STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SOAP LAKE EDUCATIONAL SUPPORT PERSONNEL,	)	
Complainant,	)	CASE 13532-U-97-3304
vs.	)	DECISION 6194 - PECB
SOAP LAKE SCHOOL DISTRICT,	)	PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS
Respondent.	)	

On November 4, 1997, Soap Lake Educational Support Personnel (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Soap Lake School District had violated RCW 41.56.140 as a result of certain personnel actions regarding bargaining unit member Becky Larsen. The complaint was reviewed under WAC 391-45-110,[1] and a Deficiency Notice issued on December 8, 1997, found certain allegations failed to state a cause of action. The complainant was given a period of 14 days in which to file and serve an amended complaint with respect to the insufficient allegations, or face dismissal of those allegations. An amended complaint was filed on December 19, 1997, and is now before the Executive Director for a preliminary ruling.

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[1] At that stage of the proceedings, all of the facts alleged in the complaint were assumed to be true and provable. The question at hand was whether, as a matter of law, the compliant stated a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Untimely Allegations

RCW 41.56.160 imposes a six-month "statute of limitations" on the filing of unfair labor practice complaints. In this case, the complaint filed on November 4, 1997, can be considered timely only as to events or occurrences on or after May 4, 1997. Paragraphs 1, 2, and 3 of the complaint referred to events in March and April of 1997, and were not amended. While the facts set forth in those paragraphs may be useful as background information, no remedy is available in this proceeding for any unlawful conduct alleged in those paragraphs.

Interference with Right to Union Representation

Paragraph 4 describes a May 12, 1997 memo, which is alleged to imply that the union has no role in disciplinary matters and/or omits the right of the employee to union representation. The facts set forth in the original complaint were deemed to be insufficient, on their face, to support a cause of action. Additional facts supplied in the amended complaint tie this paragraph in with subsequent allegations concerning a violation of Larsen's right to union representation under National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975), and Commission precedents adopting the principles established therein. As so amended, the paragraph states a cause of action.

Paragraphs 5 and 7 were amended to provide additional facts concerning Larsen's attempts to secure a union representative for a scheduled investigatory meeting. With this additional information, these paragraphs do state a cause of action concerning a violation of Larsen's rights under Weingarten, supra, and its progeny.

Surveillance of Union Activities

Paragraph 6 alleges that employer officials engaged in surveillance of Larsen on May 29, 1997, having the effect of preventing her from talking anything union-related, even on her break, without it being witnessed by them. This allegation states a cause of action.

Discriminatory Discharge Allegation

Paragraphs 8 and 9 allege that a June 6, 1997 discharge recommendation, and Larsen's July 21, 1997 discharge, were each motivated by her filing and pursuit of grievances. Under Valley General Hospital, Decision 1195-A (PECB, 1981), the filing and pursuit of grievances is an activity protected by Chapter 41.56 RCW. These allegations state a cause of action.

Alleged Unit Determination Dispute

Paragraph 10 alleges that the employer's board approved taking steps to have building secretaries excluded from the bargaining unit. The Deficiency Notice pointed out that an employer has a right to file and process a unit clarification petition under Chapter 391-35 WAC, where the merits of its argument will be determined by the Commission under RCW 41.56.060 and applicable precedent. Unit Determination is not a subject of bargaining in the usual mandatory/permissive/illegal sense. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn. App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). While it would be unlawful for an employer to insist to impasse on a unit determination issue during collective bargaining, under Spokane School District, Decision 718 (EDUC, 1979), there are no allegations of

such a context in this complaint. This paragraph was not amended by the complainant and must be dismissed.

NOW, THEREFORE, it is

ORDERED

1. The following allegations are DISMISSED as failing to state a cause of action:

   a. Paragraphs 1,2, and 3, in that they are untimely.

   b. Paragraph 10, in that unit determination is not a subject of bargaining.

2. The following allegations do state a cause of action:

   a. Paragraphs 4, 5, and 7, alleging that the employer violated Becky Larsen's right to have union representation in an investigatory interview.

   b. Paragraph 6, alleging that the employer engaged in unlawful surveillance of Becky Larsen's union activities.

   c. Paragraphs 8 and 9, alleging that the employer discriminated against Becky Larsen, by discharging her for her filing and pursuit of grievances.

3. Walter M. Stuteville is designated as Examiner to conduct further proceedings under Chapter 391-45 WAC, with respect to the causes of action identified in paragraph 2 of this Order.

4. The Soap Lake School District shall:

File and serve its answer to the allegations listed in paragraph 2 of this Order, within 21 days following the date of this Order.

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 compliant, 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, pursuant to WAC 301-45-210. An answer filed by a respondent shall:

a. 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; and

b. Assert any affirmative defenses that are claimed to exist in the matter.

The original answer and one copy 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.

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.

5. The case file shall be reviewed after the answer is filed, to evaluate the propriety of a settlement conference under WAC 391-45-260, priority processing, or other special handling.

Issued at Olympia, Washington, on the 26th day of February, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order if the agency on the matters covered thereby unless appealed by filing a petitions with the Commission pursuant to WAC 391-45-350.