

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF  
WASHINGTON,

Complainant,

vs.

HOOD CANAL SCHOOL DISTRICT,

Respondent.

CASE 24328-U-11-6235

DECISION 11236 - PECB

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

On October 12, 2011, the 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 the Hood Canal School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on October 18, 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 those allegations of the complaint set forth in the preliminary ruling below. The employer must file and serve its answer within 21 days following the date of this Decision.

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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.

DISCUSSION

The deficiency notice pointed out the defects to the complaint.

The allegations of the complaint concern employer discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by its actions toward Devin Hall (Hall) in reprisal for union activities protected by Chapter 41.56 RCW; 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 all bargaining unit members through its actions toward Hall, as well as comments made by employer official Bonnie Miller to Hall on September 30, 2011; 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 skimming of Lead Driver work previously performed by bargaining unit members, without providing an opportunity for bargaining; and employer unfair labor practices by retaliation for employees “acting in a concerted fashion.”

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

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint regarding employees “acting in a concerted fashion.” That aspect of the complaint is defective.

The statement of facts alleges that the interference and discrimination claims are connected to union activities, but in Paragraph IV the union also states that Hall and five other employees presented a No Confidence petition to the employer, and that in doing so the employees were “acting in a concerted fashion.” The use of the phrase “acting in a concerted fashion” may indicate a claim that is outside the Commission’s jurisdiction: Chapter 41.56 RCW does not protect “concerted activity.” *City of Seattle*, Decision 489-A (PECB, 1978), *aff’d* 489-B (PECB, 1979); *University of Washington*, Decision 9550 (PSRA, 2007).

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 discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1), by its actions toward Devin Hall (Hall) in reprisal for union activities protected by Chapter 41.56 RCW;
- [2] 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) all bargaining unit members through its actions toward Hall, as well as (b) comments made by employer official Bonnie Miller to Hall on September 30, 2011; and
- [3] 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 skimming of Lead Driver work previously performed by bargaining unit members, without providing an opportunity for bargaining.

Those allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC. Although the preliminary ruling includes a cause of action for skimming, the remaining causes of action concern alleged statutory violations that are not deferrable to arbitration. The Commission does not bifurcate unfair labor practice complaints. This case will not be deferred to arbitration in whole or in part.

Hood Canal School District shall:

File and serve its answer to the allegations listed 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 unfair labor practices by retaliation for employees "acting in a concerted fashion," are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 16th day of November, 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

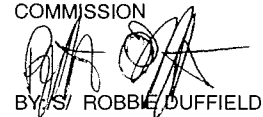
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PUBLIC EMPLOYMENT RELATIONS  
COMMISSION



BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 24328-U-11-06235 FILED: 10/12/2011 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: MIXED CLASSES  
DETAILS: Lead Driver  
COMMENTS:

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