

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROSS EDWARDS,	)	
	)	
Complainant,	)	CASE 19736-U-05-4996
	)	
vs.	)	DECISION 9152 - PSRA
	)	
WASHINGTON FEDERATION OF STATE	)	
EMPLOYEES,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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ROSS EDWARDS,	)	
	)	
Complainant,	)	CASE 19737-U-05-4997
	)	
vs.	)	DECISION 9153 - PSRA
	)	
WASHINGTON STATE - PARKS AND	)	
RECREATION,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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On August 19, 2005, Ross Edwards (Edwards) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The first complaint concerned allegations against the Washington Federation of State Employees (union) and was docketed as Case 19736-U-05-4996. The second complaint concerned allegations against the Washington State Parks and Recreation Commission (employer) and was docketed as Case 19737-U-05-4997.

The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on September 19, 2005, indicated that it was not possible to conclude that a cause of action existed at that

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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.

time. Edwards 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 Edwards. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

## DISCUSSION

### Complaint against Union

The allegations of the complaint in Case 19736-U-05-4996 concern union interference with employee rights in violation of RCW 41.80.110(2)(a), discrimination for filing an unfair labor practice charge in violation of RCW 41.80.110(2)(c), and refusal to bargain in violation of RCW 41.80.110(2)(d), by failing to represent Ross Edwards in the processing of several grievances.

The complaint has several defects. One, the Commission is bound by the following provisions of Chapter 41.80 RCW:

RCW 41.80.120 UNFAIR LABOR PRACTICE PROCEDURES--  
POWERS AND DUTIES OF COMMISSION. (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 complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before February 19, 2005, will be considered merely as background information.

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, in relation to the allegations of violation of RCW 41.80.110(2)(c), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Edwards has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Four, the duty to bargain under Chapter 41.80 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.80.110(2)(d) can only be enforced by an employer. Individual employees do not have standing to process refusal to bargain allegations.

Five, Chapter 41.80 RCW contains the following provisions concerning the collective bargaining rights of employees:

RCW 41.80.050 RIGHTS OF EMPLOYEES. Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter.

RCW 41.80.110(2)(a) prohibits union interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by union officials are unlawful. However, the alleged facts are insufficient to conclude that the union made any threats of reprisal or force or promises of benefit, in violation of RCW 41.80.110(2)(a).

#### Complaint against Employer

The allegations of the complaint in Case 19737-U-05-4997 concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), discrimination in violation of RCW 41.80.110(1)(c), and discrimination for filing an unfair labor practice charge in violation of RCW 41.80.110(1)(d), by downgrading Ross Edwards' job classification and changes in Edwards' work schedule, in reprisal for union activities protected by Chapter 41.80 RCW.

The complaint has several defects. One, as for the complaint against the union, the complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before February 19, 2005, will be considered merely as background information.

Two, as for the complaint against the union, a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Edwards has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Three, the complaint refers to requests for reasonable accommodations related to a disability. The Commission has no jurisdiction concerning allegations of discrimination based on disability.

Four, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.80.110(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." *City of Anacortes*, Decision 6863 (PECB, 1999).

Five, in relation to the allegations of employer discrimination under RCW 41.80.110(1)(c), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.80 RCW.

Six, RCW 41.80.110(1)(a) prohibits employer interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by employer officials, are unlawful. However, the alleged facts are insufficient to conclude that the employer made any threats of reprisal or force or promises of benefit, in violation of RCW 41.80.110(1)(a).


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 26<sup>th</sup> day of October, 2005.

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.