STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. COMMUNITY COLLEGE DISTRICT 13 - LOWER COLUMBIA, Respondent.	)	CASE 17397-U-03-4511 DECISION 8117 - PSRA PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS
COMMUNITY COLLEGE DISTRICT 13 - LOWER COLUMBIA, Employer.	)	
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	)	CASE 17419-U-03-4515 DECISION 8118 - PSRA PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS

The above-captioned cases are before the Executive Director for issuance of preliminary rulings under WAC 391-45-110, as well as for a determination as to their effect on a related representation proceeding under the "blocking charge" rule, WAC 391-25-370. The Executive Director concludes that some of the allegations state claims for relief available through unfair labor practice proceedings before the Commission, and that those charges warrant invoking the "blocking charge" rule.

BACKGROUND

The above-captioned companion cases were docketed on the basis of a complaint charging unfair labor practices filed by the Washington Public Employees Association (WPEA) on April 3, 2003:

- Case 17397-U-03-4511 concerns allegations against Lower Columbia (Community) College (employer);
- Case 17419-U-03-4515 concerns allegations against the Washington Federation of State Employees (WFSE).

Apart from being intertwined with one another, these cases are also intertwined with a previous unfair labor practice case filed by the WPEA against this employer,[1] as well as with a representation petition by which the WFSE seeks to replace the WPEA as exclusive

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[1] Case 16499-U-02-4259 originated with an unfair labor practice charge filed by the WPEA with the Washington State Department of Personnel on May 14, 2002. The case was transferred to the Commission under amendments to RCW 41.06.340 that were effective on June 13, 2002. A preliminary ruling was issued on April 14, 2003, finding a cause of action to exist on allegations summarized as follows:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by [the employer's] selection of Carole Jordan for reduction in force and by its discipline of Ron Adkisson, in reprisal for their union activities protected by Chapter 41.56 RCW.

Examiner Vincent M. Helm has been assigned to conduct further proceedings in the matter under Chapter 391-45 WAC, and a notice has been issued setting a hearing for September 9, 2003. In a letter filed on June 13, 2003, the WFSE has questioned whether discrimination charges concerning two bargaining unit employees constitute a sufficient basis to invoke the "blocking charge" rule.

bargaining representative of the classified employees of the college.[2]

The Original Complaint

The original complaint in these cases alleged that, with the employer's knowledge and tolerance, WFSE supporters:

- Used "classified staff meetings" required by the collective bargaining agreement between the employer and the WPEA as a forum to advance the organizing efforts of the WFSE at the college; and
- Used the employer's e-mail system in the organizing efforts of the WFSE; and
- Used extensive work time in organizing efforts on behalf of the WFSE.

The complaint further alleged that the employer denied a WPEA request to address employees on work time, and that the actions of an employer official in allowing a posting by WFSE supporters had the effect of fostering employer sanction for a change of exclusive bargaining representatives. The WPEA cited employer interference with employee rights in violation of RCW 41.56.140(1) and unlawful employer assistance to the WFSE in violation of RCW 41.56.140(2).

A deficiency notice was issued on April 10, 2003, pointing out that the complaint was untimely as to events alleged to have occurred prior to October 3, 2002, and that there was no evident basis for the WPEA's claim of a right to address employees at the employer's premises on work time.

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[2] Case 17319-E-03-2818 was docketed on the basis of a representation petition filed on March 12, 2003.

The Amended Complaint

An amended statement of facts filed by the WPEA on April 16, 2003, is now before the Executive Director.

Paragraph 1 of the amended complaint cites Case 16499-U-02-4259, and generally alleges a continuing course of unlawful conduct, but does not allege any specific facts. Thus, even though the WPEA cites both RCW 41.56.140(1) and (2), this paragraph does not state a cause of action. Each case must be decided on its own merits. A finding that a party has committed one unfair labor practice does not warrant or necessitate finding that it has violated the law in relation to any later-filed complaint.[3]

Paragraph 2 of the amended complaint alleges that the employer "sought to convene" a meeting "intended" to thwart the right of an employee to representation by the WPEA.[4] The paragraph falls short of alleging that the meeting was actually held. Moreover, the paragraph fails to allege that: (1) the meeting was to be of an "investigatory" nature, (2) the employee made a timely request for union representation, and (3) the employer denied the employee's request for union representation and went ahead with the meeting, all of which would be necessary to create a cause of action under *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) and Commission precedents embracing that principle.

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[3] Under Commission precedent, repetitive violations can be a basis for imposition of extraordinary remedies.

[4] A fleeting reference in Paragraph 2 to the involvement of a supervisor who is a WFSE supporter and a fleeting question as to whether that supervisor should be excluded from the bargaining unit are dealt with separately, below.

Paragraph 3 of the amended complaint acknowledges that some of the conduct alleged in the original complaint occurred prior to October 3, 2002, but asks that the statute of limitations be waived because of the alleged course of unlawful conduct. As already stated in relation to paragraph 1 of this amended complaint, each cause of action must rise or fall on its own facts. RCW 41.06.340 was amended by the Personnel System Reform Act of 2002 (PSRA) to make "each and every provision of RCW 41.56.140 through 41.56.160" applicable to state civil service employees. That amendment was effective on June 13, 2002, and the Commission adopted emergency rules the next day, so that the six month statute of limitations clearly set forth in RCW 41.56.160 is applicable to these parties. The union could have sought timely amendment in Case 16499-U-02-4259 to broaden the "discrimination" theories already asserted in that proceeding, but it did not do so and the "interference" and "domination" claims asserted in the above-captioned cases do not relate back to the earlier case. By waiting until April 3, 2003, to file the above-captioned cases, the WPEA lost the ability to seek a remedy for any "interference" and "domination" that occurred prior to October 3, 2002.

Paragraph 4 of the amended complaint responds to the deficiency notice by asserting that the WPEA normally had use of work time and employer facilities, so that allowing the WFSE to use work time and employer facilities while denying the same rights to the WPEA constituted unlawful assistance to the WFSE. This now states a cause of action, together with the allegations in the original complaint that the employer knew of and tolerated actions of WFSE supporters on or after October 3, 2002, to:

- Use "classified staff meetings" as a forum to advance the organizing efforts of the WFSE at the college; and

- Use the employer's e-mail system in the organizing efforts of the WFSE; and
- Use extensive work time in organizing efforts on behalf of the WFSE.

Additionally, the involvement of a supervisor in organizing among non-supervisory employees alleged in paragraph 2 of the amended complaint states a cause of action under *Kitsap County*, Decision 2116 (PECB, 1984), particularly in light of RCW 41.80.070, which statutorily requires the exclusion of supervisors from bargaining units of non-supervisory employees.

Paragraph 5 of the amended complaint responds to the deficiency notice by specifically citing RCW 41.56.150(1) and (2) as the bases for the complaint against the WFSE.

The "Blocking Charge" Question

Under both National Labor Relations Board (NLRB) and Commission precedent, the "blocking charge" concept protects the rights of parties to representation proceedings. Neither an employer, an employee organization, nor a decertification petitioner will be subjected unwillingly to the risks associated with a representation election or cross-check, if its pending allegations of unfair labor practices that would destroy the "laboratory conditions" for determining a question concerning representation remain undetermined and/or unremedied. Any "discrimination" violation found under RCW 41.56.140(1) would inherently carry with it a derivative "interference" with employee rights that would constitute objectionable conduct in the related representation proceeding, so the finding of a cause of action in Case 16499-U-02-4259 was sufficient by itself to invoke the "blocking charge" rule. Any "interference"

or "unlawful assistance" violation found in the above-captioned cases under RCW 41.56.140(1) and (2) and/or 41.56.150(1) and (2) would inherently carry with it a derivative "interference" with employee rights that would constitute objectionable conduct in the representation proceeding, so the finding of a cause of action in these cases is also a basis to invoke the "blocking charge" rule.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the complaint in Case 17397-U-03-4511, as amended states a cause of action, summarized as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1) and unlawful assistance to the Washington Federation of State Employees (WFSE) in violation of RCW 41.56.140(2) on and after October 3, 2002, by permitting WFSE supporters to use the employer's time, facilities, and e-mail system for purposes of organizing in support of a change of exclusive bargaining representative, and by denying a Washington Public Employees Association (WPEA) request for use of the employer's time and facilities.

Those allegations will be the subject of further proceedings under Chapter 391-45 WAC, as follows:

a. Community College District 13 - Lower Columbia 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:

(1) 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

(2) Assert any affirmative defenses that are claimed to exist in the matter.

b. 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. *See* WAC 391-45-210.

2. Assuming all of the facts alleged to be true and provable, the complaint in Case 17419-U-03-4515, as amended, states a cause of action, summarized as follows:

> Union interference with employee rights in violation of RCW 41.56.150(1) and inducing an employer to commit an unfair labor practice in violation of RCW 41.56.150(2) on and after October 3, 2002, by using the employer's time, facilities, and e-mail system and by accepting the involvement of a supervisor in organizing in support of a change of exclusive bargaining representative of non-supervisory employees.

Those allegations will be the subject of further proceedings under Chapter 391-45 WAC, as follows:

a. The Washington Federation of State Employees shall file and serve its answer to the allegations listed in paragraph 2 of this order, within 21 days following the date of this order. An answer shall:

(1) 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

(2) Assert any affirmative defenses that are claimed to exist in the matter.

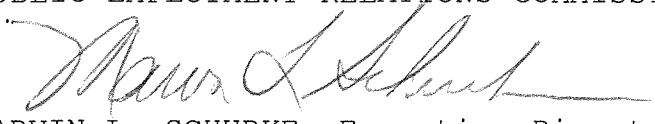
b. The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure 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. *See* WAC 391-45-210.

3. Except as forwarded for further proceedings in paragraphs 1 and 2 of this order, all of the allegations of the complaints and amended complaints relating to events that occurred prior to October 3, 2002, are DISMISSED as untimely.

4. Except as forwarded for further proceedings in paragraphs 1 and 2 of this order, the allegations in paragraph 2 of the amended complaint concerning an employer attempt to interfere with the right of an employee to union representation are DISMISSED as insufficient to state a cause of action.

Issued at Olympia, Washington, on the 19th day of June, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 3 and 4 of this order will be the final order of the agency on those matters unless a notice of appeal is filed with the Commission under WAC 391-45-350.