

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MACK EDWARD MURRAY,	)	
	)	
Complainant,	)	CASE 20825-U-06-5309
	)	
vs.	)	DECISION 9658 - CCOL
	)	
COMMUNITY COLLEGE DISTRICT 6 -	)	
SEATTLE	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
	)	
_____	)	

On December 21, 2006, Mack Edward Murray (Murray) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Community College District 6 - Seattle (employer) as respondent. The complaint was docketed by the Commission as Case 20825-U-06-5309. The allegations of the complaint concern employer interference with employee rights in violation of RCW 28B.52.073(1)(a), domination or assistance of a union in violation of RCW 28B.52.073(1)(b), and discrimination in reprisal for protected union activities in violation of RCW 28B.52.073(1)(c), by failing to comply with provisions of the parties' collective bargaining agreement. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on January 3, 2007, indicated that it was not possible to conclude that a cause of action existed at that time.

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<sup>1</sup> 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.

Murray was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On January 26, 2007, Murray filed an amended complaint. The Unfair Labor Practice Manager dismisses defective allegations of the complaint and amended complaint for failure to state a cause of action. The Unfair Labor Practice Manager finds a cause of action for one interference and discrimination allegation of the complaint and amended complaint. The employer must file and serve its answer to the complaint and amended complaint within 21 days following the date of this Decision.

#### DISCUSSION

The complaint contains several defects. One, the complaint makes reference to alleged violations 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); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Two, RCW 28B.52.073(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 28B.52.073(1)(a).

Three, in relation to the allegations of employer domination or assistance of a union in violation of RCW 28B.52.073(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)

Four, in relation to the allegations of discrimination under RCW 28B.52.073(1)(c), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 28B.52 RCW.

#### The Amended Complaint

The amended complaint fails to cure defects one and three. The amended complaint cures defects two and four in relation to the following claim: employer interference with employee rights in violation of RCW 28B.52.073(1)(a), and discrimination in violation of RCW 28B.52.073(1)(c), by not giving workload assignments to Murray for the fall quarter of 2006 and the winter quarter of 2007, in reprisal for union activities protected by Chapter 28B.52 RCW.

The remainder of the amended complaint's allegations of employer interference and discrimination fail to conform to the requirements of WAC 391-45-050, a rule adopted by the Commission concerning the filing of unfair labor practice complaints:

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.

With the exception of the cause of action noted above, the amended complaint fails to clearly specify times, dates, and places of alleged violations.

The amended complaint charges that the employer's alleged unfair labor practices included violations of the rights of employees other than Murray. The Commission has adopted the following rule regarding the filing of unfair labor practice complaints:

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 action complaints are not permitted under Commission rules. Individual employees must file their own unfair labor practice complaint. The complaint and amended complaint are limited to allegations concerning Murray.

The amended complaint contains allegations that the employer attempted to nullify provisions of the collective bargaining agreement through bad faith acts. It is unclear whether the amended complaint alleges an employer refusal to bargain violation. The good faith bargaining obligations of RCW 28B.52.020(8), under RCW 28B.52.073(1)(e), can only be enforced by a public employer or an exclusive bargaining representative. Individual employees do not have standing to process refusal to bargain allegations.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, one interference and discrimination allegation of the complaint

and amended complaint states a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 28B.52.073(1)(a), and discrimination in violation of RCW 28B.52.073(1)(c), by not giving Mack Edward Murray workload assignments in fall quarter 2006 and winter quarter 2007, in reprisal for union activities protected by Chapter 28B.52 RCW.

The interference and discrimination allegations of the complaint and amended complaint, as specified above, will be the subject of further proceedings under Chapter 391-45 WAC.

2. Community College District 6 - Seattle 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 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 complaints, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint and amended complaint concerning employer domination or assistance of a union in violation of RCW 28B.52.073(1)(b), and employer refusal to bargain in violation of RCW 28B.52.073(1)(e) are DISMISSED for failure to state a cause of action. With the exception of the cause of action specified in paragraph 1 of this order, the remaining allegations in the complaint and amended complaint concerning employer interference with employee rights in violation of RCW 28B.52.073(1)(a), and discrimination in violation of RCW 28B.52.073(1)(c) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 30<sup>th</sup> day of April, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.