

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 15164-U-00-3826
)	
vs.)	DECISION 7142-B - EDUC
)	
TACOMA EDUCATION ASSOCIATION,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
)	
_____)	

Lois Mehlhaff appeared pro se.

Michael J. Gawley, Attorney at Law, appeared for the respondent.

On April 25, 2000, Lois Mehlhaff filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Tacoma Education Association (union) as respondent. Mehlhaff alleged that the union interfered with employee rights, induced the employer to discriminate, and discriminated against the filing of charges, in violation of RCW 41.59.140(2).¹ A deficiency notice was issued under WAC 391-45-110 on June 23, 2001, with respect to both cases. Mehlhaff filed an amended complaint with respect to both cases, on July 12, 2000.

¹ On the same date, Mehlhaff filed a complaint naming the Tacoma School District as respondent. A separate case was docketed, as Case 15163-U-00-3825.

A partial dismissal and preliminary ruling was issued on August 3, 2000, with respect to both cases. A second deficiency notice was issued with respect to both cases on August 14, 2000, noting that the complaint appeared to be untimely under RCW 41.59.150. Another amended complaint was filed on September 1, 2000. On September 26, 2000, the complaint against the Tacoma School District was dismissed in its entirety,² while the complaint against the union was partially dismissed.³ The sole issue remaining for processing in this case was whether statements concerning Mehlhaff which were allegedly made by Linda McCone to a substitute teacher constituted union interference with employee rights and discrimination for filing an unfair labor practice charge, in violation of RCW 41.59.140(2)(a).

A hearing was held on March 16, 2001, before Examiner Vincent M. Helm. At the conclusion of the complainant's presentation of her case-in-chief, the Examiner granted the union's motion for dismissal. This order confirms the ruling made by the Examiner at the hearing.

BACKGROUND

At the hearing, Mehlhaff established some basic facts indicating that she has been an employee subject to the jurisdiction of the Public Employment Relations Commission under the Educational Employment Relations Act, Chapter 41.59 RCW. She has been employed

² *Tacoma School District*, Decision 7141-A (EDUC, 2000).

³ *Tacoma School District (Tacoma Education Association)*, Decision 7142-A (EDUC, 2000)

as a substitute teacher in the Tacoma School District since 1981. At all times relevant herein, she was a union member. She served on the union's substitute issues committee for some time. For several years prior to her filing of this complaint, Mehlhaff had conversations with union representatives about what she believed to be violations of the collective bargaining agreement between the union and the Tacoma School District, and particularly with respect to the terms and conditions of employment of substitute teachers in what Mehlhaff characterizes as "long-term substitute" teaching assignments. Mehlhaff has also filed various legal actions related to her employment, including the complaint which led to a ruling against the union in *Tacoma School District (Tacoma Education Association)*, Decision 5465-E (EDUC, 1997).⁴

The conversation at issue in this proceeding allegedly occurred on either November 2 or 3, 1999. The participants were Linda Rodriguez and Linda McCone, but McCone was the only witness who testified about that conversation. At the time of the conversation, Rodriguez had been working as a substitute teacher, while McCone was a full-time teacher, a zone vice president for the union, and chairperson of an employee rights commission which conducted the union's review of requests for arbitration on alleged contract violations.⁵

⁴ The union was found to have violated RCW 41.59.140(2)(a) and (b), in connection with its administration of the union security obligations of substitute teachers.

⁵ At the time of the hearing in this case, McCone was a building representative for the union at the high school where she was employed as a teacher, and was also a member of the union's bargaining team for contract negotiations with the employer.

DISCUSSION

Viewed in the light most favorable to the complainant, Mehlhaff has established that she was a vigilant guardian of the rights and interests of substitute teachers, and that her activities had placed her and the union in adversarial positions on some prior occasions. Mehlhaff also established that Linda McCone was, at all times relevant herein, a representative of and agent of the union.

Rodriguez had been working as a substitute teacher in an assignment where the regular teacher was absent and the substitute teacher initially assigned was also absent. Rodriguez was disturbed because the substitute initially assigned had returned to work, and the school principal was not permitting Rodriguez to continue in the assignment until the regular teacher returned. Rodriguez believed that she should have been regarded as a substitute for the regular teacher, rather than as a substitute for the substitute initially assigned.

According to the only evidence presented by Mehlhaff in her case-in-chief, Rodriguez related to McCone during the disputed conversation that she had previously discussed this matter with Mehlhaff, who had advised that she should sue for breach of contract. McCone acknowledged that she responded by stating that Rodriguez should not listen to Mehlhaff, and that there was an easier or better way to deal with the matter, but she denied telling Rodriguez to stay away from Mehlhaff. The testimony of McCone was unequivocal, and was credible. Mehlhaff has not established facts which could be a basis for a remedy in her favor. There was absolutely no evidence introduced at the hearing to support Mehlhaff's allegation that

McCone made comments to Rodriguez which were violative of Mehlhaff's statutory rights.

Neither McCone nor the union was obligated to accept or endorse Mehlhaff's purported advice that Rodriguez should sue the Tacoma School District for breach of contract, and it was not an unfair labor practice for McCone to suggest that such advice should not be followed. Moreover, after reviewing the facts, McCone concluded that the sequence of events described by Rodriguez did not constitute a contract violation. McCone so advised Rodriguez, and Mehlhaff has no legal standing to pursue claims on behalf of Rodriguez.

FINDINGS OF FACT

1. Tacoma School District (employer) is a school district operated under Title 28A RCW, and is an employer within the meaning of RCW 41.59.020(5).
2. The Tacoma Education Association (union), a labor organization within the meaning of RCW 41.59.020(1), was the exclusive bargaining representative, at all times material herein, of non-supervisory certificated employees of the Tacoma School District. Linda McCone was, at all times material herein, an agent of the union.
3. Lois Mehlhaff was employed by the Tacoma School District, at all times material herein, as a substitute teacher. Mehlhaff was an employee within the meaning of RCW 41.59.020(4), was represented by the union for purposes of collective bargaining

with the employer, has been a union member, and has served on a union committee as a representative of substitute teachers.

4. At all times material herein, a collective bargaining agreement was in effect between the employer and union.
5. Mehlhaff and the union have had an adversarial relationship over a period of several years, with respect to the status and rights of substitute teachers. Their disagreements primarily involved provisions of the collective bargaining agreement and interpretations thereof.
6. On November 1 or 2, 1999, Mehlhaff had a conversation with another substitute teacher, Linda Rodriguez, concerning the removal of Rodriguez from a substitute teaching assignment.
7. On November 2 or 3, 1999, Rodriguez had a conversation with McCone, concerning the same assignment change discussed by Rodriguez with Mehlhaff as described in Finding of Fact 6. McCone was told by Rodriguez that Mehlhaff had advised her to sue the employer for breach of contract. McCone advised Rodriguez not to follow the advice given by Mehlhaff.
8. Mehlhaff has failed to provide any credible evidence in support of her allegation that McCone advised Rodriguez to avoid contact with Mehlhaff.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction of this matter pursuant to Chapter 41.59 RCW.

2. The complainant has not sustained her burden of proof to establish any violation of RCW 41.59.140(2)(a) by virtue of the comments made by union representative Linda McCone to Linda Rodriguez in November of 1999.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED.

Issued at Olympia, Washington, this 10th day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Examiner

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY:/S/ MITCH NELSON

CASE NUMBER: 15164-U-00-03826 FILED: 04/25/2000 FILED BY: PARTY 2
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