

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 763,	)	
	)	
Complainant,	)	CASE 22189-U-09-5663
	)	
vs.	)	DECISION 10301 - PECB
	)	
HIGHLINE SCHOOL DISTRICT,	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
_____	)	

On January 8, 2009, Teamsters Local 763 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Highline School District (employer) as respondent. The complaint was docketed by the Commission as Case 22189-U-09-5663. The allegations of the complaint concern [1] employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its actions regarding Shannon Kaspank and Greg Seth in connection with union activities; and [2] employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by skimming security service officer work at New Start High School previously performed by bargaining unit members, without providing an opportunity for bargaining. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on January 20,

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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.

2009, 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 February 5, 2009, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning employer discrimination and finds causes of action for the allegations concerning independent employer interference and interference and refusal to bargain.

#### DISCUSSION

The deficiency notice pointed out the defects to the complaint. One, the following statute of limitations applies in this case:

RCW 41.56.160--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.

The Commission requires complainants to provide specific dates for their allegations. References to allegations committed "within the past six months" are insufficient to state a cause of action. The statement of facts does not provide dates for any of the allegations concerning Kaspank, Seth, or security service officer work at New Start High School.

Two, 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.

The allegations concerning the employer's alleged interference and discrimination regarding Kaspank and Seth do not conform to WAC 391-45-050(2), which requires information regarding times, dates, places, and employer participants, and thus do not state a cause of action.

Three, the union alleges employer interference and discrimination against Kaspank and Seth. Interference allegations will state a cause of action if the statement of facts indicates employer threats of reprisal or force or promises of benefit in connection with employees' union activities. In order to state a cause of action for discrimination, the statement of facts must indicate that the employer's actions have actually deprived employees of ascertainable rights, status, or benefits in reprisal for union activities protected by Chapter 41.56 RCW. The statement of facts indicates employer threats of reprisal or force against Kaspank and Seth, but does not indicate that the employer has deprived Kaspank and Seth of ascertainable rights, status, or benefits; thus, the complaint does not state a cause of action for discrimination.

The Amended Complaint

The amended complaint cured the first two defects by providing facts required under RCW 41.56.160(1) and WAC 391-45-050(2). However, the amended complaint fails to state causes of action for employer discrimination against Seth and Kaspank. The union's

claim that Seth's reputation was harmed as a result of the employer's investigation does not, without more facts, indicate a deprivation his rights, status, or benefits in reprisal for union activities protected by Chapter 41.56 RCW.

Regarding Kaspank, the union has not stated a claim for discrimination by its assertion that the employer's refusal to include her in the bargaining unit constitutes said discrimination. The employer is not automatically susceptible to a discrimination claim because it declines to place Kaspank in the bargaining unit. The union has filed a unit clarification petition over the position at issue.<sup>2</sup> The question of whether the position belongs in the bargaining unit will be decided based upon the Commission's decision in the unit clarification proceeding. The union's allegations do not indicate that the employer has deprived Kaspank of any rights, status, or benefits in reprisal for union activities protected by Chapter 41.56 RCW.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain allegations of the amended complaint in Case 22189-U-09-5663 state causes of action, summarized as follows:

[1] Employer interference with employee rights  
in violation of RCW 41.56.140(1), by threats

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<sup>2</sup> Under WAC 391-35-110(2), the processing of the petition in Case 22190-C-09-1391 is currently on hold pending the resolution of this unfair labor practice case.

of reprisal or force or promises of benefit made to Shannon Kaspank and Greg Seth as a result of their union activities; and [2] employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by skimming security service officer work at New Start High School previously performed by bargaining unit members, without providing an opportunity for bargaining.

The interference and refusal to bargain allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Highline School District 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 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 allegations of the amended complaint in Case 22189-U-09-5663 concerning employer discrimination against Shannon Kaspank and Greg Seth in violation of RCW 41.56.140(1) are DISMISSED for failures to state causes of action.

ISSUED at Olympia, Washington, this 13<sup>th</sup> 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.