

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RON NILSON,)	
)	CASE 12279-U-96-2898
Complainant,)	
)	
vs.)	DECISION 5437 - PECB
)	
STATE OF WASHINGTON, DEPARTMENT)	
OF RETIREMENT SYSTEMS,)	
)	ORDER OF DISMISSAL
Respondent.)	
)	
)	
)	

This matter is before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, all of the facts alleged by the complainant are assumed to be true and provable. The question at hand is whether the allegations state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

On November 22, 1995, Ron Nilson filed a letter with the Public Employment Relations Commission, as follows:

Consider this letter and the enclosures as an unfair labor practice complaint against the Washington State Retirement System and all school districts in the State that discriminate against extra-curricular employees who are not also teachers in their school district. They do this by not providing them with retirement benefits even though they sign the same contract and do the same work.

The Department of Retirement Systems (DRS) is a state agency, created by Chapter 41.50 RCW to administer various state laws providing pensions for public employees.

The materials attached to Nilson's letter filed on November 22, 1995 included:

(1) A copy of a September 9, 1995 letter that Nilson sent to DRS, in which Nilson informed DRS of the Commission's decision in Castle Rock School District, Decision 4722-A, 4723-A (EDUC, 1995),¹ and stated his position that employees performing extra-curricular assignments should qualify for pension benefits under the Teachers Retirement System (TRS)² and/or the Public Employees Retirement System (PERS)³;

(2) A copy of a September 10, 1995 letter that Nilson sent to DRS, pointing out that some employees may perform two or three extracurricular assignments;

(3) A copy of an October 31, 1995 letter from DRS to Nilson, responding to items (1) and (2); and

¹ Nilson brought unfair labor practice charges against the Castle Rock School District and the Castle Rock Education Association in a dispute arising out of his discharge from employment as a basketball coach. In the cited decision, the Commission found that the employer and union had committed unfair labor practices by purporting to negotiate for certain "extracurricular" assignments in collective bargaining under the Educational Employment Relations Act, Chapter 41.59 RCW. That employer and union were ordered to remove assignments which did not require educator certification under Title 28A RCW or local practice from their bargaining relationship under Chapter 41.59 RCW. The Commission subsequently adopted an emergency rule, requiring all other school districts in the state and the exclusive bargaining representatives of all other bargaining units under Chapter 41.59 RCW to effect a similar separation. In both the Castle Rock decision and the rule, the Commission required posting of notices informing affected employees that their collective bargaining rights, if any, were under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

² TRS is created by Chapter 41.32 RCW, and covers teachers employed by public school districts.

³ PERS is created by Chapter 41.40 RCW and covers a variety of state government and local government employees, including non-teacher employees of public school districts.

(4) A copy of a November 4, 1995 letter from Nilson to DRS, requesting copies of the statutes on which various statements in item (3) were based, requesting answers on various fact situations, and requesting reconsideration of points in item (1) that were not the subject of direct responses.

The materials described above were presented to the Public Employment Relations Commission at an open, public meeting held on November 27, 1995, as part of the "Compliance" docket.⁴ On December 20, 1995, the parties were notified that the Commission did not find a basis to reopen the Castle Rock cases. In a letter filed on January 16, 1996, Nilson stated:

The retirement system complaint was a separate correspondence to the PERC.

I do not know why PERC responded to the retirement system complaint in the same letter which also involved the [Castle Rock] cases.

The above-captioned case was thus docketed, on the basis of the materials Nilson filed on November 22, 1995. As with any other

⁴ The collective bargaining statutes authorize the Commission to seek judicial enforcement of its orders under the Administrative Procedure Act, Chapter 34.05 RCW. Reports on compliance with remedial orders, as well as motions to authorize the Attorney General to sue for enforcement of remedial orders, are handled at public meetings of the Commission held under Chapter 42.30 RCW, inasmuch as such matters do not fit within the "quasi-judicial" functions of the agency. To implement that process, each case in which a remedial order has been issued is transferred to a "compliance" docket on the Commission's computer system, and that list is routinely reviewed at monthly Commission meetings. The Commission deemed the employer's efforts to be a sufficient tender of compliance with the remedial order issued in Castle Rock, supra, after a lingering dispute. The parties were notified in August of 1995 that those cases were being closed from the "compliance" docket, subject to reopening upon a showing of good cause. The materials Nilson filed on November 22, 1995 were initially interpreted as part of an effort to reopen the "compliance" question.

case filed with the Public Employment Relations Commission, Nilson is entitled to an appealable order on his complaint.

Jurisdiction Regarding Retirement System

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission is a state agency created by Chapter 41.58 RCW, with a jurisdiction limited to the resolution of collective bargaining disputes between employers, employees and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment.

As regards this particular case, the Legislature has delegated authority to the Commission to administer Chapter 41.56 RCW and Chapter 41.59 RCW. The TRS and PERS pension systems are created by other statutes, and the Public Employment Relations Commission has no statutory authority over their administration. Moreover, the Department of Retirement Systems is not even an "employer" within the meaning and coverage of either of the collective bargaining statutes which could be applicable to Nilson's claims.

Due Process and Standing

Nearly 300 separate school districts exist within the state of Washington under Title 28A RCW, to operate common schools for students in kindergarten through high school. The Commission's rules require identification of the respondent in a complaint charging unfair labor practices. WAC 391-45-050. Neither the materials filed on November 22, 1995 nor the letter filed on January 16, 1996 identified the "school districts in the State that discriminate against extra-curricular employees". Two recent Commission decisions point out the need for complainants to satisfy fundamental due process concerns. In Spokane School District,

Decision 5151-A (PECB, 1995), the Commission affirmed the dismissal of an unfair labor practice case on the basis that the complainant had not served both the school district and the union involved with copies of all of the documents filed with the Commission. In Tacoma School District, Decision 5337-B (PECB, 1996), the Commission dismissed a petition for review, upon a conclusion that a failure of the complainant to serve papers on both the school district and the union involved there provided an additional basis for dismissal of the case. It is even more evident that "due process" cannot be provided in this case, where the complaint does not even identify the employers being accused of wrongdoing.

Even if one or more school districts had been identified in the materials filed by Nilson, and even if those employers had been served with copies of the November 22, 1995 materials, the fact remains that Ron Nilson has no legal standing to file a complaint on behalf of other employees. Each employee who might claim to have been discriminated against would need to file and prosecute his or her own complaint charging unfair labor practices with the Commission.


NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

DATED at Olympia, Washington, this 8th day of February, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.