

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JIM PARRY,)	
)	
Complainant,)	CASE 18697-U-04-4752
)	
vs.)	DECISION 8716 - EDUC
)	
SPOKANE SCHOOL DISTRICT,)	
)	
Respondent.)	
_____)	
JIM PARRY,)	
)	
Complainant,)	CASE 18698-U-04-4753
)	
vs.)	DECISION 8717 - EDUC
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On July 9, 2004, Jim Parry (Parry) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The first complaint named the Spokane School District (employer) as respondent and was docketed as Case 18697-U-04-4752. The second complaint named the Washington Education Association (union) as respondent and was docketed as Case 18698-U-04-4753.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 16, 2004, indicated that it was not

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.

possible to conclude that a cause of action existed at that time. Parry was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

No further information has been filed by Parry. 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 18697-U-04-4752 concern 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), refusal to bargain in violation of RCW 41.59.140(1)(e), and an other unfair labor practice through violating RCW 49.44.160, by breach of its good faith bargaining obligations in making a collective bargaining proposal to change the status of tutor teachers to leave replacement teachers, in reprisal for union activities protected by Chapter 41.59 RCW.

The complaint is defective for several reasons. One, it is unclear whether the complaint is being filed by an individual employee (Parry), or by four employees (Parry, Stuart Dagg, Laurel Riley, Mike Bradley). The complaint form is signed only by Parry. But a July 6, 2004 letter attached to the complaint is signed by Parry and Dagg, and below their signatures the names of all four employees are listed as the Tutor Negotiating Team. Commission rules provide as follows:

WAC 391-45-010 COMPLAINT CHARGING UNFAIR LABOR PRACTICES -- WHO MAY FILE. A complaint charging that a

person has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

Class actions are not permitted under Commission rules. Individual employees must file their own unfair labor practice complaints. The complaint is limited to allegations concerning Parry.

Two, in a phone conversation with the Commission office on August 3, 2004, employer official Barbara Wright indicated that the employer had not received a copy of the complaint, and that it was her understanding that the union had not received a copy of the complaint. WAC 391-08-120(3) requires parties filing papers with the Commission to serve a copy of any papers upon all other parties. The deficiency notice indicated that if the provisions of this rule were followed, Parry must promptly provide proof of service under WAC 391-08-120(4) to the Commission. Parry did not respond to the deficiency notice. In *King County*, Decision 7221-A (PECB, 2001), the Commission affirmed dismissal of a case for insufficient service of process.

Three, 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 July 6 letter alleges that "we were not aware of the possibility of filing an unfair labor practice until we called PERC in May of 2004." The Commission addressed the issue of timeliness in *City of Selah*, Decision 5382 (PECB, 1995) as follows:

RCW 41.56.160 provides that the Commission shall not process any unfair labor practice complaint occurring more than six months before the filing of the complaint. The clock begins to run when the adverse employment decision is made and communicated to the employee, and the six month time limit has been extended only where it can be demonstrated that the complainant did not have actual or constructive knowledge of the acts or events which are the basis of the charge. *Spokane County*, Decision 2377 (PECB, 1986); *City Of Dayton*, Decision 2111-A (PECB, 1986). The Commission's precedents in this area are consistent with the rulings of the National Labor Relations Board under the similar limitations in the federal law. See, *U.S. Postal Service*, 271 NLRB 397 (1984); *Metromedia, Inc.*, 232 NLRB 76 (1977), 586 F.2d 1182 (8th Circuit, 1978); and *ACF Industries, Inc.*, 231 NLRB 83 (1977), 592 F.2d 422 (8th Circuit, 1979).

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the July 6 letter occurring before January 9, 2004, will be considered merely as background information. The complaint fails to contain allegations that Parry did not have actual or constructive knowledge of the acts or events which are the basis of the charge. The complaint does not meet the requirements of RCW 41.59.150. In order for the complaint to be timely under RCW 41.59.150, the complaint must contain allegations of employer misconduct occurring on or after January 9, 2004.

Four, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.59.140(1)(b), none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

Five, the duty to bargain under Chapter 41.59 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions

of RCW 41.59.140(1)(e) can only be enforced by an employee organization. Individual employees do not have standing to process refusal to bargain allegations.

Six, in reference to the allegations of discrimination under RCW 41.59.140(1)(c), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.59 RCW.

Seven, in relation to the allegations of an other unfair labor practice through violating RCW 49.44.160, the Commission does not have jurisdiction over the provisions of Chapter 49.44 RCW.

Complaint Against Union

The allegations of the complaint in Case 18698-U-04-4753 concern union interference with employee rights in violation of RCW 41.59.140(2)(a), discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(2)(a), inducement of employer to commit an unfair labor practice in violation of RCW 41.59.140(2)(b), refusal to bargain in violation of RCW 41.59.140(2)(c), and an unspecified other unfair labor practice, by breach of its good faith bargaining obligations in failing to obtain continuing contract status for tutor teachers through collective bargaining negotiations with the employer, breach of its duty of fair representation through failing to provide funding for a lawsuit, and by failing to represent Jim Parry in the processing of a grievance filed with the employer in June 2003.

The complaint is defective for several reasons. One, as for the complaint against the employer, the complaint is limited to allegations concerning Parry. Two, as for the complaint against the employer, if the provisions of WAC 391-08-120(3) were followed, Parry failed to provide proof of service under WAC 391-08-120(4) to

the Commission. Three, as for the complaint against the employer, in order for the complaint to be timely under RCW 41.59.150, the complaint must contain allegations of union misconduct occurring on or after January 9, 2004.

Four, in relation to the allegations of discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(2)(a), 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.

Five, as for the complaint against the employer, individual employees do not have standing to process refusal to bargain allegations. The refusal to bargain provisions of RCW 41.59.140(2)(c) can only be enforced by an employer.

Six, 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.

Seven, in relation to the allegations of an other unfair labor practice violation, the complaint fails to explain and specify what "other" statute has been violated by the union's actions.

Eight, as the complaint fails to state a cause of action against the employer under RCW 41.59.140(1), there are insufficient factual

allegations to support a cause of action that the union induced the employer to commit an unfair labor practice in violation of RCW 41.59.140(2)(b).

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 14th day of September, 2004.

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.