

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 609,)	
)	
Complainant,)	CASE 16076-U-01-4102
)	
vs.)	DECISION 7607 - PECB
)	
SEATTLE SCHOOL DISTRICT,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by the International Union of Operating Engineers, Local 609 (union) on October 24, 2001. The complaint alleged that the Seattle School District (employer) interfered with employee rights in violation of RCW 41.56.140(1), and refused to bargain in violation of RCW 41.56.140(4), by transferring and disciplining Michael Dixon and K. Renee Helms, in reprisal for their union activities protected by Chapter 41.56 RCW.

The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice was issued on December 17, 2001, indicating 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

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 Public Employment Relations Commission.

RCW 41.56.140(4). A breach of the good faith bargaining obligations of RCW 41.56.030(4) involves either a public employer or union utilizing bargaining tactics which, under the circumstances, frustrate agreement. The factual allegations of the complaint fail to indicate that the employer's conduct concerning Dixon and Helms occurred during contract negotiations between the parties.

The deficiency notice stated that the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) 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. . . .

In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of employer misconduct occurring on or after April 24, 2001. The deficiency notice indicated that events described in the statement of facts occurring before April 24, 2001, would be considered merely as background information.

The deficiency notice questioned the union's use of the terms "retaliation against . . . Helms and Dixon" and "retaliatory transfers and discipline" in its statement of facts. Allegations of retaliation taken in reprisal for union activities protected by Chapter 41.56 RCW are processed by the Commission under the provisions of RCW 41.56.140(1). However, the union did not check the box entitled "Employer Discrimination" on the complaint form (Form U-1). The deficiency notice inquired as to whether the union was alleging a discrimination violation under RCW 41.56.140(1).

The deficiency notice indicated that the interference allegations of the complaint under RCW 41.56.140(1) appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice.

The deficiency notice advised the union that an amended complaint 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 the union that in the absence of a timely amendment stating a cause of action, the allegations concerning employer refusal to bargain in violation of RCW 41.56.140(4) would be dismissed.

The union filed an amended complaint on January 7, 2002. While the amended complaint added an allegation of employer discrimination under RCW 41.56.140(1), it failed to add factual allegations concerning the employer's collective bargaining obligations occurring on or after April 24, 2001.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations of the amended complaint state a cause of action, summarized as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by transferring and disciplining Michael Dixon and K. Renee Helms, in reprisal

for their union activities protected by Chapter 41.56 RCW.

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

2. The Seattle School District shall:

File and serve its answer to the allegations listed in paragraph 1 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 amended 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended

complaint, and as a waiver of a hearing as to the facts so admitted. See WAC 391-45-210.

3. The allegation of the complaint concerning employer refusal to bargain in violation of RCW 41.56.140(4) is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 31st day of January, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

Paragraph 3 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.