

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE/KING COUNTY BUILDING  
AND CONSTRUCTION TRADES  
COUNCIL,

Complainant,

vs.

SEATTLE SCHOOL DISTRICT,

Respondent.

CASE 24175-U-11-6190

DECISION 11176 - PECB

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

On August 12, 2011, the Seattle/King County Building and Construction Trades Council (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Seattle School District (employer) as respondent. Prior to a ruling on the complaint, the union filed an amended complaint on August 16, 2011. The amended complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on August 18, 2011, indicated that it was not possible to conclude that a cause of action existed at that time for one of the claims in the amended complaint. The union was given a period of 21 days in which to file and serve a second amended complaint or face dismissal of the defective allegation. The union has not filed any further information.

The Unfair Labor Practice Manager dismisses the defective allegation of the amended complaint for failure to state a cause of action and finds a cause of action for the remaining allegations, as more fully set forth below. The preliminary ruling is included in the Order. The employer must file and serve its answer to the amended complaint 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 discussed the complaint. The original complaint was amended on August 16, 2011. This was an administrative amendment only; the complaint's statement of facts was not amended.

The allegations of the amended complaint concern 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 unilateral change to Don Canfield's (Canfield) position as foreperson, without providing an opportunity for bargaining; breach of its good faith bargaining obligations concerning Canfield's foreperson position; and discrimination (and if so, derivative interference) in violation of RCW 41.56.140(1).

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

The discrimination allegations were found to be defective. It is an unfair labor practice for an employer to discriminate against an employee in reprisal for union activities by depriving the employee of ascertainable rights, benefits, or status. The union checked the box on the amended complaint form for "employer discrimination." The union did not check the box on the amended complaint form for "employer refusal to bargain." However, the statement of facts and remedy request concern the union's allegations that the employer unilaterally changed Canfield's job position and breached its good faith bargaining obligations concerning Canfield's position. Neither the statement of facts nor the remedy request mention discrimination allegations. Based upon the statement of facts and remedy request, a cause of action can be given for refusal to bargain despite the failure to check the proper box on the amended complaint form. However, it is not clear if the union intended to allege discrimination by checking that box on the amended complaint form.

NOW, THEREFORE, it is

ORDERED

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

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:

- (a) its unilateral change to Canfield's position as foreperson, without providing an opportunity for bargaining, and
- (b) breach of its good faith bargaining obligations concerning Canfield's position as foreperson.

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 a unilateral change, the cause of action for breach of good faith bargaining obligations concerns an alleged statutory violation that is not subject to deferral. The Commission does not bifurcate unfair labor practice complaints. This case will not be deferred to arbitration in whole or in part.

Seattle 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 discrimination (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 19th day of September, 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: *[Signature]* *[Signature]*  
JS/ ROBBIE DUFFIELD

CASE NUMBER: 24175-U-11-06190 FILED: 08/12/2011 FILED BY: PARTY 2  
DISPUTE: ER DISCRIMINATE  
BAR UNIT: OPER/MAINT  
DETAILS: Don Canfield  
COMMENTS:

EMPLOYER: SEATTLE S D  
ATTN: SUSAN ENFIELD  
PO BOX 34165  
MS 32-151  
SEATTLE, WA 98124-1165  
Ph1: 206-252-0180

REP BY: KEVIN F ONEILL  
SEATTLE S D  
PO BOX 34165  
MS 32-151  
SEATTLE, WA 98124  
Ph1: 206-252-0110

PARTY 2: SEATTLE KING CO BUILDING AND CONST TRADES CNCL  
ATTN: LEE NEWGENT  
PO BOX 80327  
SEATTLE, WA 98108-0327  
Ph1: 206-441-0550

REP BY: DAN HUTZENBILER  
ROBBLEE DETWILER AND BLACK  
2101 4TH AVE STE 1000  
SEATTLE, WA 98121-2392  
Ph1: 206-467-6700