

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ERNEST A. ABDO,

Complainant,

vs.

YAKIMA SCHOOL DISTRICT,

Respondent.

CASE 24002-U-11-6139

DECISION 11106 - EDUC

ORDER OF DISMISSAL

On May 23, 2011, Ernest A. Abdo (Abdo) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Yakima School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 27, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Abdo was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On June 16, 2011, Abdo 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 interference with employee rights in violation of RCW 41.59.140(1)(a) and 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 actions toward Abdo.

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 Public Employment Relations Commission.

The deficiency notice pointed out the defects to the complaint.

One, WAC 391-45-050(2) (rule) requires “Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.” The statement of facts is not clear and concise and does not contain sufficient information under the rule.

Two, Chapter 41.59 RCW prohibits interference and discrimination in reprisal for union activities protected by that statute. The statement of facts does not make clear the nature of Abdo’s union activities. In addition, a cause of action for discrimination requires a showing that the employee was unlawfully deprived of ascertainable rights, benefits, or status. The statement of facts does not make clear the nature of Abdo’s deprivation claims. The Commission has no jurisdiction to remedy claims for pain, suffering, and related matters, such as lost time and effort.

Three, Abdo appears to be challenging his evaluation and indicates that a contractual grievance was filed in that regard. It appears that is the proper format for Abdo’s claims, rather than an unfair labor practice proceeding. The statement of facts seems to indicate that the parties settled the grievance, but that the employer allegedly has violated the agreement. If that is the allegation, then that is also a contractual dispute between the parties. The Commission does not assert jurisdiction to interpret and remedy violations of collective bargaining agreements, but rather interprets and remedies violations of collective bargaining statutes. Abdo must seek relief through the arbitration process or the courts.

Finally, Abdo did not provide a copy of the collective bargaining agreement with the complaint as required by WAC 391-45-050(5)(c)(ii).

Amended Complaint

Abdo provided a copy of the relevant collective bargaining agreement. The amended statement of facts alleges that on September 23, 2010, Abdo was involved with sending a letter to the employer on the union’s behalf in support of an employee, that the employer objected to Abdo’s

involvement, and that retaliation “soon followed” in the form of observations, apparently of Abdo’s teaching performance. Abdo further alleges that certain charges have been made against him, and that his status has changed because the charges are false and have been allowed to stand. The amended complaint states that a parental complaint was included in an evaluation, and that Abdo has had more observations than other teachers. He states that he is moving to another school and does not want to be a union building representative in the new location because of the employer’s actions. The amended statement of facts does not indicate dates for the alleged retaliation.

Abdo states that he has been an active union member, although he does not give specific instances of his union activity other than the letter of September 23, 2010. Other than the reference to that letter and the circumstances surrounding it, the amended complaint does not cure the defects to the complaint’s overall failure to conform to WAC 391-45-050(2).

Regarding the September 23 letter, the amended complaint alleges that the employer began reprisals against Abdo as a result of that letter, and that the allegedly unlawful actions occurred within a short time after the employer received the letter. Abdo filed his complaint on May 23, 2011. RCW 41.59.150(1) provides that:

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.

Any allegations of the amended complaint occurring before November 23, 2010, are not subject to remedial action by the Commission. The amended complaint does not provide any information concerning the employer’s actions after that date. (The attachments to the amended complaint are not part of the amended statement of facts and have not been considered in this Decision.) Abdo’s claims concern the observations of his performance, charges made against him, his evaluation, and not wanting to serve as a union building representative in his new building. Those claims are all related to his allegation that the employer’s actions resulted from the letter of

September 23, 2010, and the reprisals that allegedly followed “soon after” that letter was sent, without providing further details about the timing of events. The amended complaint is untimely.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 24002-U-11-6139 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 27th day of June, 2011:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", with a long horizontal flourish extending to the right.

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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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY: *[Signature]*
BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24002-U-11-06139 FILED: 05/23/2011 FILED BY: PARTY 2
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