

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEATRICE MONCADA,)	
)	
Complainant,)	CASE 13819-U-98-3384
)	
vs.)	DECISION 6428 - PECB
)	
SAMARITAN HOSPITAL,)	
)	
Respondent.)	PARTIAL ORDER OF DISMISSAL
)	
)	

On April 1, 1998, Beatrice Moncada filed two unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC, naming her employer and her union as respondents. Consistent with long-standing Commission procedure, a separate case was docketed for each respondent:

- The complaint against Samaritan Hospital was docketed as Case 13819-U-98-3383;
- The complaint against Office and Professional Employees International Union, Local 23, was docketed as Case 13820-U-98-3384.¹

The controversy leading to the filing of the complaints arose out of Moncada's absence from work due to the critical illness and

¹ That complaint is the subject of a separate order being issued today.

impending death of her brother in Texas. The alleged facts are summarized as follows:

- Moncada reported to work in an upset condition on November 16, 1997, after learning of her brother's situation. She explained the reason for her distress to the "house supervisor". He told her to go home, and said he would contact Moncada's supervisor on her behalf.
- Moncada went home, and soon thereafter received a telephone call from her own supervisor. Moncada explained what had happened, and apparently took the supervisor's response to mean that she had been denied any bereavement leave.
- Moncada apparently returned to work after the conversation with her supervisor. At that time, she was advised to file a grievance and to give a limited power of attorney to another individual who has no role or status with the union. Moncada submitted a request for bereavement leave to the employer, and apparently also filed a grievance with the employer.
- Moncada went to Texas on November 17, 1997, and returned to Washington on November 23, 1997.
- Moncada went to work on November 24, 1997 and, accompanied by a union steward, attempted to talk to Moncada's supervisor. They were sent to the employer's personnel director, who was unavailable. The union steward informed Moncada that a meeting would probably take place within a few days, and indicated that she would inform Moncada when the meeting was to take place.

- The union steward left a telephone message for Moncada on November 24. Moncada's niece, who is eight years old, took the message but forgot to relay it.
- Moncada received a telephone call from a co-worker on November 25, 1997, asking why she had not appeared for the meeting, and informing her that she had been discharged because she failed to appear for that meeting.
- Moncada telephoned the union steward, who stated the telephone message had been left at Moncada's home the previous day.
- Moncada telephoned the personnel director the next day, and was informed that she had been discharged because she did not attend the meeting.
- Moncada received a letter soon thereafter in which the personnel director listed failure to use the proper procedure to request time off, job abandonment, and failure to attend the meeting, as reasons for the discharge.

In a deficiency notice issued on June 30, 1998, under WAC 391-45-110,² Moncada was informed that certain problems with the complaint, as filed, prevented a conclusion that a cause of action existed at that time. In particular:

² 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.

- As to an allegation that the hospital administrator denied Moncada's rights in a hearing, by denying her advocate the opportunity to speak on her behalf, the deficiency notice pointed out that the Public Employment Relations Commission does not have jurisdiction to remedy possible violations of an individual's rights under the federal constitution. While such allegations suggest a claim that Moncada's civil rights under the federal constitution were violated, any such claim would have to be pursued in the courts under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).
- As to any suggestion of discrimination on the basis of sex, race, disability, national origin, and the like, Moncada was informed that she would need to pursue such claims through the Washington State Human Rights Commission, the federal Equal Employment Opportunity Commission, or the courts.
- As to the complaint generally, it was stated that there were no facts alleged which could support a claim that the employer took action against Moncada because she had involved the union in her case, or because she had filed a grievance, or because she had been otherwise involved in union activity.

Moncada was given a period of 14 days following the date of the deficiency notice in which to file and serve amended complaints which stated a cause of action, or face dismissal of the cases.

Nothing further has been heard or received from Moncada, and the cases are again before the Executive Director for processing under WAC 391-45-110. Review of the complaints in the course of preparing an order of dismissal revealed, however, that certain

allegations of this complaint do state a cause of action. Specifically, the complaint alleges that:

The employer's discharge of Beatrice Moncada was connected, at least in part, to the processing of her grievance.

The filing and processing of grievances is an activity protected by Chapter 41.56 RCW. Valley General Hospital, Decision 1195-A (PECB, 1981). Assuming all of those alleged facts to be true and provable, the complaint states a cause of action for further proceedings against the employer under Chapter 391-45 WAC.

Other allegations of the complaint remain insufficient, and are dismissed accordingly.

NOW, THEREFORE, it is

ORDERED

1. The allegation of the complaint charging unfair labor practices concerning the employer's having interfered with and discriminated against Beatrice Moncada for her failure to appear at a grievance hearing is hereby found to state a cause of action for further proceedings under Chapter 391-45 WAC.
 - a. Chapter 391-45 WAC **requires the filing of an answer** in response to a preliminary ruling which finds a cause of action to exist. See, WAC 391-45-110(2). Cases are 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.

b. Samaritan Hospital shall:

File and serve its answer to the complaint within 21 days following the date of this letter.

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; and
2. Assert any affirmative defenses that are claimed to exist in the matter.

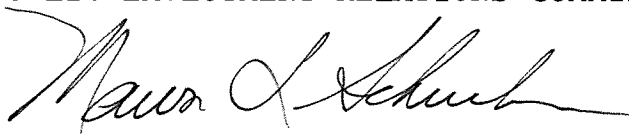
c. The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

d. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file 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.

- e. Martha M. Nicoloff of the Commission staff has been designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. The Examiner will issue a notice of hearing. A party desiring a change of hearing dates must comply with the procedure set forth in WAC 391-08-180, including making contact to determine the position of the other party prior to presenting the request to the Examiner.
2. Except as provided in paragraph 1 of this order, all of the allegations of the complaint charging unfair labor practices are DISMISSED as failing to state a claim for relief available through unfair labor practice proceedings before the Commission.

Issued at Olympia, Washington, this 24th day of September, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.