



DISCUSSION

The allegations of the complaint concern employer domination or assistance of a union in violation of RCW 41.59.140(1)(b), discrimination in violation of RCW 41.59.140(1)(c), and discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(1)(d) [and if so, derivative "interference" in violation of RCW 41.59.140(1)(a)], by comments of principal Lois Betzing reprimanding union executive board member Lisa Freeze for Freeze's behavior during an April 1, 2004, meeting between superintendent Ben Soria and the union executive board, comments of Soria to Lynne Green concerning statements Green made at a April 14, 2004, union meeting, circumventing the union through direct dealing with employees represented by the union in an email of April 14, 2004, from Soria to employees misrepresenting actions of the union and in Soria's direction of April 19, 2004 to block emails addressed to "All Teachers," in reprisal for union activities protected by Chapter 41.59 RCW.

The deficiency notice indicated that the complaint contained several defects. One, 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 did not contain any such factual allegations. The amended complaint cured this defect by withdrawing the allegations of discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(1)(d).

Two, circumvention of the union under Chapter 41.59 RCW involves an employer negotiating directly with bargaining unit employees on "wages, hours, and terms and conditions of employment" that should be negotiated with the exclusive bargaining representative. Circumvention of the union violates the employer's duty to bargain under RCW 41.59.140(1)(e). However, the union did not check the

box entitled "Employer Refusal to Bargain" on the complaint form (Form U-1). The deficiency notice inquired as to whether the union was alleging a refusal to bargain violation under RCW 41.59.140(1)(e). The amended complaint cured this defect by adding an allegation of refusal to bargain in violation of RCW 41.59.140(1)(e).

The deficiency notice explained that the above summary of the allegations of the complaint included a derivative "interference with employee rights" violation under RCW 41.59.140(1)(a). Any violation of the domination or assistance of a union provisions of RCW 41.59.140(1)(b), discrimination provisions of RCW 41.59.140(1)(c), discrimination for filing an unfair labor practice charge provisions of RCW 41.59.140(1)(d), or refusal to bargain provisions of RCW 41.59.140(1)(e), is automatically a derivative interference with employee rights violation under RCW 41.59.140(1)(a). However, the complaint raised a question as to whether the union was alleging an independent interference violation under RCW 41.59.140(1)(a). While the union did not check the box entitled "Employer Interference with Employee Rights" on Form U-1, the statement of facts attached to the complaint alleged that the employer's conduct "constitutes interference with, coercing restraint from employees exercising their rights to freely join and participate in the activities of their union . . ." The deficiency notice inquired as to whether the union was alleging an interference violation under RCW 41.59.140(1)(a). The amended complaint cured this defect by adding an allegation of interference in violation of RCW 41.59.140(1)(a).

The deficiency notice stated that the domination or assistance of a union allegations under RCW 41.59.140(1)(b) and discrimination allegations under RCW 41.59.140(1)(c), 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.

Allegations of Amended Complaint

The amended complaint contains interference, domination or assistance, discrimination, and refusal to bargain allegations concerning an email of May 22, 2002, from Soria to employees censoring a union newsletter. The Commission is bound by the following provisions of Chapter 41.59 RCW:

RCW 41.59.150 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES -- SCOPE. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: 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. . . .

The amended complaint contains information concerning events occurring more than six months before filing of the complaint. The additional factual allegations of the amended complaint fail to meet the requirements of RCW 41.59.150.

NOW, THEREFORE, it is

ORDERED

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

Employer interference with employee rights in violation of RCW 41.59.140(1)(a), domination or assistance of a union in violation of RCW 41.59.140(1)(b), discrimination in violation of RCW 41.59.140(1)(c), and refusal to bargain in violation of RCW 41.59.140(1)(e), by comments of principal Lois Betzing reprimanding union executive board member Lisa Freeze for Freeze's behavior during a April 1, 2004 meeting between superintendent Ben Soria and the union executive board, comments of

Soria to Lynne Green concerning statements Green made at a April 14, 2004, union meeting, circumventing the union through direct dealing with employees represented by the union in an email of April 14, 2004, from Soria to employees misrepresenting actions of the union and in Soria's direction of April 19, 2004, to block emails addressed to "All Teachers," in reprisal for union activities protected by Chapter 41.59 RCW.

The interference, domination or assistance, discrimination, and refusal to bargain allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Yakima 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 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.

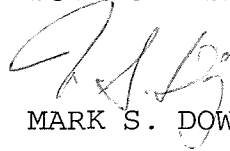
The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure 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.

3. The interference, domination or assistance, discrimination, and refusal to bargain allegations of the amended complaint concerning an email of May 22, 2002, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 21<sup>st</sup> day of June, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.