

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| DENNIS REDMON, |) | |
| |) | |
| Complainant, |) | CASE 21022-U-07-5365 |
| |) | |
| vs. |) | DECISION 9742 - PSRA |
| |) | |
| WASHINGTON PUBLIC EMPLOYEES |) | |
| ASSOCIATION, |) | |
| |) | ORDER OF DISMISSAL |
| Respondent. |) | |
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| DENNIS REDMON, |) | |
| |) | |
| Complainant, |) | CASE 21021-U-07-5364 |
| |) | |
| vs. |) | DECISION 9743 - PSRA |
| |) | |
| WASHINGTON STATE - REVENUE, |) | |
| |) | ORDER OF DISMISSAL |
| Respondent. |) | |
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On April 16, 2007, Dennis Redmon (Redmon) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Public Employees Association (union) and the Washington State Department of Revenue(employer) as respondents. The complaint against the union was docketed as Case 21022-U-07-5365, and the complaint against the employer was docketed as Case 21021-U-07-5364. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 4, 2007, indicated that it was not possible to conclude that causes of action existed at that time. Redmon was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

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 claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Redmon has not filed any further information. The Unfair Labor Practice Manager dismisses the complaints for failure to state causes of action.

DISCUSSION

Complaint against the Union

The allegations of the complaint in Case 21022-U-07-5365 concern union interference with employee rights in violation of RCW 41.80.110(2)(a), inducement of the employer to commit an unfair labor practice in violation of RCW 41.80.110(2)(b), and other unfair labor practices, specified as domination and interference with a decertification election.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint. The complaint seems to make the following allegations: (1) the union filed a complaint with the employer against Redmon in reprisal for Redmon's union activities; (2) the employer has allowed the union and other parties to use the employer's data bank of employee names and addresses for union activities, while denying that access to Redmon; the employer has allowed the union to use bulletin board space for union activities, while denying access to Redmon; the employer has denied Redmon use of its e-mail system for decertification activities; (3) the union has disseminated false information about Redmon's decertification efforts as well as false information regarding union representation issues, causing injury to the decertification process; and (4) the union has dominated and interfered with the decertification process.

The deficiency notice pointed out several defects. One, the Commission has adopted the following rule 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.

The complaint is unclear regarding the application of the factual allegations to the claimed causes of action. The statement of facts attached to the complaint does not identify which allegations are related to the interference claim and which are related to the claim that the union induced the employer to commit an unfair labor practice. The complaint does not conform to the requirements of WAC 391-45-050.

Two, the Commission is bound by the following provisions of Chapter 41.80 RCW:

RCW 41.80.120 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.

Regarding the allegation that the union filed a complaint with the employer in reprisal for Redmon's union activities, the unfair labor practice complaint does not specify when the union filed its complaint and so does not comply with RCW 41.80.120.

Three, regarding the allegation that the employer has disparately aided the union's representation efforts, it is an unfair labor practice during representation proceedings for an employer to render aid to an incumbent union for the purpose of the union's communicating with employees, while denying the same access to any rival union or competing labor organization. *Renton School District*, Decision 1501-A (PECB, 1982); *Washington State Patrol*,

Decision 2900 (PECB, 1987). Redmon alleges that the employer has allowed the union to communicate with employees using the employer's mailing lists and bulletin boards, but has not allowed Redmon to do so. Redmon also alleges that the employer has not allowed Redmon access to its e-mail system for his decertification activities, but does not allege that the employer has allowed the union access to the e-mail system. However, Redmon filed these allegations against the union, not the employer and so fails to state a cause of action.

Four, regarding Redmon's claims that the union has disseminated false information about Redmon's decertification efforts and the representation process in general, misrepresentations of fact or law are prohibited in a representation proceeding under Commission rules. For mail ballot elections, the rule reads as follows:

WAC 391-25-470 MAIL BALLOT ELECTION PROCEDURES--ELECTIONEERING--OBJECTIONABLE CONDUCT. The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of employee voting

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

Similar prohibitions on objectionable conduct for on-site election procedures are found in WAC 391-25-490.

Commission rules prohibit misrepresentations of fact or law in a representation proceeding under certain circumstances. However, to set aside an election the misrepresentation must occur at a time which prevents others from effectively responding to the asserted falsehoods. The Commission has docketed the decertification petition referred to in this unfair labor practice complaint as Case 20994-E-07-3243. No election date has been scheduled by the Commission in that case. There is ample time for others, such as Redmon, to respond to the alleged misrepresentations made by the union. The complaint fails to state a cause of action.

Five, Redmon alleges other unfair labor practice by the union's "domination and interference" with the decertification process. No legal cause of action exists for union domination under Chapter 41.80 RCW. The claim of interference with the decertification process fails for the reason noted in defect four.

Six, based upon the foregoing, the complaint does not allege facts sufficient to conclude that a cause of action exists for union interference with employee rights in violation of RCW 41.80.110(2)(a).

Seven, based upon the foregoing, the complaint does not allege facts sufficient to conclude that a cause of action exists for the union inducing the employer to commit an unfair labor practice under RCW 41.80.110(2)(b).

Complaint against the Employer

The allegations of the complaint in Case 21021-U-07-5364 concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), discrimination in violation of RCW

41.80.110(1)(c), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and other unspecified unfair labor practices.

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint. The complaint seems to make the following allegations: (1) the employer sent Redmon a notice of a pre-discharge meeting relative to non-payment of union dues; (2) the employer violated an agreement with Redmon over the application of the notice to the collective bargaining agreement's union security provision; (3) the employer violated an agreement with Redmon over the purpose and scope of the pre-discharge meeting; (4) the employer sent Redmon a notice of discharge; (5) the discharge was improper because the union security provision was not properly ratified; and (6) the employer is currently investigating Redmon for violation of state law at the direction and in compliance with the union, in reprisal for Redmon's union activities.

The deficiency notice pointed out several defects. One, as for the complaint against the union, the complaint fails to conform to the requirements of WAC 391-45-050. The statement of facts attached to the complaint does not adequately identify the factual allegations with the claimed causes of action.

Two, Chapter 41.80 RCW contains the following provisions:

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. It is not an unfair labor practice for the employer to enforce the provisions of a union security agreement.

Three, Redmon disputes the employer's interpretation of the collective bargaining agreement's procedures regarding enforcement of the union security section. 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, the complaint alleges that the union security provision of the collective bargaining agreement was not properly ratified. The agreement attached to the complaint became effective on July 1, 2005. The complaint's challenge to the terms of the collective bargaining agreement is untimely. Under RCW 41.80.120, Redmon had until January 1, 2006, to file this claim.

Five, regarding 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, based upon the foregoing, the complaint does not allege facts sufficient to conclude that a cause of action exists for employer interference in violation of RCW 41.80.110(1)(a).

Seven, based upon the foregoing, the complaint does not allege facts sufficient to conclude that a cause of action exists for employer discrimination in violation of RCW 41.80.110(1)(c).

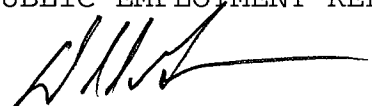
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in Case 21022-U-07-5365 and Case 21021-U-07-5364 are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 15th 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 06/15/2007

The attached document identified as: **DECISION 9742 - 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 CUFFIELD

CASE NUMBER: 21022-U-07-05365 FILED: 04/16/2007 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: ALL EMPLOYEES
DETAILS: Against Union
COMMENTS:

EMPLOYER: STATE - REVENUE
ATTN: STEVE MCLAIN
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5166

REP BY: CHRISTOPHER J PARSONS
STATE - REVENUE
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OLYMPIA, WA 98504-7463
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PARTY 2:
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PARTY 3:
ATTN: WA PUBLIC EMPLOYEES ASSN
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REP BY: LAWRENCE R SCHWERIN
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PUBLIC EMPLOYMENT RELATIONS COMMISSION


B/S/ ROBBIE HUFFIELD

CASE NUMBER: 21021-U-07-05364 FILED: 04/16/2007 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ALL EMPLOYEES
DETAILS: Against Employer
COMMENTS:

EMPLOYER: STATE - REVENUE
ATTN: STEVE MCLAIN
210 11TH AVE SW STE 331
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