

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HERSHEL GREER, JR,	)	
	)	
Complainant,	)	CASE 17042-U-02-4419
	)	
vs.	)	DECISION 8223 - PECB
	)	
AUBURN SCHOOL DISTRICT,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	

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On December 11, 2002, Hershel Greer, Jr. (Greer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Auburn School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on September 15, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Greer was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On September 23, 2003, Greer filed an amended complaint. After review of the amended complaint, the Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer discrimination in violation of RCW 41.56.140(1) and discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by failing to interview Greer for several custodial job openings that he bid on, in reprisal for union activities protected by Chapter 41.56 RCW.

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<sup>1</sup> 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.

Several defects are noted with the complaint. One, in reference to the allegations of discrimination under RCW 41.56.140(1), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW. Two, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The statement of facts attached to the complaint does not contain any such factual allegations.

Three, the bidding rights of employees concerning the filling of open bargaining unit positions is often controlled by language in a collective bargaining agreement between the employer and the union. However, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976).

The amended complaint reiterated Greer's claim that he was entitled to an interview for several job openings. The amended complaint failed to cure the defects indicated in the deficiency notice.

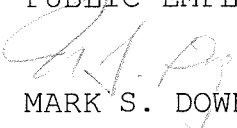
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 2<sup>nd</sup> day of October, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARK S. DOWNING, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.