

*Community College District 10 - Green River, Decision 10199 (PSRA, 2008); Community College District 10 - Green River (Washington Federation of State Employees), Decision 10200 (PSRA, 2008)*

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| ALEX FELICIANO,                 | ) |                       |
|                                 | ) |                       |
| Complainant,                    | ) | CASE 21955-U-08-5593  |
|                                 | ) |                       |
|                                 | ) | DECISION 10199 - PSRA |
| COMMUNITY COLLEGE DISTRICT 10 - | ) |                       |
| GREEN RIVER,                    | ) |                       |
|                                 | ) |                       |
| Respondent.                     | ) | ORDER OF DISMISSAL    |
| <hr/>                           |   |                       |
| ALEX FELICIANO,                 | ) |                       |
|                                 | ) |                       |
| Complainant,                    | ) | CASE 21954-U-08-5592  |
|                                 | ) |                       |
|                                 | ) | DECISION 10200 - PSRA |
| vs.                             | ) |                       |
|                                 | ) |                       |
| WASHINGTON FEDERATION OF STATE  | ) |                       |
| EMPLOYEES,                      | ) | ORDER OF DISMISSAL    |
|                                 | ) |                       |
| Respondent.                     | ) |                       |
| <hr/>                           |   |                       |

On September 2, 2008, Alex Feliciano (Feliciano) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Community College District 10 - Green River (employer) and the Washington Federation of State Employees (union) as respondents. The complaint was docketed as two separate cases. The complaint against the employer was docketed as Case 21955-U-08-5593; the complaint against the union as Case 21954-U-08-5592. The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency

<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.

notice issued on September 5, 2008, indicated that it was not possible to conclude that causes of action existed at that time. Feliciano was given a period of 21 days in which to file and serve amended complaints or face dismissal of the cases.

On September 29, 2008, Feliciano filed amended complaints. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state causes of action.

## DISCUSSION

### Consolidation of Cases

WAC 10-08-085 provides that "multiple adjudicative proceedings involving common issues or parties" may be consolidated. The cases involve identical parties and issues. The cases are consolidated for the purposes of this ruling.

### Case 21955-U-08-5593 (employer)

The allegations of the complaint concern employer violation of the collective bargaining agreement between the employer and union, wrongful termination of probation for Alex Feliciano (Feliciano), wrongful termination of Feliciano, and violation of his rights.

The deficiency notice pointed out the defects to the complaint. One, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements.

Second, the Commission has no jurisdiction over general complaints of wrongful termination of probation, employment, or violation of rights. The Commission will process unfair labor practice complaints only where an employee asserts employer interference or

discrimination involving the employee's exercise of collective bargaining rights under an applicable statute, in this case, Chapter 41.80 RCW. Feliciano has not alleged that the employer interfered or discriminated against him in connection with, or reprisal for, his union activities. Feliciano must pursue any wrongful termination claims through the courts.

Case 21954-U-08-5592 (union)

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a), by breach of its duty of fair representation in failing to adequately represent Feliciano regarding termination of his probation and employment.

The deficiency notice pointed out the defects to the complaint. The Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

In summary, the Commission does not have jurisdiction over Feliciano's claims and cannot provide him with remedies.

Amended Complaints

Feliciano filed one document to serve as the amended complaints. The amended complaints do not provide any new facts supporting Feliciano's claims. Feliciano's complaint against the employer continues to concern a claim of wrongful termination based upon allegations of unfair treatment. His complaint against the union continues to allege that the union did not fully and properly represent him in his grievance over his termination.

As stated in the deficiency notice, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.

Regarding Feliciano's termination claim, the Commission's jurisdiction in such matters extends only to the remedy of violations of employee rights where facts indicate that the violations may result from an employee's union activities. A cause of action will not be found where allegations contain only legal conclusions and fail to provide sufficient facts indicating that an unfair labor practice could be found. Feliciano made legal claims of interference and discrimination in violation of his rights under Chapter 41.80 RCW, but provided no evidence of any union activities prior to his termination. The amended complaints merely summarize the complaints and do not cure their defects.

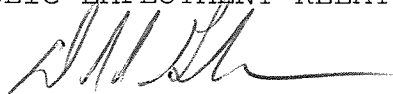
NOW, THEREFORE, it is

ORDERED

The amended complaints charging unfair labor practices in Cases 21955-U-08-5593 and 21954-U-08-5594 are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 6<sup>th</sup> day of October, 2008.

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.