

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WESTERN WASHINGTON UNIVERSITY,

Employer.

CLAUS JOENS,

Complainant,

vs.

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON,

Respondent.

CASE 23868-U-11-6098

DECISION 11058 - PSRA

ORDER OF DISMISSAL

On March 18, 2011, Claus Joens (Joens) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Public School Employees of Washington (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 30, 2011, indicated that it was not possible to conclude that a cause of action existed at that time. Joens was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. On the same day the deficiency notice was issued, Joens filed an identical copy of the March 18 complaint, labeled as an amended complaint. However, the document did not amend the complaint and was considered a duplicate complaint.

On April 21, 2011, Joens filed an amended complaint in response to the deficiency notice. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

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.

DISCUSSION

The deficiency notice pointed out the defects to the complaint. Joens's complaint alleged discrimination by Western Washington University (employer), and a claim against the union for inducing the employer to discriminate against Joens. Joens also alleged numerous other actions against him by the employer and union. Joens filed one statement of facts concerning the allegations against both the employer and the union. The complaints were docketed as separate cases: Case 23867-U-11-6097 (employer) and Case 23868-U-11-6098 (union).

Case 23868-U-11-6098

The allegations of the complaint concern the union inducing the employer to discriminate in violation of RCW 41.80.110(2)(b) [and if so, derivative interference in violation of RCW 41.80.110(2)(a)]; breach of contract; civil and criminal offenses; and violations of other Washington State laws, the Constitutions of the United States, and the Washington State Constitution. While Joens did not check the box on the complaint form for union interference with employee rights, the statement of facts alleges that the union failed to adequately pursue a grievance it filed on his behalf, thus alleging union interference through a breach of its duty of fair representation under RCW 41.80.110(2)(a).

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions. In the present case, the Commission has jurisdiction only over unfair labor practice complaints filed under Chapter 41.80 RCW, and has no jurisdiction over other state or federal laws, including civil and criminal offenses, Chapter 357-37 of the Washington Administrative Code (WAC), other Washington statutes, the Constitution of the United States, and the Washington State Constitution. In addition, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). Joens must seek remedies with state and federal courts or other state or federal agencies.

Joens has made two allegations within the Commission's jurisdiction under Chapter 41.80 RCW. Joens received a letter of reprimand from the employer, and the union filed a grievance on his behalf. The employer eventually terminated Joens's employment. Joens alleges union interference in violation of RCW 41.80.110(2)(a), by the union's breach of its duty of fair representation in failing to adequately pursue his termination grievance, and a violation of RCW 41.80.110(2)(b), by the union inducing the employer to discriminate against Joens.

Regarding the duty of fair representation, in most cases the Commission does not assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). However, the Commission will assert jurisdiction if there is an indication of arbitrary, discriminatory, or bad faith conduct on the part of the union based upon an improper or invidious reason, such as union activities or membership (or lack thereof), or such matters as race, creed, sex, national origin, and the like. *See Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004).

Joens alleges that the union failed to follow the collective bargaining agreement or statutory requirements in its representation of him, but does not provide facts indicating that the union failed to perform its duties because of improper or invidious reasons. The Commission does not have jurisdiction. Joens must seek remedies through internal union procedures or the courts.

Regarding the claim of inducing the employer to discriminate, Joens must show that the union requested that the employer discriminate against him, and that it did so because of improper or invidious reasons. *State – Natural Resources*, Decision 8458-B (PSRA, 2005). However, the statement of facts does not indicate that the union ever requested the employer to discriminate against Joens, nor does Joens ascribe improper or invidious reasons to the union. Joens's discrimination claim is based upon the allegation that he was terminated in reprisal for the union filing a grievance on his behalf. There is no indication in the complaint that the union filed the

grievance and then requested that the employer terminate Joens's employment based upon that grievance.

The complaint fails to state causes of action for union interference in violation of RCW 41.80.110(2)(a), for the union inducing the employer to discriminate in violation of RCW 41.80.110(2)(b), and for derivative interference in violation of RCW 41.80.110(2)(a).

Amended Complaint

WAC 391-45-050 sets forth the requirements for the filing of unfair labor practice complaints:

CONTENTS OF COMPLAINT

Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the party filing the complaint (complainant), and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(3) A statement of the remedy sought by the complainant.

(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.

(5) Information concerning the parties' relationships, including:

(a) The employer's principal business;

(b) Identification of the employer department or division in which the dispute arises;

(c) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

- (d) The status of related grievance proceedings between the parties, indicating that:
- (i) No grievance has been filed on the dispute involved; or
 - (ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or
 - (iii) An arbitration award has been issued on a related grievance;
 - (e) A description of the bargaining unit involved, specifying inclusions and exclusions; and
 - (f) The number of employees in the bargaining unit.
- (6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

The amended complaint has multiple defects:

- It re-alleges on one complaint form, and with one statement of facts, allegations against both the employer and the union.
- It responds to the deficiency notice, but does not restate the allegations of the complaint.
- The amended statement of facts is not clear and concise and does not contain numbered paragraphs.
- Joens identifies the employer as the Attorney General of Washington, with an address in Olympia.
- Joens did not sign the amended complaint.
- The amended complaint was due on April 20, 2011.

Joens checked the box on the amended complaint form for union interference in violation of RCW 41.80.110(1)(a). The deficiency notice recognized this claim as one made in the body of the complaint; thus, the amended complaint does not add an additional cause of action, but re-alleges the claims of the original complaint. The amended complaint consists largely of legal case citations and argument. It re-alleges violations of statutes and laws outside of the Commission's jurisdiction. It combines arguments concerning the employer and the union. Joens does not provide any new facts showing that the union requested the employer to take unlawful action against Joens, or that the union failed to pursue his grievance for improper or invidious reasons.

CONCLUSION

Although isolated and minor procedural defects are not necessarily fatal to unfair labor practice complaints, the combination of procedural defects in the amended complaint makes the processing of it impossible. In addition, the amended complaint fails to cure the substantive defects of the original complaint and does not state causes of action for any violations of Chapter 41.80 RCW.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 23868-U-11-6098 is DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 6th day of May, 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

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 05/06/2011

The attached document identified as: **DECISION 11058 - PSRA** 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:  / ROBBIE DUFFIELD

CASE NUMBER: 23868-U-11-06098 FILED: 03/18/2011 FILED BY: PARTY 2
DISPUTE: ER DISCRIMINATE
BAR UNIT: MIXED CLASSES
DETAILS: -
COMMENTS:

EMPLOYER: WESTERN WASHINGTON UNIVERSITY
ATTN: BRUCE SHEPARD
MS 9000
516 HIGH ST
BELLINGHAM, WA 98225-9000
Ph1: 360-650-3480

REP BY: RON MARSHALL
STATE - FINANCIAL MANAGEMENT
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5511

REP BY: GIL HODGSON
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4167

PARTY 2:
ATTN: CLAUS JOENS
61140 STATE RTE 20
PO BOX 36
MARBLEMOUNT, WA 98267
Ph1: 360-873-4183

PARTY 3:
ATTN: PSE OF WASHINGTON
ELYSE MAFFEO
PO BOX 798
AUBURN, WA 98071-0798
Ph1: 253-876-7446