

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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|--------------------------------|---|----------------------|
| STEVEN TOLLIVER, |) | |
| |) | |
| Complainant, |) | CASE 17191-U-03-4449 |
| |) | |
| vs. |) | DECISION 8293 - PECB |
| |) | |
| SEATTLE SCHOOL DISTRICT, |) | ORDER OF DISMISSAL |
| |) | |
| Respondent. |) | |
| |) | |
| <hr/> |) | |
| STEVEN TOLLIVER, |) | |
| |) | |
| Complainant, |) | CASE 17199-U-03-4451 |
| |) | |
| vs. |) | DECISION 8294 - PECB |
| |) | |
| SEATTLE EDUCATION ASSOCIATION, |) | ORDER OF DISMISSAL |
| |) | |
| Respondent. |) | |
| |) | |
| <hr/> |) | |

On February 10, 2003, Steven Tolliver (Tolliver) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Seattle School District (employer) and the Seattle Education Association (union) as respondents. The Commission docketed the complaint as two case numbers. Case 17191-U-03-4449 concerns allegations of the complaint against the employer, while Case 17199-U-03-4451 involves allegations against the union.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on October 17, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Tolliver was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

On November 4, 2003, Tolliver filed an amended complaint. After review of the amended complaint, the Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint against Employer

The allegations of the complaint in Case 17191-U-03-4449 concern employer interference with employee rights and 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 its layoff and/or termination of Steven Tolliver, in reprisal for union activities protected by Chapter 41.56 RCW.

Several defects are noted with the complaint. One, while several documents were attached to the complaint, the complaint failed to explain how the employer violated the provisions of Chapter 41.56 RCW. Unlike the National Labor Relations Board, the Commission

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.

does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated.

Two, the complaint indicates that Tolliver is "a '504 status' employee, which is a handicapping condition." The Public Employment Relations Commission does not have jurisdiction concerning allegations of discrimination based on disability.

Three, the complaint contains an attachment of pages 19 - 23 entitled "Article IV: Employment Provisions", which appears to be from the parties' collective bargaining agreement. The Public Employment Relations 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).

Four, 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.

Five, 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 complaint does not contain any such factual allegations.

The amended complaint responded to the deficiency notice by stating: "the results of complaints/contact with union were a hostile work environment and later termination. No prior unfair labor practice complaint has been filed with the Commission." The

response relates to two defects: 1) Failure to explain how the employer violated the provisions of Chapter 41.56 RCW; and 2) Lack of evidence that Tolliver previously filed an unfair labor practice complaint with the Commission. As the response indicated that Tolliver has not filed a prior unfair labor practice complaint with the Commission, no cause of action can be found under RCW 41.56.140(3).

The amended complaint did not cure the defect concerning failure to explain how the employer violated the provisions of Chapter 41.56 RCW. The Commission staff is not at liberty to take on advocacy responsibilities such as assembling a coherent presentation, filling in gaps, or making leaps of logic. Tolliver has failed to explain how the provisions of RCW 41.56.140 were violated by the employer's conduct.

Complaint against Union

The allegations of the complaint in Case 17199-U-03-4451 concern union refusal to bargain in violation of RCW 41.56.150(4), by unspecified actions related to the layoff and/or termination of Steven Tolliver. Several defects are noted with the complaint. One, as for the complaint against the employer, the complaint fails to explain how the union violated the provisions of Chapter 41.56 RCW.

Two, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of

grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Three, the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by an employee organization, and the refusal to bargain provisions of RCW 41.56.150(4) can only be enforced by an employer. Individual employees do not have standing to process refusal to bargain allegations.

The amended complaint did not respond to any of the defects noted for the complaint against the union.

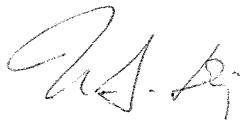
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 10th day of December, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

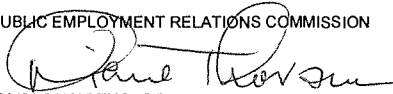
603 EVERGREEN PLAZA BUILDING
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
SAM KINVILLE, COMMISSIONER
JOSEPH W. DUFFY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 12/10/2003

The attached document identified as: RECORD OF SERVICE 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/ DIANE THOVSEN

CASE NUMBER: 17191-U-03-04449 FILED: 02/10/2003 FILED BY: PARTY 2
DISPUTE: ER DISCRIMINATE
DETAILS: -
COMMENTS:

EMPLOYER: SEATTLE S D
ATTN: JOSEPH OLCHEFSKE
2445 3RD AVE S
PO BOX 34165
SEATTLE, WA 98124-1165
Ph1: 206-252-0100

REP BY: MARGO HOLLAND
SEATTLE S D
2445 3RD AVE S
PO BOX 34165
SEATTLE, WA 98124
Ph1: 206-252-0377

PARTY 2: STEVEN TOLLIVER
ATTN: 8406 26TH AVE SW STE A
SEATTLE, WA 98106
Ph1: 206-762-4805

PARTY 3: SEATTLE EDUCATION ASSN
ATTN: NANCY MURPHY
720 NOB HILL AVE N
SEATTLE, WA 98109
Ph1: 206-283-8443

REP BY: KRAIG PECK
SEATTLE EDUCATION ASSN
720 NOBB HILL AVE N
SEATTLE, WA 98109
Ph1: 206-283-8443

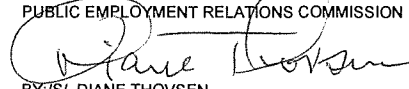
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /s/ DIANE THOVSEN

CASE NUMBER: 17199-U-03-04451 FILED: 02/10/2003 FILED BY: PARTY 3
DISPUTE: UN FAIR REP
DETAILS: -
COMMENTS:

EMPLOYER: SEATTLE S D
ATTN: JOSEPH OLCHEFSKE
2445 3RD AVE S
PO BOX 34165
SEATTLE, WA 98124-1165
Ph1: 206-252-0100

REP BY: MARGO HOLLAND
SEATTLE S D
2445 3RD AVE S
PO BOX 34165
SEATTLE, WA 98124
Ph1: 206-252-0377

REP BY: FAYE CHESS-PRENTICE
SEATTLE S D
PO BOX 34165
MS 32-151
SEATTLE, WA 98124-1165
Ph1: 206-252-0110

PARTY 2:
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Ph1: 206-283-8443

REP BY: KRAIG PECK
SEATTLE EDUCATION ASSN
720 NOBB HILL AVE N
SEATTLE, WA 98109
Ph1: 206-283-8443

PARTY 3:
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