

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ERIC HOOD,

Complainant,

vs.

SOUTH WHIDBEY SCHOOL DISTRICT,

Respondent.

CASE 23511-U-10-5993
DECISION 10880-A - EDUC

CASE 23680-U-10-6040
DECISION 10939-A - EDUC

DECISION OF COMMISSION

*Eric Hood, appeared pro se.*¹

On September 17, 2010, Eric Hood (Hood), an individual, filed a complaint with this agency alleging that the South Whidbey School District (employer) committed an unfair labor practice by terminating his employment in reprisal for Hood's exercise of union activities. Hood is a teacher in the employer's workforce, and at the pertinent time of his complaint he taught at the Bayview School and was the union representative for the teachers. Fred McCarthy (McCarthy) is the superintendant of the school district, and David Pfeiffer (Pfeiffer) is the director of the Bayview School.

Hood's original complaint in Case 23511-U-10-5993 outlined six different incidents between calendar year 2001 and May 21, 2010, which he claimed demonstrated a pattern of discriminatory conduct on the part of the employer in violation of Chapter 41.59 RCW.

Hood claimed that on November 4, 2009, he criticized Washington's "Race to the Top" education plan on his union's e-mail site. According to Hood, access to that site is restricted to

¹ The employer did not make an appearance in either of Hood's complaints.

teachers. Following Hood's posting, Pfeiffer posted a response angrily denouncing Hood's statements as "administration bashing."

Hood alleged that the employer placed him on an "improvement plan" on December 18, 2009. Other than mentioning that he was placed on the plan, Hood did not describe in his complaint what that plan entailed. On February 2, 2010, Hood was informed that he would be "teaching a new English curriculum . . . , piloting a new science curriculum, and overseeing coursework in four different online courses[.]" Finally, Hood alleged that on May 15, 2010, his employment contract was not renewed based upon false statements made by Pfeiffer despite the fact that Hood received a satisfactory evaluation from an independent evaluator.

Unfair Labor Practice Manager David I. Gedrose reviewed Hood's original complaint and issued a deficiency notice indicating that it was not possible to conclude that a cause of action existed under the statutes administered by this agency. The Unfair Labor Practice Manager specifically noted that many of the allegations fell outside the six-month statute of limitations prescribed in RCW 41.59.150(1). Hood was given 21 days to file an amended complaint or face dismissal of his complaint.

On September 28, 2010, Hood filed an amended complaint. The first part of Hood's amended complaint alleged that on May 21, 2010, Hood engaged in protected activity when he filed a grievance under the existing collective bargaining agreement concerning the termination of his employment without just cause. Hood also alleged that on May 20, 2010, McCarthy took action against him by falsifying his leave request to indicate that Hood was taking medical leave, when in fact, Hood had specifically declined to take such leave.

Hood's amended complaint also asserted that on May 19, 2010, Pfeiffer unlawfully ordered him out of the employer's facilities as he was packing up his belongings following the non-renewal of his contract. Finally, Hood claimed that on September 19, 2010, McCarthy falsely informed the Washington Education Association that he had intimidated students and that School Board Member Richard Parker (Parker) impermissibly discussed Hood's employment matter with a member of the public in order to damage Hood's reputation in the community.

In the second part of his amended complaint for Case 23511-U-10-5993, Hood alleged that when he appealed his contract termination to the school board, McCarthy presented false evidence and made false statements regarding Hood's employment and, as a result, the school board declined to overturn the decision to not renew his employment contract. Finally, Hood alleged that the employer attempted to obstruct his appeal of the denial of his COBRA benefits, and that McCarthy threatened to obtain a restraining order against Hood.

On October 1, 2010, the Unfair Labor Practice Manager dismissed Hood's complaint for failing to state a cause of action.² In reaching this conclusion, the Unfair Labor Practice Manager concluded that the event that ultimately triggered the statute of limitations in this matter was the implementation of Hood's December 18, 2009 improvement plan. Hood filed a timely appeal of that decision.

On December 13, 2010, Hood filed a second complaint, Case 23680-U-10-6040, which alleged substantially the same allegations pled in Case 23511-U-10-5993. The Unfair Labor Practice Manager dismissed this new complaint based upon his previous rulings.³ On December 23, 2010, Hood filed a timely notice of appeal of the Unfair Labor Practice Manager's second decision. For purposes of administrative efficiency, we have consolidated both cases for appeal.

DISCUSSION

The statute of limitations for filing an unfair labor practice complaint under Chapter 41.59 RCW is six months from the date of occurrence. RCW 41.59.150(1); *see also City of Bellevue*, Decision 9343-A (PECB, 2007). The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *City of Bremerton*, Decision 7739-A (PECB, 2003). This Commission has previously held that the only exception to the strict enforcement of the six-month statute of limitations is where the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Pasco*, Decision 4197-A (PECB, 1994).

² *South Whidbey School District*, Decision 10880 (EDUC, 2010).

³ *South Whidbey School District*, Decision 10939 (EDUC, 2010).

WAC 391-45-050(2) specifically requires that an unfair labor practice complaint must contain, in separate numbered paragraphs, a clear and concise statement of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences. *Bethel School District*, Decision 6484-A (PECB, 2000). The facts set forth in the complaint must be sufficient to make intelligible findings of fact in a 'default' situation, such as when a respondent fails to answer a complaint. *Apostolis v. City of Seattle*, 101 Wn. App. 300, 306 (2000), citing *Thurston County Fire District 3*, Decision 3830 (PECB, 1991). A skeletal "charge" will not suffice and will not be fleshed out by agency personnel. *Jefferson Transit Authority*, Decision 5928 (PECB, 1997). The Executive Director or his or her designee must make a preliminary ruling under WAC 391-45-110 based on what is contained within the four corners of the complaint. *Bethel School District*, Decision 6484-A, citing *Apostolis v. City of Seattle*.

Hood's First Complaint - Case 23511-U-10-5993

Hood filed his complaint on September 17, 2010. Therefore, any events that occurred prior to March 17, 2010, cannot form the basis of an unfair labor practice that can be redressed by Chapter 41.59 RCW. Additionally, the facts alleged in Hood's original and amended complaints were not in separately numbered paragraphs, and therefore not in compliance with WAC 391-45-050(2). Despite this failure, we decline to dismiss his complaint on this technicality, and we will review the merits of those complained-of facts that are timely.

Although the six-month statute of limitations limits Hood's allegations that could be redressed by Chapter 41.59 RCW, we do not agree with the Unfair Labor Practice Manager that the December 18, 2009 improvement plan was the controlling event that triggered the statute of limitations in this case. Rather, any allegation of unlawful conduct that occurred after March 17, 2010, could have constituted a violation had the pleadings asserted that the decision to dismiss him was in retaliation against him for exercising protected activity.

However, it is clear from a plain reading of Hood's complaint and amended complaint that the only timely events that could form the basis of an unfair labor practice are his allegations that the employer retaliated against him for filing his May 21, 2010 grievance, his allegation that Parker unlawfully discussed his termination with the public, and his allegation that the employer provided falsified information at his June 23, 2010 appeal before the school board. However,

assuming the alleged facts are true, none of those events as pled by Hood state a claim that can be redressed by the statutes this Commission administers.

The May 21, 2010 Grievance

The timing of events is important to this decision. Filing and processing of contractual grievances is protected activity under the laws this Commission administers. *City of Pasco*, Decision 3804-A (PECB, 1992). An employer who discriminates against an employee for filing a grievance commits an unfair labor practice. RCW 41.59.140(1)(d).

It appears that Hood alleged that McCarthy retaliated against him for filing a grievance by altering his leave slip. However, McCarthy's alleged act took place on May 19, 2010, *before* Hood filed his grievance, and Hood has made no allegation that he informed McCarthy of his intent to file the grievance. Accordingly, this portion of Hood's complaint fails to state a cause of action.

It also appears that Hood alleged that McCarthy had a discussion with Hood's union representative where McCarthy falsely accused Hood of entering school premises to intimidate students. With respect to this claim, Hood's original and amended complaint fail to provide sufficient facts for this agency to make a ruling. The mere allegation that McCarthy misrepresented a material fact to Hood's union does not by itself demonstrate that the employer violated RCW 41.59.150(1) by discriminating against Hood.

Hood's allegation that Parker inappropriately discussed Hood's employment situation with the public cannot be redressed by Chapter 41.59 RCW. This Commission lacks the authority to redress false statements unless those statements tend to discourage an employee from exercising rights protected by Washington's collective bargaining statutes, and Hood has not alleged that Parker made his statements in an attempt to discourage Hood from engaging in protected activity or exercising rights protected by Chapter 41.59 RCW. Thus, this portion of Hood's complaint fails to state a cause of action.

The June 23, 2010 Appeal Hearing

Hood's allegation that McCarthy presented false information to the school board during his appeal of his termination in violation of WAC 181-87-050 is not properly before this Commission. This Commission's jurisdiction is limited to matters governed by Washington's collective bargaining laws. Violations of WAC 181-87-050 are appropriately heard before the Washington Professional Educator Standards Board, and not this Commission. Thus, this portion of Hood's complaint fails to state a cause of action.

Finally, Hood's allegation that the employer attempted to obstruct his appeal of the denial of a request for COBRA benefits, as well as his allegation that McCarthy threatened to contact police and obtain a restraining order against Hood, also fail to provide sufficiently detailed facts that would allow this agency to make a ruling in a default situation had the employer failed to answer the complaint. Hood's complaint simply alleges that the employer took these actions, on specific dates, and does not describe in adequate detail how the employer took the alleged action in response to Hood's exercise of union activity.

Hood's Second Complaint – Case 23680-U-10-6040

Hood second complaint makes many of the same factual allegations as his first complaint, including the allegation that Parker inappropriately discussed Hood's employment situation with the public, that the employer provided false information and testimony at Hood's June 23, 2010, appeal hearing, that the employer did not renew his employment contract, that McCarthy threatened to contact police, and that the employer delayed or opposed Hood's ability to obtain benefits. The second complaint must also be dismissed because Hood has not provided any additional facts asserting that the employer's actions were based upon Hood exercising protected activity.

CONCLUSION

The entireties of Hood's complaints in both cases fail to state causes of action under Chapter 41.59 RCW. Accordingly, the Order of Dismissal issued by Unfair Labor Practice Manager is upheld.

NOW, THEREFORE, it is

ORDER

The Order of Dismissal issued by Unfair Labor Practice Manager is AFFIRMED and adopted as the Order of Dismissal of the Commission.

ISSUED at Olympia, Washington, this 12th day of January, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner



THOMAS W. McLANE, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/12/2011

The attached document identified as: DECISION 10880-A - EDUC has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 23511-U-10-05993 FILED: 09/17/2010 FILED BY: PARTY 2
DISPUTE: ER DISCRIMINATE
BAR UNIT: TEACHERS
DETAILS: -
COMMENTS:

EMPLOYER: SOUTH WHIDBEY S D
ATTN: FRED MCCARTHY
721 CAMANO AVE
PO BOX 346
LANGLEY, WA 98260-0346
Ph1: 360-221-6100

PARTY 2: ERIC HOOD
ATTN:
5256 FOXGLOVE LN
LANGLEY, WA 98260
Ph1: 360-321-4011



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/12/2011

The attached document identified as: DECISION 10939-A - EDUC has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23680-U-10-06040 FILED: 12/13/2010 FILED BY: PARTY 2
DISPUTE: ER.DISCRIMINATE
BAR UNIT: TEACHERS
DETAILS: -
COMMENTS:

EMPLOYER: SOUTH WHIDBEY S D
ATTN: FRED MCCARTHY
721 CAMANO AVE
PO BOX 346
LANGLEY, WA 98260-0346
Ph1: 360-221-6100

PARTY 2: ERIC HOOD
ATTN:
5256 FOXGLOVE LN
LANGLEY, WA 98260
Ph1: 360-321-4011