

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SUSAN HEBEL,

Complainant,

vs.

UNIVERSITY OF WASHINGTON,

Respondent.

CASE 23968-U-11-6127

DECISION 11085 - PSRA

ORDER OF DISMISSAL

On May 11, 2011, Susan Hebel (Hebel) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the University of Washington (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 13, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Hebel was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On May 31, 2001, Hebel 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 complaints concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)]; and union interference with employee rights in violation of RCW 41.80.110(2)(a), by employer and union actions toward Hebel.

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, Hebel filed the complaints against the employer and union on one complaint form, with one statement of facts. The complaints were docketed as Case 23968-U-11-6127 (employer) and Case 23969-U-11-6128 (union). Amended complaints should be filed separately, with separate statements of facts.

Two, the complaints appear to be untimely under RCW 41.80.120(1), which states:

Unfair labor practice procedures – Powers and duties of commission.

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: 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 or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

It is an unfair labor practice in violation of Chapter 41.80 RCW for an employer or union to interfere with an employee's collective bargaining rights by improperly excluding the employee from a bargaining unit. Hebel alleges that the employer and union unlawfully entered into an agreement to exclude Hebel from a bargaining unit represented by the Washington Federation of State Employees (union). Apparently, this occurred sometime in 2001. Information supplied with the statement of facts indicates that the union's most recent communication with Hebel was on August 4, 2007. Based upon these facts, the Commission does not have jurisdiction either in Case 23968-U-11-6127 or Case 23969-U-11-6128. No causes of action exist for the allegations of employer interference in violation of RCW 41.80.110(1)(a), or union interference in violation of RCW 41.80.110(2)(a).

Three, Hebel alleges employer discrimination in violation of RCW 41.80.110(1)(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)]. It is an unfair labor practice for an employer to deprive an employee of ascertainable rights, benefits, or status in reprisal for union activities protected by Chapter 41.80 RCW. Hebel states that her employment was terminated in November 2010, although no specific date is given; thus, it is not possible to determine if that allegation would be timely under RCW 41.80.120(1). In any case, the statement of facts does not

show that Hebel was terminated for union activities. Hebel indicates that her termination was related to her use of Family Medical Leave and other non-union related factors, and that although an employee of the University of Washington, she was terminated by an employee of King County.

The Commission does not have jurisdiction in disputes related to Family Medical Leave, other employment matters unrelated to union activities, or to questions involving dual employers and their termination policies. Hebel must seek relief for any claims against the University of Washington or King County through the courts.

Amended Complaint

The amended complaint form alleges only employer discrimination in violation of RCW 41.80.110(c) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)], by its termination of Hebel. However, the amended statement of facts alleges that:

- The employer refused to bargain with the union over including Hebel's position in the union.
- Hebel asked the union to intervene with the employer, the union did so, but the employer declined to accept the union's advice concerning Hebel, and thus discredited the union.
- The employer dealt directly with Hebel without informing the union, and told Hebel that it was negotiating with the union.
- Hebel did not have the opportunity for grievance mediation or arbitration.

The amended statement of facts alleges employer refusal to bargain in violation of RCW 41.80.110(1)(e), by refusing to bargain over including Hebel's position in the union and direct dealing with Hebel. Hebel has no standing to process claims for an employer's refusal to bargain. Only an exclusive bargaining representative may process such claims. It is therefore not necessary to discuss the merits of Hebel's refusal to bargain allegations.

The amended statement of facts also alleges or implies employer independent interference in violation of RCW 41.80.110(1)(a), by discrediting the union, telling Hebel it was negotiating with

the union, and Hebel's inability to go to grievance mediation or arbitration under the provisions of Chapter 41.80 RCW.

Hebel was not a member of a union and did not engage in any protected union activities. The amended statement of facts provides no indication that Hebel's termination was remotely connected to her asking the union for advice. Hebel contacted the union for assistance after Hebel was subject to discipline and the termination process. In any case, the union had no standing to discuss Hebel's situation with the employer, the employer had no duty to accept the union's advice, and Hebel's asking the union for help did not equate to union activities. It is not possible to process Hebel's discrimination claim under RCW 41.80.110(1)(c) or Hebel's independent and derivative interference claims under RCW 41.80.110(1)(a).

Hebel also alleges that the employer allowed an employee of King County to terminate Hebel, although Hebel was an employee of the University of Washington, and Hebel's supervisor at the University of Washington did not participate in the termination. The employment policies of the University of Washington and King County are not germane to this case; Hebel must address any claim for wrongful termination through the civil courts.

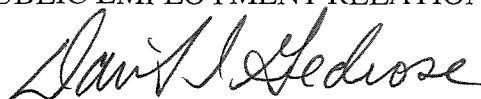
NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 23968-U-11-6127 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 7th day of June, 2011.

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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PUBLIC EMPLOYMENT RELATIONS
COMMISSION


BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 23968-U-11-06127 FILED: 05/11/2011 FILED BY: PARTY 2
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