

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ERIC HOOD,

Complainant,

vs.

SOUTH WHIDBEY SCHOOL DISTRICT,

Respondent.

CASE 24048-U-11-6151

DECISION 11134 - EDUC

ORDER OF DISMISSAL

On June 15, 2011, 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 as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on June 24, 2011, 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 July 7, 2011, 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 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 Eric Hood.

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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 deficiency notice pointed out the defects to the complaint.

One, Hood did not sign and date the complaint; although Hood signed the statement of facts, there was no date of the signature. WAC 391-45-050(4).

Two, Hood was terminated from his employment with the employer at the end of the 2010 school year, and as a non-employee has no standing to file this complaint. *South Whidbey School District*, Decisions 10880-A, 10939-A (EDUC, 2011). WAC 391-45-010.

Three, Hood alleges violations of WAC 357-22-040. The Commission has no jurisdiction over Chapter 357 WAC.

Four, Hood alleges violations of a collective bargaining agreement. Individual citizens and employees have no standing to process violations of collective bargaining agreements. Only exclusive bargaining representatives have such standing. In any case, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements.

Five, Hood alleges that the employer's use of certain documents and its reviewing his personnel files were done in retaliation for his union activities and were used to justify his termination. Hood cites employer actions of December 2010 and statements of February 2011 in support of his claims. Hood filed the present complaint on June 15, 2011, and apparently contends that the allegations concerning the events of December 2010 and February 2011 are timely. However, Hood does not have a cause of action related to his termination. *South Whidbey School District*, Decisions 10880-A, 10939-A. The employer could not have interfered or discriminated against Hood—in violation of Chapter 41.59 RCW—after the end of his employment. The claims regarding the documents and review of personnel files do not state a cause of action.

Six, Hood cites findings by the Washington State Auditor against the employer, including alleged violations of WAC 181-87-050. The Commission has no jurisdiction over Chapter 181 WAC or over matters involving the State Auditor. Hood connects his termination with the Auditor's findings. As noted above, Hood has no cause of action regarding his termination. That the

Auditor's report was issued in June 2011 does not make Hood's complaint timely under Chapter 41.59 RCW. The Commission does not have jurisdiction to remedy Hood's claims against the employer.

#### Amended Complaint

Hood submitted an amended statement of facts and signed and dated the document. Hood did not submit an amended complaint form, and the original complaint's allegations of interference and discrimination remain the only claims.

The amended statement of facts consists largely of argument, with no apparent new relevant facts. Hood contends that:

- In December 2010, an employer agent disclosed "secret, inaccurate" files not included in Hood's personnel file, that said disclosure violated WAC 357-22-040 and the 2009-2011 collective bargaining agreement, that maintenance of the files were in retaliation for Hood's union activities, and the employer cited them in February 2011 to justify his termination;
- In February 2011, an employer agent testified that in the period of 2008-2009, he viewed Hood's personnel files "in violation of the collective bargaining agreement," that the viewing of the files was in retaliation for Hood's union activities, biased Hood's evaluations, and the files were used to justify his termination;
- The State Auditor notified Hood in June 2011 that it had found the employer in violation of WAC 181-87-050 concerning reporting of student enrollment, and Hood alleges that he was terminated for questioning enrollment policies as a union representative during the 2008-2010 school years, including filing grievances (the latest filed in February 2009); and

- Hood alleges retaliation based upon an improper evaluation standard in violation of WAC 181-87-050.

Hood filed unfair labor practice complaints in 2010, alleging that on May 15, 2010, the employer terminated his employment in reprisal for union activities protected by Chapter 41.59 RCW. The Commission dismissed his claims in *South Whidbey School District*, Decisions 10880-A, 10939-A. There, the Commission stated:

it is clear from a plain reading of Hood's complaint and amended complaint that the only timely events that could form the basis of an unfair labor practice are his allegations that the employer retaliated against him for filing his May 21, 2010 grievance, his allegation that Parker unlawfully discussed his termination with the public, and his allegation that the employer provided falsified information at his June 23, 2010 appeal before the school board. However, assuming the alleged facts are true, none of those events as pled by Hood state a claim that can be redressed by the statutes this Commission administers.

The Commission found that Hood had not stated a cause of action for unfair labor practices occurring six months prior to his termination on May 15, 2010. RCW 41.59.150(1). Despite the Commission's rejection of a cause of action based upon his termination, Hood's amended complaint in this case apparently asserts that the facts presented should toll the six-month statute of limitations under RCW 41.59.150(1), and that a cause of action should be found for employer unfair labor practices occurring between December 15, 2009, and May 15, 2010, because the new facts were revealed only between December 2010 and June 2011.

The amended complaint does not cure the defects to the complaint. The Commission does not have jurisdiction over Chapter 357 WAC, Chapter 187 WAC, or matters involving State Auditor reports. Hood does not have standing to process violations of collective bargaining agreements, and the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements.

Regarding the personnel files, the amended complaint does not reveal the contents of the files nor show the relation of the files to union activities. Hood's alleges that the maintenance and viewing of the files biased his evaluations and were in retaliation for his union activities, and that the

employer used the files to justify his termination. Those allegations are legal conclusions and do not state a cause of action: Hood did not present evidence of timely union activities in his 2010 complaints and has not provided such evidence in this amended complaint. The issue is not whether information allegedly discovered in December 2010, February 2011, and June 2011, should be admitted as evidence in an ongoing unfair labor practice proceeding. The issues presented in the amended complaint are: Does the amended complaint toll the statute of limitations, and does the amended complaint state a cause of action for unfair labor practices occurring between December 15, 2009, and May 15, 2010? The answers to those queries are both no.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in the Case 24048-U-11-6151 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 2nd day of August, 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: ROBBIE BUFFIELD

CASE NUMBER: 24048-U-11-06151 FILED: 06/15/2011 FILED BY: PARTY 2  
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