

Western Washington University (Washington Public Employees Association) Decision 8849 (PSRA, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WESTERN WASHINGTON UNIVERSITY,)	
)	
Employer.)	CASE 19017-U-04-4843
-----)	
ANNE YAKE,)	DECISION 8849 - PSRA
)	
Complainant,)	
)	
vs.)	
)	
WASHINGTON PUBLIC EMPLOYEES)	
ASSOCIATION,)	PARTIAL DISMISSAL AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
_____)	

On December 1, 2004, Anne Yake (Yake) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Public Employees Association (union) as respondent. Yake is employed by Western Washington University (employer). The allegations of the complaint concern union interference with the rights of Yake in violation of RCW 41.80.110(2) (a) and "other unfair labor practice" violations, by failing to provide adequate notice and allowing all bargaining unit employees to participate in a contract ratification vote, providing misleading information as to eligibility of employees to vote, failing to count votes of non-union members, and failing to include the union security clause in a list of high-lights of the new contract.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 28, 2004, indicated that it was not possible to conclude that a cause of action existed at that time for the allegations of "other unfair labor practice" violations. Yake was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. On January 5, 2005, Yake filed a letter withdrawing the allegations of "other unfair labor practice" violations.

The Unfair Labor Practice Manager dismisses the allegations of "other unfair labor practice" violations, and finds a cause of action for interference allegations of the complaint.

DISCUSSION

Unfair labor practice complaints concerning the actions of a union during a contract ratification vote are normally dismissed as the Commission lacks jurisdiction over internal union affairs. *Lewis County*, Decision 464-A (PECB, 1978); *Lake Washington School District*, Decision 6891 (PECB, 1999). However, a different result is possible where a union delegates its representative role to a referendum of all bargaining unit employees. *Branch 6000, Letter Carriers*, 232 NLRB 263 (1977), *aff'd*, 595 F.2d 808 (D.C. Cir. 1979); *Boilermakers Local 202 (Henders Boiler & Tank Co.)*, 300 NLRB 28 (1990).

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

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint state a cause of action, summarized as follows:

Union interference with the rights of Anne Yake in violation of RCW 41.80.110(2)(a), by failing to provide adequate notice and allowing all bargaining unit employees to participate in a contract ratification vote, providing misleading information as to eligibility of employees to vote, failing to count votes of non-union members, and failing to include the union security clause in a list of highlights of the new contract.

The interference allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Washington Public Employees Association 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:

- a. 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
- b. Assert any affirmative defenses that are claimed to exist in the matter.

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. The complaint's allegations of "other unfair labor practice" violations are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 24th day of January, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.