

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| WILLARD ROBERTS, |) | |
| |) | CASE 10736-U-93-2497 |
| Complainant, |) | |
| |) | DECISION 4861 - PECB |
| vs. |) | |
| |) | |
| MUKILTEO SCHOOL DISTRICT, |) | |
| |) | PRELIMINARY RULING |
| Respondent. |) | AND PARTIAL |
| |) | ORDER OF DISMISSAL |
| |) | |

On October 22, 1993, Willard Roberts filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Mukilteo School District had committed a number of unfair labor practices against him in connection with his discharge from employment as a substitute bus driver. The complaint was the subject of a preliminary ruling letter issued on April 1, 1994.¹ The preliminary ruling letter noted that the existence of a number of problems with the complaint, as filed.

The complaint alleged that a differentiation of contractual rights between "substitutes" and other employees was unlawful. The preliminary ruling letter noted, however, that a union and employer are not required to bargain equal wages and benefits for all bargaining unit employees. Thus, the allegation did not state a cause of action for proceedings before the Commission.

¹ At that 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 complaint next alleged that the employer violated the collective bargaining agreement when it discharged Roberts from employment. 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. City of Walla Walla, Decision 104 (PECB, 1976). Thus, that allegation failed to state a cause of action.

The complaint further alleged that the employer refused to bargain in good faith and made a unilateral change in working conditions, by altering the manner in which substitute bus drivers were hired as permanent drivers. The preliminary ruling letter noted that only an employer and an exclusive bargaining representative have legal standing to pursue a "refusal to bargain" complaint. This allegation thus also failed to state a cause of action.

On October 29, 1993, Roberts filed additional allegations, this time alleging that the employer had "blacklisted" him with other employers in reprisal for his filing a grievance concerning his discharge from employment and for his filing this unfair labor practice complaint. That allegation was found to state a cause of action under RCW 41.56.140(3).

On March 9, 1994, Roberts filed additional materials, alleging that the employer had improperly maintained two personnel files concerning his employment, that it was intending to "manufacture" evidence against him, and that it watched "his every move" while he examined his personnel file. It was noted in the preliminary ruling letter that these allegations would require additional supporting facts in order to support any inference relating the employer's actions to the "blacklisting" claim.

The complainant was given a period of 14 days following the date of the preliminary ruling letter in which to file and serve an amended complaint with respect to those allegations found not to state a

cause of action, or face dismissal of those allegations. Nothing further has been heard or received from the complainant with respect to those matters.

On April 15, 1994, the complainant submitted materials alleging that the employer was continuing to discriminate and retaliate against him by contacting his present employer and threatening to take their business elsewhere if they continued to employ Roberts. In a letter dated August 5, 1994, these allegations were found to state a cause of action for further proceedings.

NOW, THEREFORE, it is

ORDERED

1. The allegation regarding the differentiation of contractual benefits between substitute and other employees of the Mukilteo School District is hereby dismissed for failure to state a cause of action.
2. The allegation that the Mukilteo School District violated the collective bargaining agreement when it discharged Willard Roberts from employment as a substitute bus driver is hereby dismissed for lack of jurisdiction.
3. The allegation that the employer refused to bargain in good faith by its unilateral alteration of the manner in which substitute bus drivers are hired to be permanent drivers is hereby dismissed due to the complainant's lack of standing to file such an allegation.
4. The allegations that the employer was engaged in surveillance of Willard Roberts while he reviewed his personnel file, that it intended to manufacture evidence against him, and that it

was maintaining two personnel files, are hereby dismissed for failure to state a cause of action.

5. The allegations that the Mukilteo School District is engaging in discrimination and retaliation against Willard Roberts, by its efforts to "blacklist" him with his current and prospective employers because he filed a grievance and a complaint charging unfair labor practices, are found to state a cause of action for further proceedings and are hereby assigned to Examiner William A. Lang of the Commission staff to conduct further proceedings.

PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

File and serve its answer to the allegations contained in paragraph 5 of the above order within 21 days following the date of this letter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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. WAC 391-45-210.

An answer filed by a respondent shall:

1. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.
2. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.
3. Assert any other affirmative defenses that are claimed to exist in the matter.

The original answer and three copies shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

DATED at Olympia, Washington, this 30th day of September, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1, 2, 3, and 4 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.