

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                 |   |                      |
|---------------------------------|---|----------------------|
| RICHARD COLE,                   | ) |                      |
|                                 | ) |                      |
| Complainant,                    | ) | CASE 20991-U-07-5358 |
|                                 | ) |                      |
| vs.                             | ) | DECISION 9726 - PECB |
|                                 | ) |                      |
| NORTH THURSTON SCHOOL DISTRICT, | ) |                      |
|                                 | ) | ORDER OF DISMISSAL   |
| Respondent.                     | ) |                      |
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| RICHARD COLE,                   | ) |                      |
|                                 | ) |                      |
| Complainant,                    | ) | CASE 20990-U-07-5357 |
|                                 | ) |                      |
| vs.                             | ) | DECISION 9727 - PECB |
|                                 | ) |                      |
| PUBLIC SCHOOL EMPLOYEES OF      | ) |                      |
| WASHINGTON,                     | ) | ORDER OF DISMISSAL   |
|                                 | ) |                      |
| Respondent.                     | ) |                      |
| <hr/>                           |   |                      |

On March 29, 2007, Richard Cole (Cole) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the North Thurston School District (employer) and the Public School Employees of Washington (union) as respondents. The complaint against the employer was docketed as Case 20991-U-07-5358 and the complaint against the union was docketed as Case 20990-U-07-5357. Cole filed an amended complaint for both cases on April 30, 2007. The complaints and amended complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on May 4, 2007, indicated that it was not possible to conclude that a cause of action existed at

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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.

that time. Cole was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

On May 15, 2007, Cole filed amended complaints. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state a cause of action.

## DISCUSSION

### Complaint against the Employer

The allegations of the complaint in Case 20991-U-07-5358 concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by not placing drivers on cancel lists for call-in trips.

The deficiency notice pointed out several defects. One, 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 complaint fails to state the date of the alleged violation.

Two, the Commission has adopted the following rule regarding 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 complaint does not comply with the provisions of WAC 391-45-050.

Three, the statement of facts attached to the complaint makes reference to an alleged violation of the parties' collective bargaining agreement. The 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. *Clallam County*, Decision 607-A (PECB, 1979).

Four, regarding the interference claim, RCW 41.56.140(1) prohibits employer interference with employee rights. Employer threats of reprisal or force or promises of benefit associated with the union activity of employees are unlawful. Cole makes no allegations that the employer's actions regarding the cancel list were because of Cole's union activity. 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 41.56.140(1).

Five, regarding the discrimination claim, while Cole did not check the box on the complaint form alleging employer discrimination, his complaint alleges that the employer discriminated against employees by not placing drivers on cancel lists. RCW 41.56.140(1) prohibits employer discrimination against employees based on the employees' union activities. As with the interference charge, the alleged facts are insufficient to conclude that the employer's actions were in reprisal for Cole's union activities protected by Chapter 41.56 RCW.

Complaint against the Union

The allegations of the complaint in Case 20990-U-07-5357 concern union interference with employee rights and discrimination in violation of RCW 41.56.150(1), by directing Cole to cancel a trip for which he had bid, or face discipline.

The deficiency notice pointed out several defects. One, as with the complaint against the employer, the complaint does not comply with RCW 41.56.160(1).

Two, Cole claims that the union's alleged violation concerns the interpretation of a collective bargaining agreement. As noted above, the Commission does not assert jurisdiction to interpret collective bargaining agreements through unfair labor practice proceedings.

Three, RCW 41.56.150(1) prohibits union interference with employee rights. Union threats of reprisal or force or promises of benefit associated with the union activity of employees are unlawful. Cole makes no allegations that the union's actions regarding his trip bid were because of Cole's union activities. 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 41.56.150(1).

Four, regarding the discrimination claim, while Cole did not check the box on the complaint form alleging union discrimination, his requested remedy alleges that the union's actions discriminated against him. RCW 41.56.150(1) prohibits union discrimination against employees based on the employees' union activities. As with the interference charge, the alleged facts are insufficient to conclude that the union's actions were in reprisal for Cole's union activities protected by Chapter 41.56 RCW.

Amended Complaint of April 30, 2007

The amended complaint concerns identical allegations against the employer and union: a violation of the grievance procedure of the collective bargaining agreement and denial of Cole's right to due process of law. The deficiency notice indicated that the amended complaint has two defects. One, the allegations of the amended complaint concern a violation of the collective bargaining agreement. As noted above, the Commission does not interpret collective bargaining agreements through unfair labor practice proceedings.

Two, the Commission does not have jurisdiction over due process claims. Cole must address this concern through the courts.

Amended Complaints of May 15, 2007Employer

The amended complaint cures the first and second defects detailed in the deficiency notice. Regarding defects 3-5, and the defects noted in the amendment of April 30, Cole continues to assert employer violation of the collective bargaining agreement. As stated above, this claim is not within the Commission's jurisdiction. The amended complaint fails to allege facts sufficient to conclude that the employer made any threats of reprisal or force or promise of benefit in violation of RCW 41.56.140(1) or took actions against Cole in reprisal for union activities protected by Chapter 41.56 RCW.

Union

The amended complaint cures the first defect detailed in the deficiency notice. Regarding defects 2-4, and the defects noted in the April 30 amendment, as with the complaint against the employer, the Commission lacks jurisdiction over alleged contract violations, and the amended complaint fails to allege facts sufficient to conclude that the union interfered with Cole's rights or discriminated against him in violation of RCW 41.56.150(1).

The amended complaint raises a new issue concerning the allegation that the union failed to fairly represent Cole during the grievance procedure related to his present claims. 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.


NOW, THEREFORE, it is

ORDERED

The complaints and amended complaints charging unfair labor practices in Cases 20990-U-07-5357 and 20991-U-07-5358 are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11<sup>th</sup> day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE  
P. O. BOX 40919  
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
DOUGLAS G. MOONEY, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

## RECORD OF SERVICE - ISSUED 06/11/2007

The attached document identified as: **DECISION 9726 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 20991-U-07-05358 FILED: 03/29/2007 FILED BY: PARTY 2  
DISPUTE: ER UNILATERAL  
BAR UNIT: SCHOOL BUS  
DETAILS: Set procedure for call-in trips  
COMMENTS:

EMPLOYER: N THURSTON S D  
ATTN: JAMES E KOVAL  
305 COLLEGE ST NE  
LACEY, WA 98516-5390  
Ph1: 360-412-4413

REP BY: RON MCCARTY  
N THURSTON S D  
6620 CARPENTER RD SE  
OLYMPIA, WA 98516  
Ph1: 360-412-4545

PARTY 2: RICHARD COLE  
ATTN:  
556 MALIBU DR SE  
LACEY, WA 98503  
Ph1: 360-438-1235

PARTY 3: PSE OF WASHINGTON  
ATTN: ERIC T NORDLOF  
602 W MAIN ST  
PO BOX 798  
AUBURN, WA 98071-0798  
Ph1: 253-876-7444 Ph2: 206-612-1360

REP BY: KATHY SHEA  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 20990-U-07-05357 FILED: 03/29/2007 FILED BY: PARTY 2  
DISPUTE: UN DISCRIMINATE  
BAR UNIT: SCHOOL BUS  
DETAILS: Driving Time Limitations  
COMMENTS:

EMPLOYER: N THURSTON S D  
ATTN: JAMES E KOVAL  
305 COLLEGE ST NE  
LACEY, WA 98516-5390  
Ph1: 360-412-4413

REP BY: RON MCCARTY  
N THURSTON S D  
6620 CARPENTER RD SE  
OLYMPIA, WA 98516  
Ph1: 360-412-4545

PARTY 2:  
ATTN: RICHARD COLE  
556 MALIBU DR SE  
LACEY, WA 98503  
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ATTN: PSE OF WASHINGTON  
ERIC T NORDLOF  
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