Morton School District, Decision 6735 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| PUBLIC SCHOOL EMPLOYEES OF MORTON,<br><br>Complainant,<br><br>vs.<br><br>MORTON SCHOOL DISTRICT,<br><br>Respondent. | ) | CASE 14260-U-98-3538<br><br>DECISION 6735 - PECB<br><br>PRELIMINARY RULING AND PARTIAL DISMISSAL |

On November 25, 1998, Public School Employees of Morton (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Morton School District (employer) violated Chapter 41.56 RCW by discriminating against bargaining unit member Elizabeth Byrd in retaliation for union activities. The complaint was reviewed by the Executive Director under WAC 391-45-110,[1] and a deficiency notice issued on January 28, 1999, pointed out defects in the complaint, as filed. An extension of the time for filing an amended complaint was requested and granted, but nothing further was received from the union.

The case is again before the Executive Director under WAC 391-45-110. Dismissal of the deficient allegations is now in order.

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[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 Commission.

## Applicable Legal Standards

RCW 41.56.160(1) establishes a period of limitations, providing in pertinent part:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That **a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.**

[Emphasis by **bold** supplied.]

This complaint filed on November 25, 1998 can only be considered timely for actions occurring on or after May 25, 1998.

WAC 391-45-050(2) requires unfair labor practice complaints to include:

> Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

These details assist the Executive Director in reviewing complaints under WAC 391-45-110, and put respondents on notice of the charges against them.

## Application of Legal Standard

The deficiency notice informed the union: (1) the statement of facts did not distinguish between information set forth as background and incidents alleged to be violations of the law; and (2) the descriptions of some incidents lacked dates. Because the

union has not remedied these deficiencies, each of the 27 paragraphs of the statement of facts must be examined for timely causes of action.

- Paragraph 1 identifies the positions included in the bargaining unit represented by the union, and is taken as only stating background information.

- Paragraph 2 states the parties reached agreement on their current collective bargaining agreement in August of 1998, while paragraphs 3 and 4 identify the parties' representatives in the negotiations leading to that agreement. All of this is taken as only stating background information.

- Paragraph 5 identifies Elizabeth Byrd as one of the co-presidents of the local union, and is taken as only stating background information.

- Paragraph 6 states that the employer's refusal to grant a wage increase to this bargaining unit equal to that which administrators and certificated employees received was the key issue in collective bargaining after December of 1997. Standing alone, this is insufficient to state a cause of action under the definition of "collective bargaining" set forth in RCW 41.56.030(4), which includes "neither party shall be compelled to agree to a proposal or be required to make a concession". Moreover, this complaint is untimely as to any difficulties in bargaining prior to May 25, 1998.

- Paragraph 7 states the parties negotiated "periodically" during the 1997-1998 school year. This complaint is untimely as to any difficulties in bargaining prior to May 25, 1998,

and the term "periodically" is too vague to form an opinion as to whether this allegation states any cause of action.

- Paragraph 8 describes the union's efforts, from "winter" into "April and May" of an unspecified year, to inform the community of comparisons between the salaries paid to the employer's administrators and those doing similar work at other school districts. Again, this complaint is untimely as to any difficulties in bargaining prior to May 25, 1998, and the terms used are too vague to form an opinion as to whether this allegation states any cause of action. This is thus taken as only stating background information.

- Paragraph 9 states that Byrd is well known as a union activist, but does not allege any wrongdoing on the part of the employer.

- Paragraph 10 alleges that the employer's superintendent asked the police to disperse union members conducting protected informational picketing before a school board meeting was to begin on May 4 of an unspecified year. This complaint is untimely as to that action occurring prior to May 25, 1998. Allegations that Byrd was a member of the union group, that the group drove around town leafletting after the picketers were dispersed, and that the superintendent perceived Byrd as a primary union spokesperson are taken to be background information to show union animus.

- Paragraph 11 alleges that the superintendent was aware of union support for a demand that he resign, based on occurrences at a community meeting held on May 8 of an unspecified year. For the same reasons as stated in the preceding

paragraph, this can only be taken as taken to be background information to show union animus.

- Paragraph 12 alleges that the superintendent again requested police action to disperse informational picketing at a school board meeting held "approximately May 25". The terms used are too vague to form an opinion as to whether this allegation states any cause of action. This is thus only taken as background information to show union animus.

- Paragraph 13 contains a conclusionary statement that the employer "began" to retaliate against Byrd. This paragraph is insufficient to state any cause of action.

- Paragraph 14 alleges that the employer reduced the work hours for certain bargaining unit members during "spring, 1998". The unremedied lack of detail precludes any determination of timeliness, and therefore the paragraph fails to state a cause of action for that layoff.

- Paragraph 14 further alleges that the union advised some bargaining unit employees to apply for unemployment compensation after the reduction of work hours, that Byrd actually received unemployment compensation benefits, and that the superintendent "repeatedly" complained to union officers about the unemployment compensation. As with previous allegations, the absence of a fixed date for the alleged events precludes finding a cause of action to exist. This is only taken as background information to show union animus.

- Paragraph 15 alleges that Byrd accompanied another bargaining unit member to a meeting with the employer's business manager

on September 30, 1998, to discuss a pay question. Paragraph 16 alleges that Byrd identified her role in the September 30, 1998 meeting as being one of a union representative. These allegations do not suggest any wrongdoing on the part of the employer, and are taken as only stating background information.

- Paragraph 17 alleges that the business manager subsequently called Byrd to a meeting to discuss Byrd's behavior in the September 30 meeting, and that Byrd brought a union staff representative to the meeting. These allegations do not suggest any wrongdoing on the part of the employer, and are taken as only stating background information.

- Paragraph 18 alleges that the business manager refused to meet with Byrd because of the presence of the union staff representative. While employees have a right to union representation at investigatory interviews conducted by the employer, under National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975) and Commission precedents adopting that principle, one of the lawful options available to an employer under Weingarten is to dispense with holding the interview. Thus, this portion of paragraph 18 fails to state a cause of action.

- Paragraph 18 goes on to allege that the superintendent later told the union that employees must meet singly with the business manager to discuss pay questions, without a union representative or anyone else as an observer. Inasmuch as the union is the exclusive bargaining representative of all bargaining unit employees under RCW 41.56.080, and the "wages" of bargaining unit employees are a mandatory subject of collective bargaining between the employer and union under RCW

41.56.030(4), this paragraph states a cause of action for attempted circumvention of the exclusive bargaining representative in violation of RCW 41.56.140(4) and (1).

- Paragraph 19 describes a meeting held on October 8 of an unspecified year, at which the superintendent characterized Byrd's union activities as harassment which must cease. This states a cause of action for interference with employee rights in violation of RCW 41.56.140(1) and interference in union affairs in violation of RCW 41.56.140(2).

- Paragraph 19 also suggests that the superintendent imposed limitations on the union activities of employees other than Byrd and made repeated complaints about Byrd's union activities, but it is unclear whether those actions occurred during the October 8 meeting or separately. These allegations thus lack sufficient detail to determine their timeliness, and therefore fail to state a cause of action.

- Paragraph 20 sets forth a conclusionary statement that further retaliation soon followed, but lacks sufficient detail to state a cause of action.

- Paragraphs 21 through 24 state a cause of action for discrimination in violation of RCW 41.56.140(1) when taken together. Paragraph 21 alleges that Byrd was told the employer would no longer permit her son to take a school bus from the school where Byrd worked to the elementary school he attended. In this instance, the complaint is specific as to an October 22, 1998 date for this incident. Although paragraph 21 acknowledges that Byrd lives within the enrollment boundaries of another elementary school, paragraph 22 alleges that her year-

long practice of bringing him to the school where she worked and having him ride a school bus from that location was in accord with employer policy and prior approval. Paragraph 23 alleges that the children of other employees continued to be transported in accord with the past practice after Byrd's son was excluded from the school bus, which provides basis for a "discrimination" claim.

- Paragraph 24 also alleges that the superintendent has failed or refused to supply the employer policy relied upon as the basis for denying school bus transportation for Byrd's son, after a copy of that policy was requested by the union. This states a cause of action for a refusal to bargain (by refusal to provide information) in violation of RCW 41.56.140(4).

- Paragraph 25 cites a decision in an earlier case, where this employer was found to have discriminated against two employees in a different bargaining unit,[2] paragraph 26 states that at least two of the school board members "implicated in the previous anti-union activity" continue to serve, and paragraph 27 states that the superintendent held the same position during the processing of the earlier case, and asks for enforcement of the order in the earlier case. These materials do not state a cause of action in this case, although they may be admissible as background information.

The foregoing dissection of the statement of facts reveals that the complaint could only be a basis for a remedy as to the circumvention of the union in paragraph 18 states a cause of action, the interference and domination in paragraph 19, the discrimination in regard to denial of school bus transportation for Byrd's son in

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[2] Morton School District, Decision 5838 (PECB, 1997).

paragraphs 21 through 24, and the refusal to provide information requested by the union in paragraph 24. The remaining paragraphs fail to state a cause of action, although evidence on some of the matters alleged may be admissible to establish background for the allegations which do state a cause of action.

Request for Enforcement of Prior Order

The union asks that this case be treated as an enforcement of the remedial order in Morton School District, supra. The union sees such treatment as including an expedited hearing, Commission action to seek court enforcement of any decision that the employer has again violated the law, an award of attorney fees and costs, and appointment of a special master to oversee the employer's labor relations and approve all discipline for the next two years. The union cites no authority or precedent for any of those requests.

It could suffice to say that the union's request is both unprecedented and outside of the procedures established by the Commission in Chapter 391-45 WAC. Additional reasons for rejecting the union's request at this time include:

a. This union lacks legal standing to intercede in proceedings between the employer and the exclusive bargaining representative of another bargaining unit, concerning violation of the rights of employees who are not members of the bargaining unit this union represents. A union's rights are limited to representing employees within the bargaining unit for which the union is exclusive bargaining representative. Castle Rock School District, Decision 4722-B (PECB, 1995).

b. Even if it somehow had legal standing to intervene in the earlier proceeding, nothing remains to be enforced in that case. The employer tendered compliance with the remedial order issued in Morton School District, supra, the parties to that case eventually resolved a dispute concerning that tender of compliance, those cases were closed on June 30, 1998, and the parties' agreement was reported to the Commission at its open, public meeting held in July of 1998. None of the conduct at issue in the present unfair labor practice complaint is alleged to have occurred until much later, and none involves the same employees. This case thus appears to be a separate proceeding under Chapter 41.56 RCW.

c. No basis is found in Chapter 41.56 RCW for the Commission to appoint a special master or otherwise directly or indirectly take over the authority and role of the employer. While the name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute, RCW 41.58.005 clearly indicates that the role of the Commission is the impartial resolution of labor-management disputes. While RCW 41.56.160 authorizes the Commission to determine and remedy unfair labor practices, that does not suggest any basis for the Commission to act in the absence of a current controversy.

d. Finally, the union has failed to make use of the temporary relief procedure available under the Commission's rules, at 391-45-430.

The "enforcement" request will not be acted upon at this time. The viable allegations of this unfair labor practice complaint will be processed in the usual manner.

NOW, THEREFORE, it is

ORDERED

1. A cause of action is found to exist, and further proceedings under Chapter 391-45 WAC are warranted, only with respect to the circumvention allegation in paragraph 18, the interference and domination allegations in paragraph 19, the discrimination allegations in paragraphs 21 through 24, and the refusal to provide information allegation in paragraph 24.

   a. The person or organization charged with an unfair labor practice in this matter (the "respondent") shall: **File and serve its answer to the complaint within 21 days following the date of this letter.** An answer filed by a respondent shall:

      1) Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial; and

      2) Assert any affirmative defenses that are claimed to exist in the matter.

   The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

b. Examiner Pamela G. Bradburn is designated to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 10-08-090, including making contact to determine the position of the other party prior to presenting the request to the Examiner.

2. Except as provided in paragraph 1 of this order, all of the allegations of the complaint are dismissed as failing to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Issued at Olympia, Washington, on the 7th day of July, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order will be the final order of the agency on the matters covered thereby, unless a notice of appeal is filed with the Commission under WAC 391-45-350.