

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ENUMCLAW SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
JOHN MACDONALD,	)	CASE 12837-U-96-3093
	)	
Complainant,	)	DECISION 5936 - PECB
	)	
vs.	)	
	)	
PUBLIC SCHOOL EMPLOYEES OF	)	
WASHINGTON,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
_____	)	

The complaint charging unfair labor practices filed in the above-captioned matter on November 25, 1996, was considered by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110,<sup>1</sup> and a deficiency notice was issued on March 26, 1997. The complainant was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint. Nothing further has been heard or received from the complainant on this case.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> Complaints which Macdonald filed against the employer and union on April 23, 1997, were not denominated as amended complaints in this case, and are being processed as separate cases: 13110-U-97-3175 and 13111-U-97-3176.

The Parties and the Complainant's Legal Standing

Public School Employees of Washington (PSE) is named as the respondent in this case. Examination of a collective bargaining agreement which accompanied the complaint indicates that PSE represents a bargaining unit consisting of all classified employees of the Enumclaw School District (employer) who perform duties in custodial-maintenance, educational assistant, food service, office-clerical, and transportation generic types.

The complaint identifies John Macdonald as a custodian employed by the Enumclaw School District, but does not appear to allege any wrongdoing by (or seek any remedy against) the employer.<sup>3</sup>

To the extent that the complaint purported to identify "Custodial Employees" as the complainant, it was interpreted as an attempt by Macdonald to file on behalf of both himself and other employees. An organization which has the support of the majority of the employees in an appropriate bargaining unit is designated as the "exclusive bargaining representative" under RCW 41.56.080, and has legal standing to pursue rights on behalf of individual employees within the bargaining unit that it represents, but individual employees only have legal standing to file and pursue complaints asserting their own rights. The deficiency notice issued in this case thus notified Macdonald that he lacks standing to file or prosecute unfair labor practice charges on behalf of the all "custodial employees" group mentioned in the documents.

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<sup>3</sup> Every case processed by the Commission must arise out of an employment relationship. Listing of the employer's name on the Commission's docket records and in the caption of this order does not impose any liability or obligation upon the employer.

The Discrimination Allegation

The complaint alleges that PSE denied a request for "release" of the custodians from the bargaining unit. Macdonald alleges that PSE thereby discriminated against him, but a discrimination violation can only be found if a party is unlawfully deprived of some ascertainable right or benefit. The deficiency notice informed Macdonald that the "right" asserted here does not exist.

The determination of appropriate bargaining units is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060. Even where employers and unions agree upon units, those agreements are not binding upon the Commission. City of Richland, Decision 279-A (PECB, 1978), affirmed, 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). Individual employees within a bargaining unit will be eligible voters if a question concerning representation is to be determined by the Commission by means of an election or cross-check conducted under Chapter 391-25 WAC, but individual employees do not have a right to veto their inclusion in a bargaining unit. There is no evident basis to conclude here that Macdonald had any right to be excluded from the bargaining unit based on his request to PSE, so that no violation could be found.

Duty of Fair Representation

An exclusive bargaining representative owes a duty of fair representation to all of the employees in the bargaining unit it represents, but that does not compel equal treatment on every issue. The Public Employment Relations Commission polices its certifications, and will assert jurisdiction in cases where it is alleged that an exclusive bargaining representative has aligned itself in interest against employees within the bargaining unit

based upon unlawful considerations such as race, creed, sex, national origin, etc., or on union membership or lack thereof, but there are no such allegations in this complaint. Thus, the deficiency notice indicated that it did not appear that an unfair labor practice violation could be found.

#### Severance Decertification

The deficiency notice posed a question as to whether Macdonald was actually attempting to initiate a representation proceeding under Chapter 391-25 WAC, rather than an unfair labor practice proceeding under Chapter 391-45 WAC. The employees in a bargaining unit have a right, under RCW 41.56.070 and Chapter 391-25 WAC, to decertify their exclusive bargaining representative and return to unrepresented status through representation proceedings before the Commission, and Macdonald requested that the Commission "... adjudicate in favor of our immediate release" from the bargaining unit. The deficiency notice pointed out two evident problems, however:

First, it would be necessary for the proponents of decertification to file a timely and properly supported petition for investigation of a question concerning representation under Chapter 391-25 WAC.<sup>4</sup>

Second, it would be necessary to conduct the decertification effort in the existing bargaining unit as a whole. A petition seeking only the removal of the custodians from the existing

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<sup>4</sup> The employee(s) filing for decertification must provide a showing of interest indicating the petition is supported by at least 30% of the employees in the bargaining unit. That showing of interest must be in the form of individual cards or letters signed by bargaining unit members within 90 days preceding the filing of the petition. WAC 391-25-110.

bargaining unit would be dismissed as a "severance decertification".<sup>5</sup>

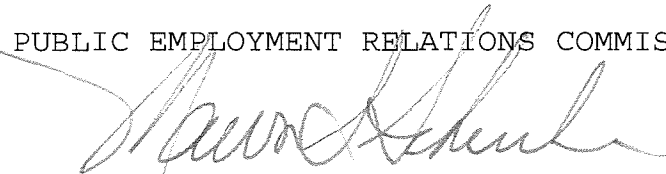
NOW, THEREFORE it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 5<sup>th</sup> day of June, 1997.

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.

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<sup>5</sup> The employees in a bargaining unit also have a right, under the statute, to change exclusive bargaining representatives. Although closely scrutinized under the criteria set forth in Yelm School District, Decision 704-A (PECB, 1980), a "severance" of part of a historical bargaining unit can be ordered in a representation proceeding initiated by a labor organization. In fact, International Union of Operating Engineers, Local 286, filed such a petition on December 2, 1996, concerning the custodians employed by the Enumclaw School District. Case 12845-E-96-2147. PSE has challenged the propriety of the severance, and a hearing has been set on the matter.