STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609,	)	
Complainant,	)	CASE 12335-U-96-2918
vs.	)	DECISION 5542 - PECB
SEATTLE SCHOOL DISTRICT,	)	
Respondent.	)	PARTIAL ORDER OF DISMISSAL

On February 20, 1996, International Union of Operating Engineers, Local 609, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Seattle School District interfered with employee rights and refused to bargain with the union. The union alleges, generally, that the employer failed or refused to respond in a timely manner to information requests made by the union on behalf of several employees in connection with discipline imposed or contemplated by the employer. In a preliminary ruling letter issued on April 3, 1996, the union was advised of several problems with its complaint.[1] An amended complaint received on April 17, 1996, cures some, but not all, of the identified defects.

Duty to Provide Information

Numerous decisions by the Commission and state courts under Chapter 41.56 RCW establish, consistent with rulings by the National Labor

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[1] 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 Commission. WAC 391-45-110.

Relations Board and federal courts under the National Labor Relations Act, that the duty to bargain in good faith includes a duty to provide information that is requested by the opposite party for the purpose of collective bargaining or contract administration. See, City of Bellevue v. IAFF, Local 1604, Decision 3085-A (PECB, 1989), affirmed 119 Wn.2d 373 (1992).

The duty to provide information which grows out of the collective bargaining statute does not extend to litigation outside of the collective bargaining process. Highland School District, Decision 2684 (PECB, 1987). Nor does it extend to pursuit of constitutional rights by individual employees, as in City of Bellevue, Decision 4324-A (PECB, 1994).[2] If, however, a party to a collective bargaining relationship takes a step which affects a mandatory subject of bargaining or gives rise to a possible grievance, that action may trigger the other party's right to information needed to fulfill its rights and obligations under the collective bargaining law. City of Bremerton, Decision 5079 (PECB, 1995). The allegations of the amended complaint involve four fact situations which straddle the intersection of these policies.

The Individual Situations

Ray Jenkins -

The amended complaint alleges that the employer informed Jenkins, in August of 1995, that it had investigated misconduct he allegedly committed during the winter of 1994-1995. The union alleges that it requested material relating to the investigation, so that it could properly represent Jenkins. The union indicates that it was considering filing a grievance alleging harassment, among other possibilities, but it does not allege that intention was ever communicated to the employer. The employer's initial refusal to

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[2] The purpose of such requests is often to prepare for due process hearings held by employers under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

provide information, citing that Jenkins had not been disciplined, was consistent with its being unaware of the "harassment" claim.

On an unspecified date between February 20 and April 17, 1996, the employer reprimanded Jenkins. The amended complaint lacks any allegation that the union renewed its request for information after the disciplined was imposed. The Executive Director finds no support in the statute or precedents for a conclusion that a request which was properly rejected as premature can somehow be recast as a "continuing" request, or that a premature request is revived by the employer's subsequent disciplinary action. To so conclude would, in fact, deprive the employee of the choice to let the disciplinary action go unchallenged.

Rather than having obligations left dangling, the process of communication inherent in the collective bargaining statute would be better served if a party that has made a premature request is required to renew its request once it is timely to do so, if it still desires to have the information. The amended complaint thus fails to state a cause of action regarding Jenkins.

Patrick Laing -
The amended complaint alleges the employer placed Laing on paid administrative leave beginning December 13, 1995, and that the employer interviewed Laing (in the presence of his union representative) on January 9, 1996. The union requested information on January 9, 1996, about the precipitating incident between Laing and his supervisor. The employer refused to provide the requested information, and discharged Laing on February 6, 1996.

An employer's exclusion of an employee from the workplace, even when that is on a paid leave status, clearly impacts the "hours" of the employee and potentially constitutes a significant and detrimental effect on the employee's "working conditions". The employer's action to suspend Laing thus produced an obligation to

provide information even before the discharge decision was announced. The amended complaint states a cause of action regarding Laing under City of Bellevue, supra.

Brian Cassin -

The amended complaint alleges the employer placed Cassin on paid administrative leave on October 13, 1995, because of alleged misconduct toward a student. The union immediately requested information supporting the allegations, for its use in representing Mr. Cassin and weighing the merits of his grievances. The employer denied the request the day it was made. The union filed a grievance on November 1, 1995, arguing that the paid leave was discipline, and repeated its information demand.[3] The employer again denied that request. Cassin was discharged on February 6, 1996. The union alleges it has made two more information demands since February 6, 1996, but has not received all the requested information.

The amended complaint states a cause of action for **each** of the requests made by the union regarding Cassin. The first request was made in response to an actual suspension action, and so falls within the same considerations discussed, above, regarding Laing; the second request is clearly alleged to have come in connection with the filing of a grievance; the third and fourth requests are clearly alleged to have come after discipline was imposed.

Michael Dixon -

The original complaint alleged the employer gave Dixon notice, on July 10, 1995, of its tentative decision to suspend him for five days. Without stating definitely that the proposed discipline was imposed, the original complaint alleged the union requested

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[3] The only grievance specifically alleged in the original complaint was the one filed November 1, 1995. The amended complaint suggests, but does not detail, that Cassin had other grievances pending at that time.

information supporting the suspension so it could determine whether to grieve the discipline, and that the employer provided the information only after an unreasonable delay.

The preliminary ruling letter noted that the original complaint filed on February 20, 1996 was untimely for any actions against Dixon occurring in July of 1995. The complainant was invited to provide further details that could support a cause of action.

The amended complaint made no mention of Dixon. The complaint as amended thus fails to state a cause of action regarding Dixon.

Request for Temporary Relief

The union has requested temporary relief on behalf of Cassin. The procedure for temporary relief is set forth in WAC 391-45-430. The union may file and serve its motion and supporting affidavits, after which the employer may timely file and serve any response.

NOW, THEREFORE, it is

ORDERED

1. The allegations that the employer interfered with employee rights and refused to bargain, by its failure or refusal to respond to the union's request for information regarding Ray Jenkins, which was made before the employer took any adverse action against Ray Jenkins, are DISMISSED as failing to state a cause of action.

2. The allegations that the employer interfered with employee rights and refused to bargain, by its failure or refusal to respond in a timely manner to the union's request in July of

1995 for information regarding Michael Dixon are DISMISSED as untimely.

3. Assuming all of the facts alleged to be true and provable, the allegations that the employer interfered with employee rights and refused to bargain, by its failure or refusal to provide requested information regarding the situations of Patrick Laing and Brian Cassin state a cause of action for further proceedings under Chapter 391-45 WAC.

PLEASE TAKE NOTICE THAT, the Seattle School District (the "respondent" in this matter) shall:

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

An answer filed by the 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.

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.

Issued at Olympia, Washington, on the 22nd day of May, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 2 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.