

Tacoma School District (Tacoma Education Association), Decision 7141-A (EDUC, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 15163-U-00-3825
)	
vs.)	DECISION 7141-A - EDUC
)	
TACOMA SCHOOL DISTRICT,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
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TACOMA SCHOOL DISTRICT,)	
)	
Employer.)	
<hr style="border-top: 1px dashed black;"/>)	
LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 15164-U-00-3826
)	
vs.)	DECISION 7142-A - EDUC
)	
TACOMA EDUCATION ASSOCIATION,)	PARTIAL DISMISSAL,
)	AND ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
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Two unfair labor practice complaints filed by Lois Mehlhaff have been re-reviewed under WAC 391-45-110. The complaint against the employer is dismissed. One allegation previously found to state a cause of action against the union is dismissed; one cause of action against the union will be the subject of further proceedings under Chapter 391-45 WAC.

Initial Processing of These Cases

On June 23, 2000, a Deficiency Notice was issued for both complaints under WAC 391-45-110 informing Mehlhaff that certain of her allegations were subject to dismissal.¹ In response to the Deficiency Notice, Mehlhaff filed amended complaints in both cases on July 12, 2000. The amended complaints were reviewed in a Partial Dismissal, Preliminary Ruling, and Order for Further Proceedings issued on August 3, 2000.² Assuming all of the facts alleged to be true and provable, the Order for Further Proceedings found an allegation to state a cause of action against the employer concerning negotiating Sections 27 and 57.A of the parties' collective bargaining agreement in reprisal for Mehlhaff 's union activities, summarized as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.59.140(1)(a) and (c), and employer discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(1)(d), by negotiating Sections 27 and 57.A of the collective bargaining agreement applicable to Lois Mehlhaff, in reprisal for her activities protected by Chapter 41.59 RCW.

The Order for Further Proceedings found two allegations of the amended complaint against the union to state causes of action. The first allegation against the union concerned negotiating the same

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

² Tacoma School District (Tacoma Education Association), Decision 7141 (EDUC, 2000).

changes to the parties' agreement found to state a cause of action against the employer, summarized as follows:

Union interference with employee rights and inducing an employer to discriminate against an employee in violation of RCW 41.59.140(2)(a) and (b), and union discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(2)(a), by negotiating Sections 27 and 57.A of the collective bargaining agreement applicable to Lois Mehlhaff, in reprisal for her activities protected by Chapter 41.59 RCW.

The second allegation against the union found to state a cause of action concerned statements by union representative McCone, summarized as follows:

Union interference with employee rights and union discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(2)(a), through statements by union representative Linda McCone to a substitute teacher, in reprisal for union activities protected by Chapter 41.59 RCW.

The Order for Further Proceedings consolidated the amended complaints for further processing under Chapter 391-45 WAC. The employer and union were instructed to file answers to the allegations found to state causes of action within 21 days following the date of the Order. On August 10, 2000, the complaints were assigned to Examiner Vincent M. Helm of the Commission staff.

The Second Deficiency Notice

When Examiner Helm reviewed the complaints, he detected an additional issue. On August 14, 2000, a second Deficiency Notice was issued under WAC 391-45-110 for both complaints. The Deficiency Notice addressed a statute of limitations issue concerning

the causes of action against the employer and union for negotiating changes in Sections 27 and 57.A of the 1998-2001 agreement. The Deficiency Notice indicated that the original complaints, filed on April 25, 2000, stated that Mehlhaff became aware of these changes at a meeting in the autumn of 1998. The Commission is bound by the following provisions of Chapter 41.59 RCW:

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. ...

The Deficiency Notice informed Mehlhaff that absent the filing and service of amended complaints stating a cause of action within 21 days following the date of the Deficiency Notice, the allegations concerning negotiating changes in Sections 27 and 57.A of the 1998-2001 agreement would be dismissed. The Deficiency Notice suspended the instructions to the employer and union to file answers to the amended complaints until the matters addressed in the Deficiency Notice were resolved.

Second and Third Amended Complaints

In response to the second Deficiency Notice, Mehlhaff filed amended complaints in both cases on August 29, 2000. These complaints stated as follows:

Complainant did not know [that the union and employer] had in reprisal for her union activities negotiated the changes to §§ 27 & 57.A of the 1998-2001 Agreement until after having received and read the PERC deficiency notice dated June 23, 2000.

Additional amended complaints in both cases were filed by Mehlhaff on September 1, 2000. These complaints stated as follows:

Complainant only had standing to complain about the traded-away rights in § 27 of the 1998-2001 Agreement after November 1, 1999, whereupon she had not accepted reassignment from a counselor to a teacher, so was not paid as a counselor for this day.

The second and third amended complaints have been reviewed under WAC 391-45-110. The defects indicated in the second Deficiency Notice have not been cured. The original complaints indicate that Mehlhaff became aware of the negotiated changes to the 1998-2001 collective bargaining agreement in the autumn of 1998. The facts alleged in the second and third amended complaints do not indicate that knowledge of the negotiation of these changes was concealed from Mehlhaff until after October 25, 1999. A complainant must allege and prove an absence of knowledge about a particular event to toll the six-month statute of limitations. City of Pasco, WPERR CD-1227 (Franklin County Superior Court, 1998). The allegations concerning negotiating changes in Sections 27 and 57.A of the 1998-2001 collective bargaining agreement in reprisal for Mehlhaff's union activities are untimely.

In summary, the only allegations that remain of the amended complaints found to state a cause of action concern statements by union representative McCone.

NOW THEREFORE, it is

ORDERED

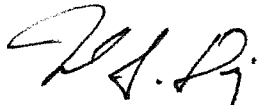
1. Paragraphs 2 and 3 of the Order for Further Proceedings are withdrawn. The allegations against the employer and the union

concerning negotiating changes in Sections 27 and 57.A of the 1998-2001 collective bargaining agreement in reprisal for Mehlhaff's union activities, are DISMISSED for failure to state a cause of action. The complaint against the employer in Case 15163-U-00-3825 is DISMISSED.

2. The instructions to the union in Case 15164-U-00-3826 concerning the filing of an answer, as detailed in Paragraph 5 of the Order for Further Proceedings, is reinstated. The answer is restricted to the allegations found to state a cause of action in Paragraph 4 of the Order for Further Proceedings. Any answer shall be filed and served within 21 days following the date of this Order.

ISSUED at Olympia, Washington, this 26th day of September, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

Paragraph 1 of 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.