

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| SERVICE EMPLOYEES INTERNATIONAL |) | |
| UNION, LOCAL 925, |) | |
| |) | CASE 18051-U-03-4637 |
| Complainant, |) | |
| |) | DECISION 8466 - PECB |
| vs. |) | |
| |) | |
| SOUTH WHIDBEY SCHOOL DISTRICT, |) | PARTIAL DISMISSAL AND |
| |) | ORDER FOR FURTHER |
| Respondent. |) | PROCEEDINGS |
| |) | |
| |) | |

On December 5, 2003, Service Employees International Union, Local 925 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the South Whidbey School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on February 18, 2004, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations.

On March 10, 2004, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses defective allegations of the amended complaint for failure to state a cause of action, and finds a cause of action for interference, discrimination and refusal to bargain allegations of the complaint and amended complaint.

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.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights 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 director of transportation Margaret Evans' attempt to block union president Susan Flister's seniority bid for a bus route at a September 2003 meeting, retaliatory actions by Evans, comments of assistant superintendent Dan Blanton to union president Dan Carter in an October 13, 2003, meeting concerning the filing of grievances, involuntary transfer of Carter, denial of compensatory time to Carter, suspension of Karen Bennett, and refusal to provide relevant collective bargaining information requested by the union.

Deficiency Notice

The deficiency notice pointed out several defects with the complaint. One, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The deficiency notice indicated that several allegations in the statement of facts attached to the complaint did not conform to the requirements of WAC 391-45-050(2), including section 2.11 concerning denial of compensatory time to Carter, section 2.15 concerning suspension of Bennett, section 2.19 concerning retaliatory actions by Evans, and section 2.20 concerning refusal to provide information.

Two, 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. . . .

The deficiency notice indicated that the complaint contained information concerning events occurring more than six months before filing of the complaint, and that events described in the statement of facts occurring before June 5, 2003, would be considered merely as background information. The deficiency notice stated that the complaint would be limited to allegations of employer misconduct occurring on or after June 5, 2003.

Three, a question is raised by the union's reference to retaliation for union activity in the 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 asked whether the union was alleging a discrimination violation under RCW 41.56.140(1).

Four, allegations of refusal to provide information can only be processed under the refusal to bargain provisions of RCW 41.56.140(4). If such allegations are found to constitute a violation of RCW 41.56.140(4), a derivative interference violation is automatically found under RCW 41.56.140(1). Allegations of refusal to provide information do not state a cause of action for an independent interference violation under RCW 41.56.140(1). The deficiency notice indicated that the refusal to provide information allegations were defective, as the complaint only alleged an interference violation under RCW 41.56.140(1) and not a refusal to bargain violation under RCW 41.56.140(4).

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 deficiency notice stated that the complaint did not contain any such factual allegations.

The deficiency notice indicated that the interference allegations of the complaint under RCW 41.56.140(1) concerning Evans' attempt to block Flister's seniority bid at a September 2003 meeting, comments of Blanton to Carter in a October 13, 2003, meeting, and the involuntary transfer of Carter, 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.

Amended Complaint

The amended complaint cured some, but not all, of the defects noted above. In relation to defect one concerning denial of compensatory time to Carter, the amended complaint alleges that the employer refused to compensate Carter for upgrade pay on November 6, 2002. The complaint was filed on December 5, 2003. Under the six-month statute of limitations found in RCW 41.56.160, the complaint is limited to allegations of employer misconduct occurring on or after June 5, 2003. The allegations concerning denial of upgrade pay to Carter on November 6, 2002, do not state a cause of action.

In relation to defect one concerning suspension of Bennett, the amended complaint withdrew this allegation. In relation to defect one concerning retaliatory actions by Evans, the amended complaint cured this defect by alleging employer discrimination in violation of RCW 41.56.140(1), by termination of Bennett on February 11, 2004, in reprisal for union activities protected by Chapter 41.56 RCW. The discrimination allegation concerning written reprimand of

Bennett on May 6, 2003, does not state a cause of action under the six-month statute of limitations found in RCW 41.56.160.

In relation to defects one and four concerning refusal to provide information, the amended complaint cured these defects by alleging employer refusal to bargain in violation of RCW 41.56.140(4), by refusal to provide relevant collective bargaining information requested by the union concerning disciplinary action taken against Bennett.

In relation to defect two, the allegations of the complaint and amended complaint found to state a cause of action, have been limited to allegations of employer misconduct occurring on or after June 5, 2003. In relation to defect three, the amended complaint cured this defect by alleging employer discrimination in violation of RCW 41.56.140(1). In relation to defect five, the amended complaint withdrew the allegations of employer discrimination for filing unfair labor practice charges in violation of RCW 41.56.140(3).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference, discrimination and refusal to bargain allegations of the complaint and 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), and refusal to bargain in violation of RCW 41.56.140(4), by director of transportation Margaret Evans' attempt to block union president Susan Flister's seniority bid for a bus route at a September 2003 meeting, comments of assistant superintendent Dan Blanton to union president Dan Carter in an October 13, 2003, meeting concerning the

filing of grievances, involuntary transfer of Carter on October 30, 2003, refusal to provide relevant collective bargaining information requested by the union on November 7, 2003, concerning disciplinary action taken against Karen Bennett, and termination of Bennett on February 11, 2004, in reprisal for union activities protected by Chapter 41.56 RCW.

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

2. South Whidbey 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 and 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 complaint and amended complaint, will be deemed to be an admission that the fact is true as alleged in

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

3. The allegations of the amended complaint concerning employer interference with employee rights and discrimination in violation of RCW 41.56.140(1) by denial of upgrade pay to Dan Carter on November 6, 2002, and written reprimand of Karen Bennett on May 6, 2003, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of March, 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.