STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARY M. KNIGHT SCHOOL DISTRICT, Complainant,	)	CASE 13837-U-98-3390
vs.	)	DECISION 6384 - EDUC
MARY M. KNIGHT EDUCATION ASSOCIATION, Respondent.	)	PARTIAL DISMISSAL AND ORDER FOR FURTHER PROCEEDINGS

On April 7, 1998, the Mary M. Knight School District (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Mary M. Knight Education Association (union) as respondent. The complaint was reviewed by the Executive Director under WAC 391-45-110,[1] and a Deficiency Notice was issued, on June 2, 1998, as to certain allegations that failed to state a cause of action. The employer was given 14 days in which to file and serve an amended complaint with respect to the insufficient allegations, or face their dismissal. No amended complaint was filed.

The Viable Allegations -

Paragraph 1 of the complaint alleges that the union committed a "refusal to bargain" violation under RCW 41.59.140(2)(c), by failing to either appear at or cancel a bargaining session

[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.

previously scheduled by agreement of the parties for February 18, 1998. Paragraph 3 alleges that the union committed a "refusal to bargain" violation by failing to provide a promised working document for the parties' contract negotiations. Assuming all of the facts alleged to be true and provable, these allegations state causes of action.

The Insufficient Allegation -

Paragraph 2 of the complaint alleges that the union committed an unfair labor practice by filing an unfair labor practice complaint against the employer. As pointed out in the deficiency notice, the union unfair labor practices proscribed for unions by RCW 41.59.140 are limited to the following:

> (2) It shall be an unfair labor practice for an employee organization:
>
> (a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: PROVIDED, That this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;
>
> (b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;
>
> (c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

The filing of an unfair labor practice complaint does not fit within any of those subsections. Moreover, a union has a right to invoke the jurisdiction of the Commission under RCW 41.59.150, and to have its claims resolved through administrative adjudication

under Chapter 391-45 WAC, just as an employer has a right to file and process unfair labor practice charges against a union. The merits of such claims are decided by the Commission, and are not themselves a mandatory subject of collective bargaining. Public Utility District 1 of Clark County, Decision 2045-A (PECB, 1989). The employer's allegations in paragraph 2 of this complaint must be dismissed as failing to state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. The allegations in paragraph 2 of the complaint are DISMISSED as failing to state a cause of action.

2. Paul T. Schwendiman of the Commission staff is designated as Examiner, to conduct further proceedings under Chapter 391-45 WAC on the allegations contained in Paragraphs 1 and 3 of the employer's complaint, regarding "refusal to bargain" violation by failing to either appear or cancel a bargaining session previously scheduled by agreement of the parties for February 18, 1998, and a "refusal to bargain" violation by failing to provide a promised working document for the parties' contract negotiations.

3. The Mary M. Knight Education Association shall:

   File and serve its answer to the allegations listed in paragraph 2 of this Order, within 10 days following the date of this Order.

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. See, WAC 391-45-210.

Issued at Olympia, Washington, on the 12th day of August, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on the matters covered thereby, unless a notice of appeal is filed with the Commission under WAC 391-45-350.