleging unfair labor practices. The amended complaint also reasserted many of the allegations of the original complaint.

[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.

Based upon the change in the charging party, the complaint as amended has been reviewed under WAC 391-45-110. The allegations of the complaint and amended complaint concern:

> Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by attempting to undermine the operation of the union through unspecified employer actions.
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> 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)] within six months of the date the complaint was filed, by refusing to bargain with the union's designated collective bargaining representative.
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> Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promise of benefit made to bargaining unit employee through statements made to bargaining unit employee Sean Conlon.

The allegations that the employer refused to bargain with the union's designated collective bargaining representative and that the employer interfered with protected right through statements made to Sean Conlon state causes of action that will be subject to further proceedings. All other allegations in the complaint are dismissed.

BACKGROUND

The union represents a bargaining unit of uniformed police officers, police sergeants, and police detectives. Vahle is the current union president. The complaint describes several events that occurred outside of the statute of limitations.[2] The complaint as amended alleges the following facts.

On February 4, 2019, Vahle and Sergeant Peter Johnson had a conversation where Johnson expressed concerns about a separate lawsuit that Vahle filed against the city. Johnson, who is also a bargaining unit member, asked Vahle if the lawsuit would interfere with Vahle's ability to serve as union president. Johnson also questioned Vahle about the union's legal counsel, Alan

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2 Paragraphs 10 through 14.

Harvey. Johnson allegedly told Vahle that Assistant City Attorney Kymm Cox had once referred to Harvey as a "boob." Cox allegedly provides legal advice to the police department and according to the complaint has a history of "anti-union animus". Vahle allegedly told Johnson that what Cox stated was illegal and that Vahle was going to discuss the matter with the union's executive board.

On February 24, 2019, Vahle and Sergeant Jeffrey Carroll had a conversation where Carroll expressed concerns Vahle's leadership of the union and about the separate lawsuit that Vahle filed against the city. According to the complaint, Carroll specifically told Vahle that Carroll was speaking as a union member. Carroll informed Vahle that he was considering filing a recall petition concerning Vahle's presidency.

On March 6, 2019, Carroll informed Vahle that he was going to file the recall petition. That same day, Office Jason Catlett informed Vahle that he also intended to file a recall petition against Vahle's presidency. On March 10, 2019, Catlett posted an announcement that he was petitioning to recall Vahle.

On March 27, 2019, the union held a general union membership meeting where union members questioned Vahle's leadership and the manner in which he was running the union. Sergeant Mark Eakes, a bargaining unit member, made disparaging comments about Harvey and called him a "boob." Carroll allegedly posted on the union's electronic message board negative statements about Vahle's leadership. Other union members allegedly made disparaging statements about Vahle's leadership during this meeting.

The amended complaint alleges, without describing any specific facts, that the above referenced actions were directed by Police Chief Michael Zaro, Assistant Chief John Unfred, or Cox in an effort to undermine the union.[3]

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[3] Paragraphs 15 through 25 of the original complaint.

ANALYSIS

Applicable legal Standard

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. *City of Tacoma*, Decision 6793-A.

Application of Standard

The union alleges that the employer interfered with protected employee rights by attempting to undermine the operation of the union and impact the ability of Vahle to effectuate the interests of the bargaining unit. The complaint and amended complaint do not describe sufficiently detailed facts to support these allegations.

WAC 391-45-050(2) requires the complainant to include "[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." Complaints must contain specific descriptions and dates of occurrences so that the respondents can look into the allegations and respond. The Commission cannot address vague allegations or generalizations that lack required details including times, dates, places, and participants in occurrences. The allegation that the employer attempted to undermine the operation of the union through employer unspecified employer actions is dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the refusal to bargain and interference allegations of the complaint and amended complaint in Case 131503-U-19 state 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)] within six months of the date the complaint was filed, by refusing to bargain with the union's designated collective bargaining representative.

   Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promise of benefit made to bargaining unit employee through statements made to bargaining unit employee Sean Conlon.

   These allegations will be the subject of further proceedings under chapter 391-45 WAC. The City of Lakewood 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 complaint and 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.

2. The allegations of the complaint and amended complaint in Case 131503-U-19 concerning employer interference in violation of RCW 41.56.140(1) by attempting to undermine the operation of the union through employer unspecified employer actions is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 31st day of July, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.

RECORD OF SERVICE

ISSUED ON 07/31/2019

DECISION 13044 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 131503-U-19

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