



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

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September 9, 2009

Joe Carrillo
Pierce County
615 South Ninth Street, Suite 200
Tacoma, Washington 98405-4670

James V. Smith II
Teamsters Local 117
14675 Interurban Avenue South, Suite 307
Tukwila, Washington 98168

Re: DEFICIENCY NOTICE
Pierce County
Case 22692-U-09-5799
Filed September 3, 2009

Dear Parties:

The complaint charging unfair labor practices filed in this matter has been reviewed under WAC 391-45-110. One purpose of this review is to comply with RCW 34.05.419(2), which requires administrative agencies to "examine the application, notify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require . . . ;"

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 the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

The allegations of the complaint concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), and refusal to bargain in violation of RCW 41.56.140(4), by the actions of employer official Dale Washam (Washam) regarding bargaining unit employees.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint. The complaint has two defects.

One, Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. Complaints must conform to WAC 391-45-050. Section 2 of that rule requires complaints to set forth "clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." The statement of facts alleges that

Washam:

- chastised and criticized bargaining unit employees for complaining to the union about his behavior;
- threatened and retaliated against bargaining unit employees, including Sally Barnes;
- continues to threaten and retaliate against them;
- sent a document of intent to change working hours and conditions of employment of bargaining unit members, without providing an opportunity for bargaining;
- established work discussion areas, without providing an opportunity for bargaining;
- refused to allow bargaining unit employees to attend VEBA meetings on paid time, without providing an opportunity for bargaining;
- required a bargaining unit employee to pay for training and use vacation leave for the training, without providing an opportunity for bargaining.

The allegations do not conform to the requirements of WAC 391-45-050(2). References to alleged violations "within the past six months" are not specific. Complaints must include the dates of the alleged unfair labor practices. Specific details are also necessary concerning allegations of threats of reprisal or force, retaliation, and changes to hours and working conditions, including work discussion areas, the VEBA meeting, and pay for training. The statement of facts must identify employees by name, with the exceptions of allegations concerning the work discussion areas and the VEBA meeting, which apparently refer to all bargaining unit members.

Two, the test for a cause of action for a domination or assistance violation is whether the complainant provides facts showing that the employer has involved itself in the internal affairs or finances of the union, or that the employer has 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 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 *Washington State Patrol*, Decision 2900 (PECB, 1988). Although the Commission has issued few decisions on this issue, those decisions have generally revolved around whether employers have unlawfully rendered assistance to unions. A few examples of such assistance are: allowing the free use of employer buildings and resources for union business, aid to employees serving as union officers, or favoring one union over another during a representation proceeding. The term "domination" concerns an employer's involvement in the internal affairs or finances of a union, or its attempt to create, fund, or control a company union 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, discrimination, and refusal to bargain violations. A union alleging that an employer is interfering with, discriminating against, or refusing to bargain with the union should file complaints based upon those allegations. A union

should not file a complaint alleging employer domination or assistance of a union unless 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.¹

Filing of Amended Complaint

PLEASE TAKE NOTICE that this proceeding will be held open for a limited time to permit the union to correct the defects. The union should:

File and serve an amended complaint within 21 days following the date of this letter.

Any materials filed as an amended complaint will be reviewed under WAC 391-45-110 to determine if they state a cause of action. If the union does not file a timely amendment correcting the defects, the complaint will be DISMISSED.

Very truly yours,

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

DIG:dlt

cc: Tracey Thompson

¹ This is not intended to be an exhaustive list. Parties should consult Commission precedent or the Commission staff manual for a more comprehensive view of this subject. (See the Commission's website, at www.perc.wa.gov.)