

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIONA BENTON EDUCATION  
ASSOCIATION,

Complainant,

vs.

KIONA BENTON SCHOOL DISTRICT,  
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Respondent.

CASE 25172-U-12-6448

DECISION 11580 - EDUC

PRELIMINARY RULING AND  
ORDER OF PARTIAL DISMISSAL

On September 28, 2012, the Kiona Benton Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Kiona Benton School District (employer) as respondent. The complaint was docketed by the Commission as Case 25172-U-12-6448. Prior to a ruling, the union filed a first amended complaint (hereinafter, complaint) on October 3, 2012. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on October 17, 2012, indicated that it was not possible to conclude that a cause of action existed at that time for some 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 complaint. The union filed an amended complaint on November 7, 2012 (hereinafter, amended complaint).

The Unfair Labor Practice Manager dismisses defective allegations of the amended complaint for failure to state causes of action, and finds causes of action for those allegations of the amended complaint as set forth below in the preliminary ruling. The employer must file and serve its

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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.

answer to the amended complaint of November 7, 2012, within 21 days following the date of this Decision.

### DISCUSSION

The allegations of the complaint of October 3, 2012, concern, in summary:

- Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], and employer discrimination for filing charges in violation of RCW 41.59.140(1)(d) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by actions toward Jennifer Oliver (Oliver), including preventing Oliver from consulting with union officials;
- Employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit made to Irene Schmick (Schmick), Donna Baumgartner (Baumgarter), Andrea Dobson (Dobson), and Connie Meredith, to all bargaining unit members by the employer's letter of June 6, 2012, concerning union behavior, and attempting to restrict the union's choice of its bargaining representative by actions involving Steve Lindholm (Lindholm);
- Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], employer discrimination for filing charges in violation of RCW 41.59.140(1)(d) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by actions toward Lindholm;
- Employer refusal to bargain in violation of RCW 41.59.140(1)(e) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by its refusal to provide relevant information requested by the union concerning a grievance filed on behalf of Oliver, its unilateral change to annual contracts, circumvention of the union regarding the contracts, contracting out of bargaining unit work, refusing to negotiate with the union's selected bargaining representative; and

- Employer discrimination for filing charges in violation of RCW 41.59.140(1)(d) and refusal to bargain in violation of RCW 41.59.140(1)(e) [and if so, derivative interference for both claims in violation of RCW 41.59.140(1)(a)], by its unilateral change to the health insurance pool.

The deficiency notice pointed out the defects to complaint.

For a majority of the claims, the allegations of the complaint state causes of actions under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission; however, it is not possible to conclude that a cause of action exists at this time for the following allegations: Oliver's ability to consult with union members; interference related to Schmick, Dobson, and Baumgartner (except for June 6 relative to Baumgartner); circumvention related to annual contracts; contracting out of bargaining unit work; discrimination for filing charges related to police action against Lindholm; and claims for discrimination under RCW 41.59.140(1)(c), other than those applying to Oliver.

#### Employer discrimination and discrimination for filing charges

The union checked the box on the complaint form for employer discrimination relative to an alleged violation of RCW 41.59.140(1)(c); however, the union does not cite that statute in the statement of facts. It is an unfair labor practice in violation of RCW 41.59.140(1)(c) for an employer to discriminate against employees in reprisal for union activities protected by Chapter 41.59 RCW. In unfair labor practice proceedings, discrimination is defined as the unlawful deprivation of employees' ascertainable rights, benefits, or status. It is also an unfair labor practice in violation of RCW 41.59.140(1)(d) for an employer to discriminate against employees for filing charges with the Commission or testifying in proceedings before the Commission [the filing of grievances and testimony at arbitration hearings are not covered by this statute, but fall under the category of general union activities protected by RCW 41.59.140(1)(c)]. RCW 41.59.140(1)(d) is narrowly tailored to address alleged discrimination for filing charges with or giving testimony before the Commission.

The statement of facts makes three discrimination claims: One involving Oliver; one involving the health insurance pool, and one involving Lindholm. In all instances, the union alleges violations of RCW 41.59.140((1)(d)): The allegations are that the employer discriminated in those instances in reprisal for the union filing one or more unfair labor practice complaints. The union alleges employer actions against Baumgartner and Dobson (Paragraphs 59-76 of the statement of facts), but alleges employer independent interference in violation of RCW 41.59.140(1)(a). The statement of facts does not specifically allege employer discrimination in violation of RCW 41.59.140(1)(c). However, Oliver is the union treasurer, a union building representative, and participated in a mediation; the union alleges employer retaliation for those activities as well. Thus, the statement of facts states a claim for discrimination under 41.59.140(1)(c) regarding Oliver.

#### Oliver's consultation with union officials

The union alleges that the employer restricted Oliver's access to union officials for the purpose of consulting with them over actions taken toward her by the employer. Apparently, this refers to the employer allegedly prohibiting Oliver from attending union board meetings held on school grounds. However, the statement of facts contains no information indicating that Oliver had no other access to union officials.

#### Interference related to Schmick, Baumgartner, and Dobson

The union alleges that the employer interfered with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit made by employer official Wayne Barrett (Barrett) to Schmick, Baumgartner, and Dobson, in connection with union activities. (The union alleges interference against Baumgartner on two occasions, once by Barrett and once by Bernardo Castillo; this deficiency concerns only comments by Barrett). WAC 391-45-050(2) requires statements of facts to include dates. The allegations concerning Barrett's comments contained in Paragraphs 58-76 of the statement of facts do not provide specific dates.

#### Circumvention of the union

The union alleges that the employer violated RCW 41.59.140(1)(e) by circumventing the union through direct dealing with employees represented by the union in negotiating annual contracts with bargaining unit members. However, the statement of facts does not provide sufficient information concerning the alleged circumvention, including times, dates, places, and participants as required by WAC 391-45-050(2). The statement of facts alleges a unilateral change by the employer's presentation of the annual contracts to bargaining unit members, but does not provide information showing that the employer bargained with any employees over the terms of the contracts.

#### Contracting out French and German instruction

The union alleges that the employer announced on September 10, 2012, that it intended to contract out French and German instruction for high school students. The failure of an employer to bargain over the actual transfer of bargaining unit work may be a violation of RCW 41.59.140(1)(e). However, the statement of facts does not show that the employer has actually contracted out the work.

#### Police action against Lindholm

The union alleges discrimination for filing charges by the employer's actions in allegedly calling the police and charging Lindholm with trespass. Although causes of action exist relative to the union's choice of its bargaining representative, there is no cause of action for discrimination against Lindholm. A cause of action for discrimination will be found if the facts indicate that an employee has been unlawfully deprived of ascertainable rights, benefits, or status in reprisal for union activities. Lindholm is apparently an employee of the union, not of the employer, and thus no cause of action for discrimination against Lindholm exists under either RCW 41.59.140(1)(c) or RCW 41.59.140(1)(d).

#### Amended Complaint of November 7, 2012

#### Oliver consulting with union officials

The amended complaint restates the claim concerning the employer preventing Oliver from consulting with union officials on employer property about her discipline, but does not provide facts showing that her only option for consultation was on the employer's property. The amended complaint does not cure the defect to this claim.

#### Circumvention

The amended complaint restates the claim that the employer circumvented the union in presenting annual contracts directly to bargaining unit members. This claim is in concert with the allegation that the employer unilaterally changed the annual contracts, without providing an opportunity for bargaining. The amended complaint adds a claim for a unilateral change to seniority, indicating that the parties reached agreement on a collective bargaining agreement by September 1, 2012. The amended complaint does not make clear how the employer unilaterally changed the annual contracts or circumvented the union, concerning wages, hours and working conditions, if the parties then negotiated a collective bargaining agreement. Based upon the union's information, the employer did bargain with the union over mandatory subjects. Thus, not only does the amended complaint fail to state a cause of action for circumvention, it contravenes the claim for unilateral changes to wages, hours, and working conditions pertaining to the annual contracts.

#### Contracting out French and German instruction

The amended complaint states only that the union "has learned" that the employer has contracted out the work in question. This statement does not comply with WAC 391-45-050(2), requiring times, dates, places, and participants in occurrences. The union has access to employer information concerning the alleged contracting out and must show, based upon actual facts, that the alleged violations have occurred.

#### Discrimination against Lindholm

The amended statement of facts restates the claim for discrimination against Lindholm relative to police action against him. There are no facts showing that Lindholm is an employee of the Kiona Benton School District.

New allegations concerning seniority

The amended complaint adds a new claim, alleging that the employer unilaterally changed the standards for seniority determination, without providing an opportunity for bargaining, in violation of RCW 41.59.140(1)(e) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)]; and alleges that such action was in reprisal for union activities, in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)]. Although the union states a cause of action for a unilateral change, its discrimination claim does not comply with WAC 391-45-050(2), other than mentioning Barb Thomas. That aspect of the claim does not state a cause of action.

Paragraphs 60-79 of the amended complaint

The allegations of interference concerning Barrett's comments about grievances and unfair labor practices (Paragraph 60 of the amended complaint) were allegedly made to Bonnie Flanagan, not Irene Schmick. The amended complaint states a cause of action for discrimination in violation of RCW 41.59.140(1)(c) relative to alleged actions against Baumgartner and Dobson (Paragraphs 61-79 of the amended complaint).

NOW, THEREFORE, it is

ORDEREDParagraph 1

Assuming all of the facts alleged to be true and provable, the allegations of the amended complaint of November 7, 2012, state causes of action summarized as follows:

- [1] Employer discrimination for filing charges in violation of RCW 41.59.140(1)(d) [and if so, derivative interference in violation of RCW

41.59.140(1)(a)], in reprisal for the union filing one or more unfair labor practice complaints, by:

- (a) placing Jennifer Oliver on administrative leave;
- (b) denying her access to union board meetings and labor management meetings on employer property and denying her contact with other employees;
- (c) giving her an involuntary transfer;
- (d) providing her a late schedule;
- (e) issuing her a letter of reprimand;
- (f) its unilateral changes to the health insurance pool;

[2] Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], in reprisal for union activities protected by Chapter 41.59 RCW, by:

- (a) actions toward Jennifer Oliver as previously summarized in this ruling;
- (b) reducing Donna Baumgartner's teaching schedule;
- (c) changing Andrea Dobson's teaching assignment;

[3] Employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit in connection with employees' union activities:

- (a) made by employer official Bernardo Castillo to Donna Baumgartner and Connie Meredith on June 6, 2012;
- (b) made to all bargaining unit members by the employer's letter of June 6, 2012, concerning union behavior;

- (c) made by employer official Wayne Barrett to Bonnie Flanagan, on or about June 7, 2012;
  - (d) attempting to restrict the union's choice of its bargaining representative by its actions regarding Steve Lindholm; and
- [4] Employer refusal to bargain in violation of RCW 41.59.140(1)(e) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by:
- (a) its refusal to provide relevant information requested by the union concerning a grievance filed on behalf of Jennifer Oliver;
  - (b) breach of its good faith bargaining obligations in refusing to negotiate with the union's selected bargaining representative (Steve Lindholm);
  - (c) its unilateral changes to the health insurance pool, without providing an opportunity for bargaining;
  - (d) its unilateral changes to seniority determination, without providing an opportunity for bargaining;

Those allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

The Kiona Benton School District shall:

File and serve its answers 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 amended complaint, as set forth in Paragraph 1 of this Order, 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

Paragraph 2

The following allegations of the amended complaint in Case 25172-U-12-6448 are DISMISSED for failure to state a cause of action:

- [1] Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], in reprisal for union activities protected by Chapter 41.59 RCW, by:
- (a) restricting Jennifer Oliver's ability to confer with union officials;
  - (b) calling the police and charging Steve Lindholm with trespass;
  - (c) changing seniority determination for Barb Thomas and unidentified employees;
- [2] Employer discrimination for filing charges in violation of RCW 41.59.140(1)(d) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], in reprisal for the union filing one or more unfair labor practice complaints, by:

- (a) restricting Jennifer Oliver's ability to confer with union officials;
- (b) calling the police and charging Steve Lindholm with trespass;
- and

[3] Employer refusal to bargain in violation of RCW 41.59.140(1)(e) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)], by:

- (a) its unilateral changes to annual contracts, without providing an opportunity for bargaining;
- (b) circumventing the union through direct dealing with employees represented by the union concerning annual contracts;
- (c) contracting out French and German instruction previously performed by bargaining unit members, without providing an opportunity for bargaining;

ISSUED at Olympia, Washington, this 27<sup>th</sup> day of November, 2012

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 2 ordering dismissal 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.