The Firehouse Lawyer

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Joseph F. Quinn, Editor

Eric T. Quinn, Staff Writer

Joseph F. Quinn is legal counsel to more than 40 Fire Departments in the State of Washington.

His office is located at:

10222 Bujacich Rd. NW
Gig Harbor, WA 98332
(Gig Harbor Fire Dept., Stn. 50)

Mailing Address:
20 Forest Glen Lane SW
Lakewood, WA 98498

Office Telephone: 253-858-3226
Cell Phone: 253-576-3232

Email Joe at firelaw@comcast.net
Email Eric at ericquinn@firehouselawyer2.com

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Inside this Issue

Upcoming Municipal Roundtable: Unfair Labor Practices

Members of the fire service, particularly fire commissioners and chiefs, should attend our upcoming Municipal Roundtable on Friday, December 18. The topic of this roundtable will be how the Public Employment Relations Commission (PERC) has ruled on claims for unfair labor practices (ULP) over the last five years. Joseph Quinn was a PERC commissioner for many years. Thus, his experience with unfair labor practices, from both perspectives, is quite valuable in this area. Most importantly, we will be discussing how to avoid ULP claims. This is a free discussion group. The roundtable is located at West Pierce Fire and Rescue, Station 21. The address for Station 21: 5000 Steilacoom Blvd., Tacoma, WA 98499. This discussion group begins at 9:00 AM and will last until 11:00 AM. At the discussion group, we will be handing out a comprehensive outline summarizing the "four horsemen": the four unfair labor practices.[1] This will be an interactive session, in which we present factual scenarios and discuss how PERC may resolve them. We may even change the facts, to spice things up. As a preview of our discussion, see the "Joe Chart" attached to this issue, which lays out how PERC generally analyzes two of the four ULP's which may be committed by an employer under RCW 41.56.140.

[1] Because the Municipal Roundtable is a free forum by which we may discuss such issues, you may also ask us for a free copy of this outline. Email Eric Quinn at ericquinn@firehouselawyer2.com for a free copy of the outline.

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Putting Out the Fire, or Not: Washington State Sued Over Response to Carlton Complex Fire

Today we are going to briefly summarize why the negligence claim against the Washington State (State), for its "delayed" response to the Carlton Complex Fire, may or may not succeed. This summary reflects our interpretation of Washington law, and is in no way intended to voice our support for either party.

Recently, the State was served with a complaint for damages. The plaintiffs are residents of Okanogan County, Washington. The complaint alleges that in 2014, the Golden Hike Fire spread from a few acres of land owned by the State onto the plaintiffs' properties. The State, through its agent, the Department of Natural Resources (DNR), was allegedly negligent in failing to put out this fire before it spread from State land. This fire merged with three other fires, and became what is known as the Carlton Complex Fire (Fire). The Fire destroyed many homes, and property belonging to the plaintiffs.

The complaint further alleges that as soon as the Golden Hike Fire started on the State's land, various residents notified the State of the "existence and location" of the fire. Allegedly, "the Defendant was negligent in responding. When it did eventually respond, the Defendant was negligent in containing the fire." Allegedly, "Defendant refused the assistance of local residents." Finally, the complaint states that "less than two days after the initial lightning strike [which apparently started the fire]," the fire spread from the State's land onto the plaintiffs' properties.

As a result of these claimed actions, the State was negligent and the plaintiffs' suffered extensive property damages, the complaint says. Importantly, the plaintiffs' central claim is that the State failed to contain the fire, as the result of its negligence, and this caused them damage.

In the context of civil litigation, government entities may be found liable for their tortious (negligent) conduct, to the same extent as a private person. *See* RCW 4.96.010. In a negligence action, the first thing the courts will consider is whether the defendant owes a duty of care to the plaintiff. *Munich v. Skagit Emergency Communications Center*, 175 Wn.2d 871, 877 (2012). But a government entity may not be found liable for negligence unless it owes a duty to an individual person, rather than a duty to the public at large. *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 785 (2001). This is known as the public duty doctrine. However, there are, primarily, four exceptions to this doctrine. These include (1) the "rescue doctrine"; (2) the "special relationship" exception[2]; (3) the "failure to enforce" exception[3]; and (4) the "legislative intent" exception. For purposes of this article, we will focus on the latter: the "legislative intent" exception.

Under Washington law, "every owner of forest land in the state of Washington shall furnish or provide, during the season of the year when

[2]See the Firehouse Lawyer article on this exception: http://www.firehouselawyer.com/Newsletters/v11n01jun2013.pdf

[3] See the Firehouse Lawyer article on this exception: http://www.firehouselawyer.com/Newsletters/November2015FINAL.pdf

there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department [DNR].” RCW 76.04.600. Most importantly, in 2014, the Washington legislature specifically created a cause of action for public and private property owners for “property damage to public or private **forested lands**, including real and personal property on those lands,” as the result of a fire which spread from public or private forested lands. RCW 76.04.760 (emphasis added). This cause of action may be brought against any person who negligently failed to prevent the fire from spreading. *See Id.*

Washington courts have found that the “legislative intent” exception applies even if the legislature established, in a statement of purpose, a particular standard of conduct. For example, the Washington Supreme Court has found that the police owe a duty of care, to individual persons, to serve anti-harassment orders, imposed by RCW 10.14.010. *See City of Washburn v. Federal Way*, 178 Wn.2d 732, 754 (2013) (finding that the statute’s statement of purpose was sufficient to create a legal duty).

In this case, the complaint alleges that the State is liable to the plaintiffs, under RCW 76.04.760, because the State negligently failed to contain the Golden Hike Fire from spreading. The State also owned the land, allegedly. As we mentioned, a person—and government agencies and municipal corporations are legal persons—must owe an individualized duty of care to another person prior to being found negligent. But the legislature specifically created a cause of action for owners of public or private forested lands, when their real or personal property, located on “forest land”, is damaged. This is much more explicit than the mere statement of purpose at issue in *Washburn*, cited above. Thus, the State may have owed the plaintiffs such a particularized duty in this case, under RCW 76.04.760, and the “legislative intent” exception to the public duty doctrine.

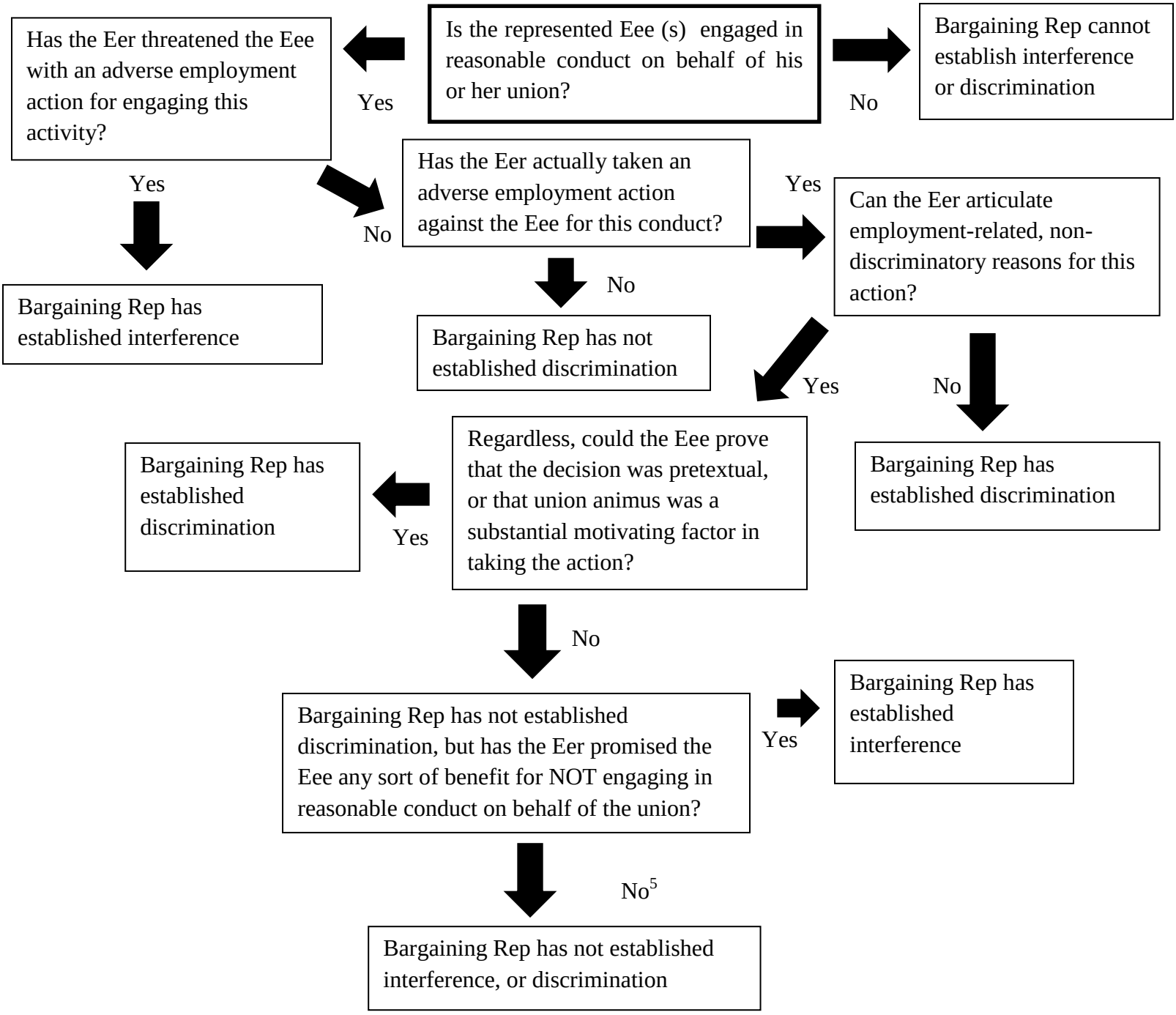
But we now wonder whether a fire department may be found liable under RCW 76.04.760. This hinges on whether the land in question is “forest land.” Under RCW 76.04.005, “forest land” means “any **unimproved lands** which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department [DNR], a fire menace to life or property.” (emphasis added). Furthermore, “unimproved lands” means “those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property.” RCW 76.04.005 (23).

Based on these definitions, we feel that a fire department, or any person, may not be found negligent under RCW 76.04.760 unless the land from which the fire spread was not cultivated, contained no structures, and was otherwise unoccupied, and only if DNR designated the land as a “fire menace to life and property.” If the land in question is not “forest land,” then RCW 76.04.760 does not apply, and therefore the “legislative intent” exception would not apply. Happy Holidays!

DISCLAIMER

legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.

Joe Chart
Generalized Interference and Discrimination Claims[4]



[4] This Joe Chart is intended to give the reader a basic understanding of how PERC may rule on claims of interference or discrimination under RCW 41.56.140, and is by no means meant to establish how each case, which hinges on its facts, may be resolved.

[5] For a complete discussion of the four unfair labor practices, see the comprehensive outline provided by our office. Contact Eric Quinn to receive a copy of this outline, at ericquinn@firehouselawyer2.com