

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES)	
OF WASHINGTON,)	
)	CASE 18557-U-04-4723
Complainant,)	
)	DECISION 8770 - PECB
vs.)	
)	
MOSES LAKE SCHOOL DISTRICT,)	
)	ORDER DENYING MOTION
Respondent.)	TO REOPEN HEARING
)	
)	

On May 25, 2004, the Public School Employees of Washington (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The union's complaint named the Moses Lake School District (employer) as respondent. Agency staff issued a preliminary ruling under WAC 391-45-110, finding a cause of action could exist as follows:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by retaliatory actions of supervisor Trish Tracy against Sylvia Perez and elimination of Perez's migrant records clerk position for the 2004-05 school year, in reprisal for union activities protected by Chapter 41.56 RCW.

Examiner Carlos R. Carrión-Crespo held a hearing on this matter on September 28, 2004. While the record is not deemed closed until briefs are filed, the hearing was closed after both parties rested their cases on that date.

On October 19, 2004, the union filed a letter asking the Examiner to reopen the hearing, as follows:

I represent the Complainant in the above-referenced matter, which was heard by you on September 28, 2004. My client has asked that I move to reopen the hearing, in order to present some short testimony bearing upon the credibility of one of the Respondent's witnesses. Please consider this letter to be such a motion.

I do not believe that the additional testimony would last more than 30 minutes, and suggest that it would serve the interests of justice to allow this additional evidence.

Thank you in advance for your kind consideration of this request.

The issue in this case is whether the request satisfies the requirements stated in the Commission's rules for unfair labor practices.

The Examiner may reopen a hearing in an unfair labor practices case. WAC 391-45-270(2) provides as follows:

Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

The union's letter does not indicate that the proposed testimony constitutes new evidence that could not have been discovered and produced at the hearing with reasonable diligence. The union does not include any facts to substantiate its request nor does it cite any authority that backs its claim to a new opportunity to present

evidence. Consequently, the motion does not meet the requirements of the rule cited above.

NOW, THEREFORE, it is

ORDERED

The Examiner DENIES the union's motion to reopen the hearing.

Issued at Olympia, Washington, the 8th day of November, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Carlos R. Carrión-Crespo".

CARLOS R. CARRIÓN-CRESPO, Examiner