

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COLUMBIA BASIN COLLEGE)	
)	
Employer.	)	CASE 15973-U-01-4072
-----)	
GARY BULLERT,)	
)	
Complainant,)	
)	
vs.)	
	)	DECISION 7539 - CCOL
ASSOCIATION OF HIGHER EDUCATION/ WASHINGTON EDUCATION ASSOCIATION,)	
	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
-----)	
GARY BULLERT,)	
)	
Complainant,	)	CASE 15974-U-01-4073
)	
vs.	)	DECISION 7540 - CCOL
)	
COLUMBIA BASIN COLLEGE,	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
-----)	

Two complaints charging unfair labor practices in the above-referenced matters were filed with the Public Employment Relations Commission by Gary Bullert (Bullert) on August 29, 2001. Bullert is an academic employee of Columbia Basin College (employer). The first complaint alleged that the Association of Higher Education/Washington Education Association (union) interfered with employee rights in violation of RCW 28B.52.073(2)(a), refused to bargain in violation of RCW 28B.52.073(2)(d), and violated the provisions of Chapter 49.44 RCW (Violations - Prohibited Practices) by agreeing to contract language granting additional compensation to an academic employee holding the office of union president. The first complaint was docketed as Case 15973-U-01-4072.

The second complaint alleged that the employer interfered with employee rights in violation of RCW 28B.52.073(1)(a), dominated or

assisted the union in violation of RCW 28B.52.073(1)(b), discriminated in violation of RCW 28B.52.073(1)(c), refused to bargain in violation of RCW 28B.52.073(1)(e), and violated the provisions of Chapter 49.44 RCW (Violations - Prohibited Practices) by agreeing to contract language granting additional compensation to an academic employee holding the office of union president. The second complaint was docketed as Case 15974-U-01-4073.

The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice was issued on September 25, 2001. In relation to the first complaint, the deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of union refusal to bargain in violation of RCW 28B.52.073(2)(d), or the allegations concerning Chapter 49.44 RCW. The deficiency notice stated that the refusal to bargain provisions of Chapter 28B.52 RCW can only be enforced by an employee organization or an employer, and individual employees do not have standing to process such allegations.

The deficiency notice indicated that the Commission does not assert jurisdiction with respect to Chapter 49.44 RCW, which establishes certain prohibited practices for labor organizations. Any allegations concerning such statutes do not state a cause of action for proceedings before the Commission. The deficiency notice stated that the interference allegations of the first complaint under RCW 28B.52.073(2)(a) appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after Bullert had an opportunity to respond to the deficiency notice.

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

In relation to the second complaint, the deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of employer refusal to bargain in violation of RCW 28B.52.073(1)(e), or the allegations concerning Chapter 49.44 RCW. The deficiency notice stated that the interference, domination, and discrimination allegations of the second complaint under RCW 28B.52.073(1)(a), (b), and (c) appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after Bullert had an opportunity to respond to the deficiency notice.

The deficiency notice advised Bullert that amended complaints could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Bullert that in the absence of a timely amendment stating a cause of action, the allegations in the first complaint of union refusal to bargain in violation of RCW 28B.52.073(2)(d) and violations of Chapter 49.44 RCW, and the allegations in the second complaint of employer refusal to bargain in violation of RCW 28B.52.073(1)(e) and violations of Chapter 49.44 RCW, would be dismissed. Nothing further has been received from Bullert.

NOW THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint in Case 15973-U-01-4072 state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 28B.52.073(2)(a), by agreeing to contract language granting additional

compensation to an academic employee holding the office of union president.

The interference allegations of this complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Assuming all of the facts alleged to be true and provable, the interference, domination, and discrimination allegations of the complaint in Case 15974-U-01-4073 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 28B.52.073(1)(a), domination or assistance of the union in violation of RCW 28B.52.073(1)(b), and discrimination in violation of RCW 28B.52.073(1)(c), by agreeing to contract language granting additional compensation to an academic employee holding the office of union president.

The interference, domination, and discrimination allegations of this complaint will be the subject of further proceedings under Chapter 391-45 WAC.

3. The Association of Higher Education/Washington Education Association, and Columbia Basin College shall each respectively:

File and serve its answer to the allegations listed in either paragraph 1 or 2 of this order, within 21 days following the date of this order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. 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. See WAC 391-45-210.

4. The allegations of the complaint in Case 15973-U-01-4072 concerning union refusal to bargain in violation of RCW 28B.52.073(2)(d), and the allegations concerning Chapter 49.44 RCW are DISMISSED for failure to state a cause of action.
5. The allegations of the complaint in Case 15974-U-01-4073 concerning employer refusal to bargain in violation of RCW 28B.52.073(1)(e), and the allegations concerning Chapter 49.44 RCW are DISMISSED for failure to state a cause of action.
6. The allegations listed in paragraphs 1 and 2 of this Order are consolidated for further proceedings under Chapter 391-45 WAC.

ISSUED at Olympia, Washington, this 5th day of November, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

Paragraphs 4 and 5 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.