

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF
WASHINGTON,

Complainant,

vs.

ENUMCLAW SCHOOL DISTRICT,

Respondent.

CASE 23967-U-11-6126

DECISION 11090 - PECB

PRELIMINARY RULING AND
ORDER OF PARTIAL DISMISSAL

On May 9, 2011, Public School Employees of Washington (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Enumclaw School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 12, 2011, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the defective allegations. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action and finds a cause of action for other allegations of the complaint, as fully set forth below in the preliminary ruling and order. The employer must file and serve its answer to the allegations summarized in the preliminary ruling within 21 days following the date of this Decision.

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 allegations of the complaint concern: Employer interference with employee rights in violation of RCW 41.56.140(1); employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1); employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)]; and employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its actions toward Sindi Hamlin (Hamlin) and all bargaining unit members concerning Hamlin's testimony in a grievance arbitration hearing and a subsequent interview regarding the testimony.

The allegations of the complaint concerning independent interference and refusal to bargain state causes of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out the defects to the complaint.

It is an unfair labor practice in violation of RCW 41.56.140(1) for an employer to deprive an employee of ascertainable rights, benefits, or status, in reprisal for union activities protected by Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complaint alleges that the employer threatened Hamlin with discipline, including termination of employment, regarding her grievance arbitration testimony. However, the complaint does not provide facts showing that the employer has actually disciplined Hamlin or deprived her of other ascertainable rights, benefits, or status.

It is an unfair labor practice in violation of RCW 41.56.140(2) for an employer to interfere in the internal affairs or finances of a union, or attempt to create, fund, or control a company union. *Washington State Patrol*, Decision 2900 (PECB, 1988); *City of Anacortes*, Decision 6863 (PECB, 1999). A cause of action may exist if the facts of the complaint suggest that the employer is violating the statute through such acts as rendering assistance to a union or union officers, supporting a company union, or showing favoritism to one union over another during an organizing campaign. The present complaint alleges that the employer has unlawfully interfered

with internal union affairs through its actions toward union representatives regarding Hamlin's interview. However, the complaint does not provide facts indicating interference with internal union affairs in violation of RCW 41.56.140(2).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the following allegations of the complaint state a cause of action, summarized as follows:

- [1] Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made to:
 - (a) Sindi Hamlin in connection with her testimony during a grievance arbitration hearing;
 - (b) all bargaining unit members in connection with testifying in grievance arbitration hearings; and
- [2] Employer refusal to bargain in violation of RCW 41.56.140(4), [and if so, derivative interference in violation of RCW 41.56.140(1)], by breach of its good faith bargaining obligations in its communications to the union concerning the nature of Sindi Hamlin's interview of May 5, 2011.

Those allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC. The preliminary ruling is issued based upon the allegations of events occurring within six months of the filing date of May 9, 2011. Information in the complaint concerning events occurring prior to November 9, 2010, was considered only as background information and is not subject to remedial action by the Commission.

Enumclaw School District shall:

File and serve its answer to the allegations summarized in the preliminary ruling set forth in Paragraph 1 of this Order within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file 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.

2. The allegations of the complaint concerning employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1)]; and employer domination or assistance of a union in violation of RCW 41.56.140(2) [and if so, derivative interference in violation of RCW 41.56.140(1)], are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of June, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 of this order will be the final order of the agency on any defective allegations 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

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PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  / ROBBIE DUFFIELD

CASE NUMBER: 23967-U-11-06126 FILED: 05/09/2011 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: ALL EMPLOYEES
DETAILS: -
COMMENTS:

EMPLOYER: ENUMCLAW S D
ATTN: MIKE NELSON
2929 MCDUGALL AVE
ENUMCLAW, WA 98022-7499
Ph1: 360-800-7103

REP BY: BRANDON CHUN
WASHINGTON EMPLOYERS
24437 RUSSELL RD STE 110
KENT, WA 98032
Ph1: 206-664-7258 Ph2: 206-329-1120

PARTY 2: PSE OF WASHINGTON
ATTN: ELYSE MAFFEO
PO BOX 798
AUBURN, WA 98071-0798
Ph1: 253-876-7446