

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ERIC HOOD,

Complainant,

vs.

SOUTH WHIDBEY SCHOOL DISTRICT,

Respondent.

CASE 23511-U-10-5993

DECISION 10880 - EDUC

ORDER OF DISMISSAL

On September 17, 2010, Eric Hood (Hood) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the South Whidbey School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on September 23, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. Hood was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On September 28, 2010, Hood filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

### DISCUSSION

The allegations of the complaint concern employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by its termination of Eric Hood (Hood) in reprisal for union activities protected by Chapter 41.59 RCW.

The deficiency notice pointed out that the complaint is untimely.

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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.

The statute of limitations for unfair labor practices in this case is governed by RCW 41.59.150(1):

The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

The complaint details numerous statements of Hood's alleged union activities and allegations of employer reprisal for his union activities between May 2002 and September 2010. The complaint was filed on September 17, 2010. The Commission has remedial powers over claims incident to the complaint occurring on or after March 17, 2010. Hood should have filed his complaint at the earliest time he knew or should have known of alleged unfair labor practices by the employer. The statement of facts alleges that prior to his termination Hood had most recently engaged in protected union activity in October and November of 2009. He alleges that the employer disciplined him for his union activities on December 18, 2009, took further retaliatory action on February 2, 2010, and failed to renew his contract on May 15, 2010. Based upon the information provided by Hood, he believed the employer had discriminated against him in reprisal for union activities on December 18, 2009. Hood should have filed his complaint no later than June 18, 2010. The Commission does not have jurisdiction in this case. Hood must seek remedies through the civil court system.

#### Amended Complaint

The amended complaint omits information given in the original complaint and begins with events on May 21, 2010, adding further allegations subsequent to that date and continuing through September 19, 2010. It is not clear whether this was an inadvertent or an intentional omission. Nevertheless, all of the information submitted in the original and amended complaints has been considered in this ruling. Hood cites the filing of a grievance over his termination and his appeal of the termination to the School Board as evidence of new union activities. However, the dispositive date in this case is December 18, 2009, when the employer placed Hood on an improvement plan, an event Hood saw at the time as disciplinary and so alleged in the original

complaint. The amended complaint does not provide information indicating that Hood successfully completed the improvement plan, or that the employer otherwise considered the matter resolved. The series of events culminating in Hood's termination began in the fall of 2009, with the decisive occurrence on December 18, 2009. Hood still could have filed a timely complaint by June 18, 2010, following his termination on May 15, 2010. He did not. There is no evidence in the amended complaint that new violations occurred on or after May 21, 2010. To the contrary, Hood's allegations from that date through the present are the result of the chain of events originating in the fall of 2009. The amended complaint does not cure the untimely filing of the original complaint.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 23511-U-10-5993 is DISMISSED for failure to state a cause of action.

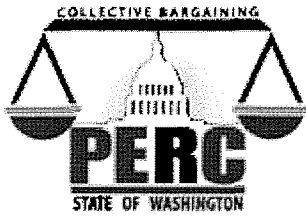
ISSUED at Olympia, Washington, this 1st day of October, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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.



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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### RECORD OF SERVICE - ISSUED 10/01/2010

The attached document identified as: DECISION 10880 - EDUC has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  S/ ROBBIE DUFFIELD

CASE NUMBER: 23511-U-10-05993 FILED: 09/17/2010 FILED BY: PARTY 2  
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BAR UNIT: TEACHERS  
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COMMENTS:

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