

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Complainant,)	CASE 22462-U-09-5737
)	
vs.)	DECISION 10444 - PSRA
)	
UNIVERSITY OF WASHINGTON,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
_____)	

On May 12, 2009, the Washington Federation of State Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the University of Washington (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 15, 2009, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the allegations of the complaint concerning employer discrimination for failure to state a cause of action, and finds causes of action for the allegations

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.

of the complaint concerning independent employer interference and employer interference and refusal to bargain. The employer must file and serve its answer to 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 41.80.110(1)(a) and refusal to bargain in violation of RCW 41.80.110(1)(e), by (a) its unilateral change in the Use of Force policy by implementing new Use of Force and Use of Force Continuum policies, without providing an opportunity for bargaining, (b) employer official William Garber (Garber) circumventing the union by direct dealing with employees represented by the union in discussing the new policies with bargaining unit members on November 13, 2009, and on or about January 8, 2009, without notice to or in the presence of the union, (c) its refusal to provide relevant information requested by the union regarding the new policies; [2] employer interference with employee rights in violation of RCW 41.80.110(1)(a), by threats of reprisal or force or promises of benefit made by Garber to Charles Smith and Michael Nervik concerning their union activities; and [3] employer interference with employee rights in violation of RCW 41.80.110(1)(a) and discrimination in violation of RCW 41.80.110(1)(c), by investigating and disciplining numerous bargaining unit employees in reprisal for union activities protected by Chapter 41.80 RCW.

The deficiency notice pointed out the defects to the complaint concerning employer discrimination. WAC 391-45-050(2)(Rule) requires that complaints provide "clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences." It is an unfair labor practice for an employer to deprive employees of ascertainable rights, status, or benefits in reprisal for union activities protected by Chapter 41.80 RCW. The complaint alleges that the employer investigated and disciplined "numerous" bargaining unit members who attended a union meeting on November 24, 2008. The allegation does not identify the employees, does not conform to the Rule, and thus does not state a cause of action for interference and discrimination.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the following allegations of the complaint state a cause of action, summarized as follows:

[1] Employer interference with employee rights in violation of RCW 41.80.110(1)(a) and refusal to bargain in violation of RCW 41.80.110(1)(e), by (a) its unilateral change in the Use of Force policy by implementing new Use of Force and Use of Force Continuum policies, without providing an opportunity for bargaining, (b) employer official William Garber (Garber) circumventing the union by direct dealing with employees represented by the union in discussing the new policies with bargaining unit members on November 13, 2009, and on or about

January 8, 2009, without notice to or in the presence of the union, (c) its refusal to provide relevant information requested by the union regarding the new policies; and [2] employer interference with employee rights in violation of RCW 41.80.110(1)(a), by threats of reprisal or force or promises of benefit made by Garber to Charles Smith and Michael Nervik concerning their union activities.

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

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

3. The allegations of the complaint concerning employer interference with employee rights in violation of RCW 41.80.110(1)(a) and discrimination in violation of RCW 41.80.110(1)(c), by investigating and disciplining numerous bargaining unit employees in reprisal for union activities protected by Chapter 41.80 RCW, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 17th day of June, 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.