

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ELSIE NEAL,)	
)	
Complainant,)	CASE 20253-U-06-5163
)	
vs.)	DECISION 9729 - PSRA
)	
WASHINGTON STATE - SOCIAL AND)	
HEALTH SERVICES,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	
ELSIE NEAL,)	
)	
Complainant,)	CASE 20254-U-06-5164
)	
vs.)	DECISION 9730 - PSRA
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On March 9, 2006, Elsie Neal (Neal) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The first complaint concerning allegations against the Washington State Department of Social and Health Services (DSHS/employer) was docketed by the Commission as Case 20253-U-06-5163. The second complaint concerning allegations against the Washington Federation of State Employees (union) was docketed as Case 20254-U-06-5164. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 2, 2006, indicated that it was not possible to conclude that causes of action existed at that time. Neal was given a period of 21 days in

¹ 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.

which to file and serve amended complaints, or face dismissal of the cases.

On May 22, 2006, Neal filed amended complaints. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state a cause of action.

DISCUSSION

Complaint against Employer

The allegations of the complaint in Case 20253-U-06-5163 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), discrimination for filing an unfair labor practice charge in violation of RCW 41.80.110(1)(d), and refusal to bargain in violation of RCW 41.80.110(1)(e), by its termination of Elsie Neal for failure to pay union dues under a union security provision of a collective bargaining agreement, in reprisal for union activities protected by Chapter 41.80 RCW.

The deficiency notice pointed out several defects. One, Chapter 41.80 RCW, State Collective Bargaining, provides as follows:

RCW 41.80.100 UNION SECURITY--FEES AND DUTIES--RIGHT OF NONASSOCIATION. (1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract

administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

Under RCW 41.80.100, union security provisions are negotiated by an employer and union in the parties' collective bargaining agreement. If such provisions are contained in the parties' agreement, it is lawful for the employer and union to require employees to abide by the terms of the agreement.

Two, 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).

Three, 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 complaint fails to include "times, dates, places and participants in occurrences" concerning the alleged unfair labor practices.

Four, 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).

Five, 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).

Six, in relation to the allegations of 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.

Seven, in relation to the allegations of violation of RCW 41.80.110(1)(d), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Neal has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Eight, 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(1)(e) can only be enforced by a union. Individual employees do not have standing to process refusal to bargain allegations.

Complaint against Union

The allegations of the complaint in Case 20254-U-06-5164 concern union interference with employee rights in violation of RCW 41.80.110(2)(a), inducement of employer to commit an unfair labor practice in violation of RCW 41.80.110(2)(b), and discrimination for filing an unfair labor practice charge in violation of RCW

41.80.110(2)(c), by unspecified actions concerning the termination of Elsie Neal for failure to pay union dues under a union security provision of a collective bargaining agreement, in reprisal for union activities protected by Chapter 41.80 RCW.

The deficiency notice pointed out several defects. One, 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).

Two, as the complaint fails to state a cause of action against the employer under RCW 41.80.110, 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 41.80.110(2)(b).

Three, as for the complaint against the employer, the complaint fails to contain any factual allegations that Neal has previously filed an unfair labor practice complaint with the Commission.

Amended Complaints

The amended complaints provided a date for Neal's termination. The amended complaints charge that the employer's alleged discrimination violated Neal's civil rights. The Commission has no jurisdiction over allegations involving violations of civil rights. The amended complaints do not allege facts sufficient to conclude that either the employer or union violated Neal's rights protected under Chapter 41.80 RCW. The amended complaints fail to cure the defects noted in the deficiency notice.

NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 11th 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

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OLYMPIA, WASHINGTON 98504-0919

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CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/11/2007

The attached document identified as: **DECISION 9729 - PSRA** 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: S/ ROBBIE DUFFIELD

CASE NUMBER: 20253-U-06-05163 FILED: 03/09/2006 FILED BY: PARTY 2
DISPUTE: ER INTERFERENCE
BAR UNIT: ALL EMPLOYEES
DETAILS: -
COMMENTS:

EMPLOYER: STATE - DSHS
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PARTY 2: ELSIE NEAL
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VANCOUVER, WA 98685
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 06/11/2007

The attached document identified as: **DECISION 9730 - PSRA** 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: S/ ROBBIE DUFFIELD

CASE NUMBER: 20254-U-06-05164 FILED: 03/09/2006 FILED BY: PARTY 2
DISPUTE: UN INTERFERENCE
BAR UNIT: ALL EMPLOYEES
DETAILS: -
COMMENTS:

EMPLOYER: STATE - DSHS
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