

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DON NICELY,)	
)	
Complainant,)	CASE 11137-U-94-2594
)	
vs.)	DECISION 5101 - PECB
)	
MUKILTEO SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

The complaint charging unfair labor practices was filed with the Commission in the above-referenced matter on May 23, 1994. The statement of facts attached to the complaint refers to "investigatory conference(s)" initiated by the employer over a period from February of 1992 through May 24, 1994.¹ The complaint was considered by the Executive Director for the purposes of WAC 391-45-110,² and a preliminary ruling letter directed to the parties on April 7, 1995 notified that the complaint was lacking in several respects. The complainant was given 14 days in which to file and serve an amended complaint or face dismissal of the complaint. Nothing further has been heard or received from the complainant.

¹ The subjects of those conferences were: A failure to call in to report an anticipated absence, lack of applause at an inservice meeting, communicating with the custodial constituent group, using the employer's equipment to print a document, using or assisting in the use of the employer's computers, and for using the employer's carpet cleaning equipment at home.

² 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 preliminary ruling indicated that the complaint appeared to be untimely in several respects. RCW 41.56.160 provides:

The Commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the Commission.

On its face, this complaint was untimely as to all of the incidents which took place between June of 1992 and November 23, 1993.

The preliminary ruling noted that "just cause" claims are not within the jurisdiction of the Commission. To be remedied under RCW 41.56.140(1), an alleged discriminatory act must be shown to be in reprisal for the exercise of rights protected by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. While the complaint alleges that no retaliatory actions occurred prior to his being selected to serve on a "district services committee", the complaint is not sufficiently detailed to support an inference that it is an arm of or related to the collective bargaining process. Discrimination allegations unrelated to the collective bargaining process do not state a cause of action.

The preliminary ruling letter further noted that some of the alleged disciplinary actions appear to have involved Nicely's use of the employer's equipment for personal use. The state constitution prohibits gifts of or private use of public property. Unfair labor practice charges filed by a public employee were dismissed in City of Seattle, Decision 1355 (PECB, 1982), where the subject of the alleged discrimination was an order that the employee cease using the employer's property and equipment for personal use.

An alternate interpretation of the allegations is that Nicely claims that the employer's disciplinary actions were taken in

violation of the collective bargaining agreement between the employer and Public School Employees of Washington. The Public Employment Relations Commission does not, however, 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).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for lack of jurisdiction.

ISSUED at Olympia, Washington, this 12th day of May, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

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