Kent School District, Decision 10298 (EDUC, 2009)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENT EDUCATION ASSOCIATION,	)	
	)	
Complainant,	)	CASE 22144-U-08-5644
	)	
vs.	)	DECISION 10298 - EDUC
	)	
KENT SCHOOL DISTRICT,	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
	)	

On December 5, 2008, the Kent Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Kent School District (employer) as respondent. The complaint was docketed by the Commission as Case 22144-U-08-5644.

The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on December 30, 2008, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint. On January 21, 2009, the union filed an amended complaint. As more fully set forth below, the Unfair Labor Practice Manager dismisses certain allegations of the amended complaint for failures to state causes of action and finds causes of action for the remaining

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[1] 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.

allegations the amended complaint. The employer must file and serve its answer to the valid causes of action in the amended complaint within 21 days following the date of this decision.

DISCUSSION

The allegations of the complaint concern:

> [1] Employer interference with employee rights in violation of RCW 41.59.140(1)(a) and refusal to bargain in violation of RCW 41.59.140(1)(e), by its (a) unilateral change in subcontracting out bargaining unit work, without providing an opportunity for bargaining, (b) refusal to provide relevant information requested by the union regarding (I) workload and teaching responsibilities related to the one-to-one laptop program and (ii) social security and district employee numbers for bargaining unit employees, (c) unilateral change to workload and teaching responsibilities related to the one-to-one laptop program, without providing an opportunity for bargaining, (d) unilateral change to optional benefits for bargaining unit members, without providing an opportunity for bargaining, (e) unilateral change to work assignments for special education teachers, without providing an opportunity for bargaining, (f) unilateral change regarding the use of employer buildings for union meetings, without providing an opportunity for bargaining, (g) unilateral change to the number of union representatives allowed in disciplinary interviews of bargaining unit members, without providing an opportunity for bargaining, (h) unilateral change to the Kent Phoenix Academy (Phoenix Academy) high school advisory program

concerning (I) individual learning plans, (ii) lessons and assignments for students under instruction of other teachers, (iii) making weekly phone calls to students, and (iv) attendance at school improvement team meetings, without providing an opportunity for bargaining, (I) employer official Merrilee Carey's circumvention of the union through direct dealing with employees represented by the union concerning early release time related to the Phoenix Academy high school advisory program, without first notifying the union, (j) breach of its good faith bargaining obligations through its bargaining team's lack of authority to negotiate during collective bargaining sessions, (k) unilateral change to the use of work assessment forms, without providing an opportunity for bargaining, (l) unilateral change in the operation of heating and ventilation systems, which affect the working conditions of bargaining unit members, without providing an opportunity for bargaining, (m) unilateral change to parent-teacher conferences at Daniel Elementary, without providing an opportunity for bargaining, (n) employer official Janet Muldrow's circumvention of the union through direct dealing with employees represented by the union concerning the Daniel Elementary parent-teacher conferences, without first notifying the union; (o) failure to implement a grievance settlement; [2] employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit toward bargaining unit members in relation to their union activities, through (a) the comments of employer officials Janae Landis and Diana Pratt to bargaining unit members regarding schedule changes, (b) the comments of employer official Bonnie

> Wong to bargaining unit members regarding their union activities; [3] employer interference with employee rights in violation of RCW 41.59.140(1)(a) and discrimination in violation of RCW 41.59.140(1) (c), by employer official Merrilee Carey's actions toward a bargaining unit representative at Kent Phoenix Academy, in reprisal for union activities protected by Chapter 41.59 RCW.

The deficiency notice found causes of action for the following allegations:

> Employer interference and refusal to bargain by failure to provide information on the one-to-one laptop program, a unilateral change in the use of employer buildings for union meetings, unilateral changes to the Phoenix Academy high school advisory program, and circumvention related to that program.

The deficiency notice pointed out the defects to the remaining allegations. The statement of facts fails to set forth sufficient information to support the union's allegations. In addition, the allegation concerning the grievance settlement may not be processed through an unfair labor practice complaint.

Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. Complaints must conform to WAC 391-45-050.

> 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.

Although the defective portions of the complaint sufficiently set forth notices of the union's legal claims, they lack the details required by WAC 391-45-050(2). The Commission does not investigate the facts presented in unfair labor practice complaints. As stated above, all facts presented are assumed to be true and provable. In addition, pre-hearing discovery procedures common to civil court proceedings are not available in unfair labor practice cases. Notices of claims are insufficient by themselves to state a cause of action. The statement of facts must set forth in detail the times, dates, places, and participants for each claim presented. Finally, all claims for which a remedy is sought must be filed within the six-month statute of limitations under RCW 41.59.150(1).

The union also makes a claim regarding a grievance settlement over teacher consent for students returning to class. This is a contractual matter between the union and employer. While the Commission offers grievance mediation and arbitration services, it does not adjudicate contractual disputes between unions and employers through unfair labor practice proceedings. The union must pursue this matter through the arbitration process or in court.

The Amended Complaint

The amended complaint does not contain the following allegations as stated in the original complaint: a unilateral change in the operation of heating and ventilation systems, which affect the working conditions of bargaining unit members, without providing an opportunity for bargaining, and failure to implement a grievance settlement. These allegations are considered withdrawn.

The allegation concerning a unilateral change in subcontracting out bargaining unit work, without providing an opportunity for

bargaining, does not comply with the requirements of WAC 391-45-050(2) and remains defective. The amended statement of facts does not provide times, dates, places or participants. The arbitration award of David W. Stiteler, of October 22, 2008, was not considered in this ruling. It is not relevant to the union's unfair labor practice complaint since the Commission cannot enforce an arbitrator's award. Further, an arbitration award will not be incorporated by reference into an unfair labor practice complaint.

The amended complaint alleges a unilateral change to the number of union representatives allowed in disciplinary interviews of bargaining unit members, without providing an opportunity for bargaining. In order to state a cause of action for a unilateral change, the complainant must show that an actual change was implemented. The amended statement of facts indicates that although the employer announced a change in its interview policy, the union continues to provide two representatives at disciplinary interviews. The amended allegation is defective.

The following allegations are time-barred: comments of employer officials Janae Landis and Diana Pratt to bargaining unit members regarding schedule changes. The union filed the complaint on December 5, 2008. The following statute of limitations applies:

> RCW 41.59.150--COMMISSION TO PREVENT UNFAIR LABOR PRACTICES-SCOPE. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: 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. . . .

Allegations of the amended complaint occurring prior to June 5, 2008, while possibly relevant as background material, are not

subject to remedial orders of the Commission. The allegations concerning Landis and Pratt remain defective.

Allegations concerning comments of employer official Bonnie Wang to bargaining unit members regarding their union activities are also time-barred, with the exception of comments allegedly made to Camille Yuasa in the fall of 2008.

Finally, the amended complaint fails to cure the defects to the allegation of employer interference with employee rights and discrimination, by employer official Merrilee Carey's actions toward Amy Wiskerchen. The amended statement of facts does not indicate whether the alleged actions occurred after June 5, 2008. The reports of other bargaining unit members in November 2008 concerning Carey's alleged actions do not cure the defects. There are no indications of who the bargaining members are, if they observed the alleged actions, and when they observed them.

The remaining allegations of the amended complaint state causes of action for unfair labor practices committed in violation of Chapter 41.59 RCW.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the allegations of the amended complaint in Case 22144-U-08-5644 state causes of action, summarized as follows:

> [1] Employer interference with employee rights in violation of RCW 41.59.140(1)(a) and refusal to bargain in violation of RCW

41.59.140(1)(e), by its (a) refusal to provide relevant information requested by the union regarding (i) workload and teaching responsibilities related to the one-to-one laptop program and (ii) social security and district employee numbers for bargaining unit employees, (b) unilateral change to workload and teaching responsibilities related to the one-to-one laptop program, without providing an opportunity for bargaining, (c) unilateral change to optional benefits for bargaining unit members, without providing an opportunity for bargaining, (d) unilateral change to work assignments for special education teachers, without providing an opportunity for bargaining, (e) unilateral change regarding the use of employer buildings for union meetings, without providing an opportunity for bargaining, (f) unilateral change to the Kent Phoenix Academy (Phoenix Academy) high school advisory program concerning (i) individual learning plans, (ii) lessons and assignments for students under instruction of other teachers, (iii) making weekly phone calls to students, and (iv) attendance at school improvement team meetings, without providing an opportunity for bargaining, (g) employer official Merrilee Carey's circumvention of the union through direct dealing with employees represented by the union concerning early release time related to the Phoenix Academy high school advisory program, without first notifying the union, (h) breach of its good faith bargaining

> obligations through its bargaining team's lack of authority to negotiate during collective bargaining sessions, (I) unilateral change to the use of work assessment forms, without providing an opportunity for bargaining, (j) unilateral change to parent-teacher conferences at Daniel Elementary, without providing an opportunity for bargaining, (k) employer official Janet Muldrow's circumvention of the union through direct dealing with employees represented by the union concerning the Daniel Elementary parent-teacher conferences, without first notifying the union; [2] employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit through the comments of employer official Bonnie Wong to Camille Yuasa regarding union activities.

These allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. The Kent School District shall:

> **File and serve its answer to the allegations listed in paragraph 1 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 amended complaint as set forth in paragraph 1 of this

order, 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The following allegations of the amended complaint in Case 22144-U-08-5644 are DISMISSED for failure to state a cause of action:

> [1] Employer interference with employee rights in violation of RCW 41.59.140(1)(a) and refusal to bargain in violation of RCW 41.59.140(1)(e), by its (a) unilateral change in subcontracting out bargaining unit work, without providing an opportunity for bargaining, (b) unilateral change to the number of union representatives allowed in disciplinary interviews of bargaining unit members, without providing an opportunity for bargaining, (c)

unilateral change in the operation of heating and ventilation systems, which affect the working conditions of bargaining unit members, without providing an opportunity for bargaining, (d) failure to implement a grievance settlement; [2] employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit through the comments of employer officials Janae Landis and Diana Pratt to bargaining unit members regarding schedule changes; [3] employer interference with employee rights in violation of RCW 41.59.140(1)(a) and discrimination in violation of RCW 41.59.140(1) (c), by employer official Merrilee Carey's actions toward Amy Wiskerchen, in reprisal for union activities protected by Chapter 41.59 RCW.

ISSUED at Olympia, Washington, this 5th day of February, 2009.

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.