

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF
COUNTY AND CITY EMPLOYEES,

Complainant,

vs.

CITY OF WAPATO,

Respondent.

CASE 132039-U-19

DECISION 13090 - PECB

ORDER OF DISMISSAL

On August 19, 2019, the Washington State Council of County and City Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the City of Wapato (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on September 17, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

No further information has been filed by the union. The Unfair Labor Practice Administrator dismisses the complaint for failure to state a cause of action.

ISSUE

The complaint alleged:

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)] within six

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.

months of the date the complaint was filed, by making statements to bargaining unit members regarding voting for mayor in the primary election.

The complaint does not state a cause of action. The complaint does not describe facts that could constitute an employer domination violation within the Commission's jurisdiction.

BACKGROUND

On July 1, 2019, the city administrator for the City of Wapato (employer) allegedly told a group of employees that if they did not vote for Dora Alvarez-Roa, there was no guarantee that the employees' jobs would be available for the next year. The group of employees included some unidentified bargaining unit members. Some of the bargaining unit members took these statements as a directive in how to vote in the upcoming primary election.

ANALYSIS

Numbered Paragraphs and Signed Petition

Complainants must number the paragraphs in the attached statement of facts. In this case, the complainant did not number each paragraph in the statement of facts. The requirements for filing a complaint charging unfair labor practices are described in WAC 391-45-050. Numbering paragraphs is important to allow the respondent to reference specific allegations within the complaint when filing an answer.

The complaint is also missing the signature of the charging party. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs: "The name, signature and, if any, title of the person filing the complaint, and the date of the signature." WAC 391-45-050(4). The complainant did not file an amended complaint correcting the defects.

Contents of the Attached Statement of Facts

The rules for contents of complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit "[c]lear and concise statements of the facts constituting the

alleged unfair labor practices, including times, dates, places and participants in occurrences.” The complaint should also contain a statement of remedy sought by the complainant, as described in WAC 391-45-050(3).

In this case, the complaint does not contain specific facts related to a domination allegation. It generally states that work-related issues were brought up in a conversation, but the complaint does not include elements necessary to allege domination. Additionally, the complaint lacks any facts related to a remedy requested.

Domination

Applicable Legal Standard

The complaint alleges employer domination or assistance of a union in violation of RCW 41.56.140(2). Other than referencing this statute, the complaint does not explain or develop this allegation. 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 employer domination 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 State – Washington State Patrol, Decision 2900 (PECB, 1988).*

Although the Commission has issued few decisions on employer domination, 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 is 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.

Application of Standard

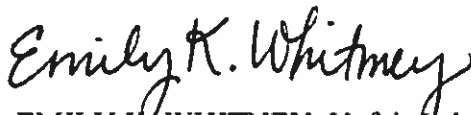
In this case, the facts alleged do not describe employer domination of the union. The city administrator made comments related to voting for mayor in an upcoming primary election. The complaint lacks facts alleging that the employer: intended to control or interfere with the formation or administration of a union; intended to dominate the internal affairs of a union; contributed financially to a union; recognized a union without majority support; or showed a preference between unions. The complaint does not describe employer domination of the union. Because the complaint lacks facts alleging employer domination, the complaint must be dismissed.

ORDER

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, Unfair Labor Practice Administrator

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 10/31/2019

DECISION 13090 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132039-U-19

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