

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

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LOIS MEHLHAFF,	)	
	)	
Complainant,	)	CASE 15163-U-00-3825
	)	
vs.	)	DECISION 7141 - EDUC
	)	
TACOMA SCHOOL DISTRICT,	)	PARTIAL DISMISSAL,
	)	PRELIMINARY RULING,
Respondent.	)	AND ORDER FOR FURTHER
	)	PROCEEDINGS
	)	
<hr/> TACOMA SCHOOL DISTRICT,	)	
	)	
Employer.	)	
	)	
<hr/> LOIS MEHLHAFF,	)	
	)	
Complainant,	)	CASE 15164-U-00-3826
	)	
vs.	)	DECISION 7142 - EDUC
	)	
TACOMA EDUCATION ASSOCIATION,	)	PARTIAL DISMISSAL,
	)	PRELIMINARY RULING,
Respondent.	)	AND ORDER FOR FURTHER
	)	PROCEEDINGS
	)	
<hr/>	)	

On April 25, 2000, Lois Mehlhaff filed two unfair labor practice complaints with the Public Employment Relations Commission. One complaint was filed against the Tacoma School District (employer). See, Case 15163-U-00-3825. The other complaint was filed against the Tacoma Education Association (union). See, Case 15164-U-00-3826.

On June 23, 2000, a Deficiency Notice was issued for both complaints under WAC 391-45-110.<sup>1</sup> The Deficiency Notice informed Mehlhaff that absent the filing and service of an amended complaint stating a cause of action within 21 days following the date of the Deficiency Notice, the complaints would be dismissed. In response to the Deficiency Notice, Mehlhaff filed amended complaints in both cases on July 12, 2000. The amended complaints have been reviewed under WAC 391-45-110.

#### Complaint Filed Against Employer

The original complaint against the employer contained two allegations of discrimination in violation of RCW 41.59.140(1)(c): (1) Negotiating new language in Section 27 of the parties' collective bargaining agreement allowing a principal to reassign a substitute teacher based on the needs of a building; and (2) Failure to pay Mehlhaff for November 1, 1999 because of this contractual provision.

The Deficiency Notice indicated that it was not possible to conclude that a cause of action existed for the original complaint. In regards to the allegation concerning negotiating Section 27 of the collective bargaining agreement, the Deficiency Notice stated that the complaint failed to allege facts supporting any allegation that the contractual provision was negotiated in reprisal for union activities protected by Chapter 41.59 RCW. In regard to the allegation concerning failure to pay Mehlhaff for November 1, 1999,

---

<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the amended complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the amended complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

the Deficiency Notice indicated that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

Mehlhaff's amended complaint claims that the employer's conduct in negotiating new language in Section 27 and deleting language in Section 57.A of the previous agreement, violates two additional statutes: 1) Interference with employee rights in violation of RCW 41.59.140(1)(a); and 2) Discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(1)(d). In addition, the amended complaint alleges that the employer's conduct in negotiating Sections 27 and 57.A of the agreement, was taken in reprisal for union activities protected by Chapter 41.59 RCW.

The amended complaint did not respond to the problems noted in regard to the pay for November 1, 1999. That allegation is dismissed for failure to state a cause of action.

#### Complaint Filed Against Union

Mehlhaff's original complaint against the union contained three allegations of interference and discrimination with employee rights in violation of RCW 41.59.140(2)(a) and other unspecified unfair labor practices for: (1) Negotiating Section 27 of the parties' agreement; (2) Refusal to request arbitration of a grievance filed by Mehlhaff; and (3) Statements by union representative Linda McCone to a substitute teacher, in reprisal for union activities protected by Chapter 41.59 RCW.

The Deficiency Notice pointed out problems with the first and second of those allegations: In regard to the allegation concerning negotiating Section 27 of the agreement, the Deficiency Notice

stated that this allegation failed to state a cause of action for the same reasons set forth above in the discussion of similar claims against the employer. The Deficiency Notice indicated that the allegation concerning refusal to request arbitration failed to state a cause of action, because the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

The Deficiency Notice indicated that assuming all of the facts in the allegation concerning statements by union representative McCone to be true and provable, it appears that an unfair labor practice violation could be found. In Tacoma School District (Tacoma Education Association), Decision 5465-E (EDUC, 1997), the union was found in violation of RCW 41.59.140(2)(a) and (b) based on a complaint filed by Mehlhaff.

Mehlhaff's amended complaint claims that the union's conduct in negotiating new language in Section 27 and deleting language in Section 57.A of the parties' agreement, violates two additional statutes: (1) Inducing an employer to discriminate against an employee in violation of RCW 41.59.140(2)(b); and (2) Discrimination for filing an unfair labor practice charge in violation of RCW 41.59.140(2)(a). In addition, the amended complaint alleges that the union's conduct in negotiating Sections 27 and 57.A of the parties' agreement, was taken in reprisal for union activities protected by Chapter 41.59 RCW.

The amended complaint did not respond to the problems noted in regard to the allegation concerning refusal to request arbitration. That allegation is dismissed for failure to state a cause of action.

NOW THEREFORE, it is

ORDERED

1. The allegation of the original complaint against the employer concerning employer discrimination for failure to pay Mehlhaff for November 1, 1999, as well as the allegation of the original complaint against the union concerning union interference and discrimination for refusal to request arbitration of a grievance filed by Mehlhaff, are DISMISSED for failure to state a cause of action.
2. Assuming all of the facts alleged to be true and provable, the allegation of the amended complaint against the employer concerning negotiating Sections 27 and 57.A of the parties' agreement states a cause of action, 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.

This allegation will be the subject of further proceedings under Chapter 391-45 WAC.

3. Assuming all of the facts alleged to be true and provable, the allegation of the amended complaint against the union concerning negotiating Sections 27 and 57.A of the parties' agreement states a cause of action, 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.

This allegation will be the subject of further proceedings under Chapter 391-45 WAC.

4. Assuming all of the facts alleged to be true and provable, the allegation of the amended complaint against the union concerning statements by union representative McCone states a cause of action, 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.

This allegation will be the subject of further proceedings under Chapter 391-45 WAC.

5. WAC 391-45-110(2) requires the filing of an answer in response to a preliminary ruling which finds a cause of action to exist. Cases are reviewed after the answer is filed, to evaluate the propriety of a settlement conference under WAC

391-45-260, priority processing, or other special handling.

PLEASE TAKE NOTICE THAT, the respondents in these matters shall each:

**File and serve its answer to those allegations of the amended complaints found to state a cause of action by this Preliminary Ruling within 21 days following the date of this Ruling.**

The original answer and one copy 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. An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the amended complaint found to state a cause of action by this Preliminary Ruling, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial.
- b. Assert any other affirmative defenses that are claimed to exist in the matter.

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 complaints found to state a cause of action by this Preliminary Ruling, 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.

6. The amended complaints in Case 15163-U-00-3825 and Case 15164-U-00-3826 are consolidated for further processing under Chapter 391-45 WAC.

ISSUED at Olympia, Washington, this 3<sup>rd</sup> day of August, 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.