STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WELLPINIT CLASSIFIED PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. WELLPINIT SCHOOL DISTRICT, Respondent.	)	CASE 9708-U-92-2197 DECISION 4083 - PECB PARTIAL DISMISSAL

The complaint charging unfair labor practices was filed with the Commission on March 23, 1992. The matter came before the Executive Director pursuant to WAC 391-45-110, and a preliminary ruling letter sent to the parties on May 12, 1992 pointed out certain difficulties with the complaint, as filed.

The union filed an amended complaint on May 26, 1992, and the matter is again before the Executive Director for a preliminary ruling. 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.

The amended complaint clearly delineates the first nine paragraphs of the statement of facts as "background information". They include identification of the employer and union, identification of Terri Samuels as a union activist, the origins of the bargaining relationship, a previous case in which the Commission ruled that the employer committed unfair labor practices by discriminating against Samuels and another employee, additional "refusal to bargain" unfair labor practice charges were held in abeyance at the

request of the union, a series of bargaining-related incidents that occurred in August and early September of 1991, and the processing of a "compliance" dispute relating to the remedies ordered in the earlier "discrimination" case.

The amended complaint then sets forth "direct allegations" in a new series of numbered paragraphs, as follows:

Paragraph 1 alleges that the employer attempted to initiate a question concerning representation, and that the Commission deemed that effort to be "blocked" by the previous unfair labor practice case.

The preliminary ruling letter issued on May 12, 1992 noted that the filing and processing of representation petitions is regulated by Chapter 391-25 WAC, and that employers are entitled to file petitions with regard to employees, such as those involved here, who are covered by Chapter 41.56 RCW. Thus, it is not inherently unlawful for the employer to have filed such a petition. The union has not added any new facts or theories sufficient to state a cause of action.

The preliminary ruling letter pointed out that the allegations fell short of claiming bad faith or a refusal to bargain. The union has not claimed a breach of the "good faith" obligation, or any violation of RCW 41.56.140(4). For those additional reasons, the paragraph does not state a cause of action as filed.

Paragraph 2 concerns a "grievance" meeting which broke down into a shouting match. If anything, the amended complaint has reduced the amount of detail provided.

The preliminary ruling letter noted that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, citing City of Walla Walla, Decision 104 (PECB, 1976). Thus, it was pointed out that the merits of any underlying contractual grievance(s) would need to be determined through

contractual grievance/arbitration machinery or through the courts. The amended complaint does not respond to that defect, and the paragraph continues to fail to state a cause of action.

The preliminary ruling letter noted the possibility that the union was seeking to complain of a refusal by the employer to meet for the purposes of collective bargaining, but indicated that such a theory should be clarified in an amended complaint. As noted above, the amended complaint does not allege any "refusal to bargain" or any violation of RCW 41.56.140(4).

There is no claim of discriminatory action against Samuels at this point in the complaint, nor even any threat of reprisal or force made in connection with her union activity. There is no basis to conclude that a simple lack of business courtesies during the "grievance meeting" could be the basis for finding an unfair labor practice violation of the "interference" variety.

Paragraph 3 of the statement of facts concerns a suspension of Terri Samuels because of her conduct at the previously-described "grievance meeting". While their immunity is not absolute, union officials do enjoy some protections under the statute when presenting grievances in their capacity as union officials. The paragraph thus states a cause of action as a "discrimination" against Samuels.[1]

Paragraph 4 alleges a "withdrawal of recognition", and a complete shutdown of bargaining for a time.[2] Although the amended complaint

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[1] The counterpart paragraph of the original complaint made reference to a violation of the employee's "Weingarten" rights. The preliminary ruling letter had pointed out that the facts alleged in this case did not appear to fit the Weingarten formula. The amended complaint omits any reference to a Weingarten claim.

[2] The preliminary ruling letter had noted the absence of any allegation of an actual shutdown of bargaining, and the need for amendment if a "refusal to bargain" claim was intended by the union under RCW 41.56.140(4).

still does not claim any "refusal to bargain" violation under RCW 41.56.140(4), the preliminary ruling letter pointed out that this allegation does state a cause of action for an "interference" under RCW 41.56.140(1). Only the latter claim is ripe for hearing.

Paragraph 5 alleges issuance of a reprimand to Terri Samuels, and alleges that the action was taken by the employer in retaliation for Samuels' attempts to convey grievances on behalf of bargaining unit employees.[3] The complaint states a cause of action with respect to an alleged "discrimination" against Samuels, as well as a derivative "interference" against all bargaining unit employees.

Paragraphs 6 and 7 of the amended complaint allege that the school board chairman convened a meeting of bargaining unit employees and made an offer directly to them, and then ordered them to vote on the offer, while stating that the same offer would not be made to the union representatives and that he would not bargain with union representatives. If proven, such conduct could clearly be found to violate RCW 41.56.140(4), as a "circumvention" of the employer's collective bargaining obligations toward the union.[4] The statements made directly to the employees could constitute an interference with their right, under RCW 41.56.040, to bargain collectively through representatives of their own choosing. The paragraphs thus state a cause of action under RCW 41.56.140(1).

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[3] The original complaint contained some allegations that suggested violation of the employer's own procedures. The preliminary ruling letter had noted that the Commission is not empowered to remedy violations of the employer's own policies. The "employer policies" aspects are omitted from the amended complaint, and are presumed to have been withdrawn or abandoned.

[4] In view of the (apparently intentional) omission of any reliance by the union on RCW 41.56.140(4), no "refusal to bargain" violation could be found in this case.

Several allegations of the original complaint concerned the steps taken to get an "appeal" before the school board, and a school board meeting allegedly held in violation of the Open Public Meetings Act. The preliminary ruling letter pointed out that the Commission does not assert jurisdiction to determine or remedy violations of employer policies or the Open Public Meetings Act. Those materials were omitted from the amended complaint, and are presumed to have been withdrawn or abandoned.

NOW, THEREFORE, it is

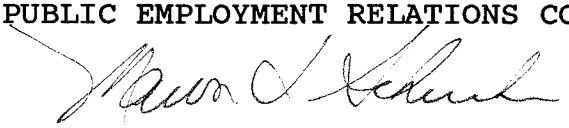
ORDERED

1. Paragraphs 1 and 2 of the amended complaint are DISMISSED for failure to state a cause of action.

2. Paragraphs 3, 4, 5, 6 and 7 of the amended complaint shall be assigned to an Examiner, in due course, for further proceedings under Chapter 391-45 WAC.

Entered at Olympia, Washington, on the 2nd day of June, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.