

Puget Sound Educational Service District, Decision 8845 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUGET SOUND EDUCATIONAL SERVICE DISTRICT,	)	
	)	
Employer.	)	
-----	)	
TARA OLIVER,	)	
	)	
Complainant,	)	CASE 18901-U-04-4806
	)	
vs.	)	DECISION 8845 - PECB
	)	
WASHINGTON EDUCATION ASSOCIATION,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	
	)	
TARA OLIVER,	)	
	)	
Complainant,	)	CASE 18915-U-04-4811
	)	
vs.	)	DECISION 8846 - PECB
	)	
PUGET SOUND EDUCATIONAL SERVICE DISTRICT,	)	
	)	
Respondent.	)	PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS
_____	)	

Tara Oliver (Oliver) is employed by the Puget Sound Educational Service District (employer). On October 14, 2004, Oliver filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association (union) as respondent. The complaint was docketed by the Commission as Case 18901-U-04-4806. On October 19, 2004, Oliver filed a complaint against the employer, which was docketed as Case 18915-U-04-4811.

The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on December 9, 2004, indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of the complaint against the union, and for some of the allegations of the complaint against the employer. Oliver was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the complaint against the union and dismissal of the defective allegations against the employer. Nothing further has been received from Oliver.

The Unfair Labor Practice Manager dismisses the complaint against the union and the defective allegations of the complaint against the employer for failure to state a cause of action, and finds a cause of action for the interference and discrimination allegations of the complaint against the employer.

## DISCUSSION

### Complaint Against Union

The allegations of the complaint in Case 18901-U-04-4806 concern union interference with employee rights in violation of RCW 41.56.150(1), inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.150(3), and refusal to bargain in violation of RCW

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<sup>1</sup> 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.

41.56.150(4), by failing to represent Tara Oliver in the processing of a grievance concerning termination of her employment.

The complaint has several defects. One, unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The Commission explained its procedure for processing unfair labor practice complaints in *State - Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) as follows:

The Commission processes unfair labor practice complaints under Chapter 391-45 WAC and the state Administrative Procedure Act, Chapter 34.05 RCW. The Commission staff makes an initial review of unfair labor practice complaints under WAC 391-45-110, applying an assumption that all of the facts alleged in the complaint are true and provable.[footnote omitted] The purposes of that preliminary ruling process is to, "[D]etermine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute." Thereafter:

1. If a complaint is found to be insufficient to state a cause of action (either as to some procedural deficiency or as a matter of law), a deficiency notice letter is issued under RCW 34.05.419(2), and the party that filed the complaint is given a period of time in which to either correct the deficiency or face dismissal of the case.
2. If a complaint is found to state a cause of action, a preliminary ruling letter is issued and the party that has been accused of wrongdoing is directed to file and serve its answer to the complaint. The case is then assigned to an examiner for an evidentiary hearing. The party that filed the complaint must present its own case, and has the burden of proof as to the factual allegations of its complaint. See WAC 391-45-270(1)(a). The examiner then issues a decision based on the merits of the evidence and testimony presented.

Parties have a right of appeal to the Commission under Chapter 391-45 WAC, either from a dismissal issued under

WAC 391-45-110, [footnote omitted] or from a decision issued by an examiner on the merits of a case. [footnote omitted]

Two, if bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes a duty of fair representation to bargaining unit employees, 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). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Three, the statement of facts attached to the complaint makes several references to alleged violations of 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). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. See *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Four, as the complaint fails to state a cause of action against the employer under RCW 41.56.140, 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 41.56.150(2).

Five, in relation to the allegations of violation of RCW 41.56.150(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Oliver has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Six, 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 deficiency notice indicated that if Oliver did not file a timely amendment correcting the defects, the complaint against the union would be dismissed.

#### Complaint Against Employer

The allegations of the complaint in Case 18915-U-04-4811 concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by its

termination of Tara Oliver and denial of Oliver's right to union representation in connection with an investigatory interview (Weingarten rights), in reprisal for union activities protected by Chapter 41.56 RCW. The deficiency notice indicated that the interference and discrimination allegations of the complaint under RCW 41.56.140(1) appeared to state a cause of action and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after Oliver had an opportunity to respond to the deficiency notice.

The complaint has several defects. One, as for the complaint against the union, the Commission does not investigate facts alleged in a complaint.

Two, as for the complaint against the union, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.

Three, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), 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).

Four, in relation to the allegations of violation of RCW 41.56.140(3), as for the complaint against the union, the complaint does not contain any factual allegations that Oliver has previously filed an unfair labor practice complaint with the Commission.

Five, while the complaint form (Form U-1) does not allege an "Employer Refusal to Bargain" violation, paragraph 17 of the

statement of facts does allege such a violation. As for the complaint against the union, individual employees do not have standing to process refusal to bargain allegations.

The deficiency notice indicated that if Oliver did not file a timely amendment correcting the defects, the allegations against the employer of domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), would be dismissed.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations of the complaint against the employer in Case 18915-U-04-4811 state a cause of action, summarized as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by termination of Tara Oliver and denial of Oliver's right to union representation in connection with an investigatory interview (Weingarten rights), in reprisal for union activities protected by Chapter 41.56 RCW.

The interference and discrimination allegations of the complaint against the employer will be the subject of further proceedings under Chapter 391-45 WAC.

2. Puget Sound Educational Service 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 allegations of the complaint in Case 18915-U-04-4811 concerning employer domination or assistance of a union in violation of RCW 41.56.140(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), are DISMISSED for failure to state a cause of action.



4. The complaint charging unfair labor practices against the union in Case 18901-U-04-4806 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 24<sup>th</sup> day of January, 2005.

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, and paragraph 4 of 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.