

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE EDUCATION ASSOCIATION,

Complainant,

vs.

SPOKANE SCHOOL DISTRICT,

Respondent.

CASE 25273-U-12-6470

DECISION 11591 - EDUC

ORDER OF DISMISSAL

On November 5, 2012, the Spokane Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Spokane School District (employer) as respondent. The union filed an amended complaint on the same day; that document is the subject of this ruling. The amended complaint (hereinafter, complaint) was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on November 14, 2012, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On November 19, 2012, the union filed an amended complaint in response to the deficiency notice. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

Complaint of November 5, 2012

The allegations of the complaint concern 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)], by 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.

termination of Nikki Easterling (Easterling) in reprisal for union activities protected by Chapter 41.59 RCW.

The deficiency notice pointed out the defects to the complaint.

The union alleged that the employer terminated Easterling on May 11, 2012, in reprisal for Easterling exercising her right to union representation regarding a disciplinary investigation meeting. The complaint was filed within six months of the date of the alleged violation, but the alleged protected activity apparently occurred earlier. WAC 391-45-050(2) requires statements of fact to include times, dates, places, and participants in occurrences. The statement of facts provided only general information concerning the employer's actions relative to Easterling, as well as for the union's involvement in the matter.

The complaint also contained information regarding employer official Mallory Thomas' (Thomas) alleged anti-union animus. The union did not allege violations concerning this information and apparently offered it as background or supporting evidence. An examiner would determine the relevancy of any such evidence to the claim involving Easterling in considering whether a violation occurred. However, that background/supporting information is not relevant in determining whether a cause of action exists for the only claim involved in the complaint—whether Easterling's termination was in reprisal for exercising her right to union representation prior to her termination.

The union's use of general claims regarding Thomas' alleged anti-union actions, as background/supporting evidence of its underlying claim involving Easterling, could produce a motion by the employer to make an amended complaint more definite and detailed. Rather than deferring that possibility to an examiner, in its response to this ruling the union should provide information supporting the allegations made in Paragraphs 8-12 of the complaint.

The complaint contained, in summary, the following allegations:

- Easterling received a non-renewal letter on May 11, 2012;

- E-mails between Brent Purdue (from human resources) and Thomas (Regal Elementary School Principal) in mid-February 2012 show that deception was used to deny Easterling union representation at a disciplinary meeting disguised as a performance evaluation meeting;
- Easterling was terminated after the union became involved and protested the employer's actions;
- "Upon information and belief" the union "believes that from the moment that Ms. Easterling sought union representation, the building principal, Ms. Mallory Thomas and others in the District took precipitous and unjustified steps to terminate her employment in the District";
- Thomas "has a long history of anti-union animus," including "related episodes of discrimination" against union members, suppressing union presence on campus, and driving off employees ("a large number of employees annually attempt to leave campus for fear of being treated in a similar manner as Ms. Easterling has been treated").

The complaint was filed on November 5, 2012. Under RCW 41.59.150(1), allegations subject to remedy must have occurred on or after May 5, 2012. The alleged violation—Easterling's termination—occurred within that time frame. The complaint referred to events occurring earlier allegedly showing the protected activity that was the basis for Easterling's termination. However, the complaint did not give specific information about the content of the February e-mails supporting the union's contention that the employer deceived Easterling about the evaluation/disciplinary meeting. There were no details about the evaluation/disciplinary meeting, including times, dates, places, and participants. There were no details about the union's alleged involvement and protest, *e.g.*, facts showing when the union became involved, who was involved (for both the union and employer), what actions the union took, and the employer's response. There were no details about the extent of Easterling's interaction with the union and employer relative to her collective bargaining rights.

Amended Complaint of November 19, 2012

The November 19 amended contains substantially the same information as the complaint of November 5, along with the following additional statements in italics, reproduced here in their entirety:

- Easterling received a non-renewal letter dated May 11, 2012. *It was on that date that the school district made the final decision to non-renew Ms. Easterling's employment even though there are facts to show that the District was strongly contemplating such a non-renewal before that date.*
- The alleged disciplinary meeting was *an evaluation meeting covered by the Spokane Education Association Collective Bargaining Agreement.*
- After the union became involved and protested the employer's actions, *Ms. Easterling was non-renewed on May 11, 2012.*
- *Ms. Thomas, in an attempt to humiliate and belittle Ms. Easterling for seeking union representation, assigned Ms. Easterling to be the dunkee in the dunk tank at the Regal end of year carnival after she had received her non-renewal notice on or around May 25, 2012. Ms. Easterling was the only individual "assigned" to such an activity.*
- *On or about June 1, 2012, Ms. Thomas set in motion false accusations against Ms. Easterling so that she would have been required to take administrative leave for several days in June of 2012 because of her protected union activities.*

The amended complaint does not provide any new information about Easterling's alleged union activities. The November 5 complaint alleged that the evaluation meeting was actually disciplinary, that the termination occurred on May 11, and that the termination was in reprisal for the union's involvement. The union merely restates those general allegations in the November 19 amended complaint. The amended complaint process gave the union the opportunity to provide facts supporting its claims; however, the union did not take advantage of that opportunity. Phrases such as "based upon information and belief" are meaningful only if information is actually

produced sustaining the beliefs asserted. The union alleges that “facts” show the employer was contemplating non-renewal before May 11, but no facts are given to support that claim.

Vague or nonspecific factual allegations are insufficient to establish a cause of action at the preliminary ruling stage. *City of Bremerton*, Decision 7739-A (PECB, 2003); *State - Office of the Governor*, Decision 10948-A (PSRA, 2011). In the present case, the Unfair Labor Practice Manager may not presume to fill in the gaps concerning the February e-mails, the evaluation/disciplinary meeting, other unidentified union activities by Easterling, and alleged actions by the employer, and surmise that Easterling’s termination could have resulted from employer reprisal for her union activities. A preliminary ruling will be issued based upon an assumption that facts alleged in a complaint are true and provable at a hearing; however, a preliminary ruling may not be issued on the assumption that facts missing from a complaint might be produced at a later date. The union had the burden of providing sufficient information to state a cause of action, but did not do so in this case.

Regarding the claims against Thomas, the union provides no supporting information for its allegations that Thomas has been historically anti-union. The claim that Thomas made false accusations on June 1 that harmed Easterling is vague, non-specific, and not directly relevant to the claim that the employer terminated Easterling on May 11. It is not clear if the union is alleging a new violation, but the claim does not conform to WAC 391-45-050(2) and does not state a cause of action.

The dunk tank occurrence is also not directly related to the termination, but it is a serious charge by the union against Thomas, since the union implies that Thomas intentionally ordered Easterling to unwillingly engage in activity that Easterling found humiliating and belittling. To the extent that the union might be asserting a separate claim, the Commission does not have general jurisdiction in civil proceedings, but has authority only in matters related to collective bargaining. However, because the union has not established any activity by Easterling protected by Chapter 41.59 RCW, the Commission is precluded from asserting jurisdiction in the dunk tank incident.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 25273-U-12-6470 is DISMISSED for failure to state a cause of action.

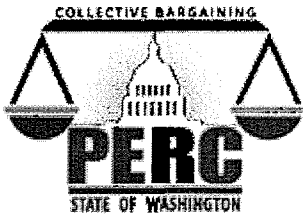
ISSUED at Olympia, Washington, this 4th day of December, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written over a horizontal line.

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 DUFFIELD

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