

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KEITH DOUGHERTY,

Complainant,

vs.

BELLEVUE SCHOOL DISTRICT,

Respondent.

CASE 23443-U-10-5975

DECISION 10868-A - PECB

DECISION OF COMMISSION

*Keith Dougherty*, appeared pro se.

On August 13, 2010, Keith Dougherty (Dougherty), an individual, filed a complaint alleging that the Bellevue School District (employer) interfered with his protected employee rights and discriminated against him in violation of RCW 41.56.140(1) and (2). Dougherty's original complaint claimed that the employer interfered with his protected employee rights by: 1) releasing confidential employment information; 2) failing to allow him an employee representative at an investigatory meeting that could lead to discipline; 3) refusing to bargain in good faith during contract negotiations; 4) attempting to dominate the exclusive bargaining representative; and 5) violating the terms of the collective bargaining agreement.

On September 13, 2010, Unfair Labor Practice Manager David I. Gedrose issued a deficiency notice indicating that it was not possible to conclude that a cause of action existed under Chapter 41.56 RCW. The Unfair Labor Practice Manager noted that Dougherty's complaint failed to comply with WAC 391-45-050 by providing a concise statement of facts in individually numbered paragraphs which clearly contain information about the parties involved, the times, dates, places, and participants in all occurrences, and a copy of the existing collective bargaining agreement. The Unfair Labor Practice Manager also pointed out that Dougherty, as an individual

employee, lacked standing to raise refusal to bargain violations, that this Commission's jurisdiction is limited to disputes arising out of the collective bargaining relationship between employers, unions and employees, as authorized by Chapter 41.56 RCW, but that this Commission may not intercede where employees claim other forms of harassment or discrimination. Dougherty was given a period of twenty-one days to cure the defects in his complaint.

On September 13, 2010, Dougherty filed an amended complaint re-alleging various violations of the provisions of the parties' collective bargaining agreement, including instances where employer officials allegedly engaged in harassing behavior, discriminated against employees based upon age or race, and gave preferential treatment to some employees. The Unfair Labor Practice Manager dismissed Dougherty's complaints for failing to state a cause of action.<sup>1</sup> Dougherty now appeals.

## DISCUSSION

### Statute of Limitations

The statute of limitations for filing an unfair labor practice complaint under Chapter 41.56 RCW is six months from the date of occurrence. RCW 41.56.160(1); *see also City of Bellevue*, Decision 9343-A (PECB, 2007). The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *City of Bremerton*, Decision 7739-A (PECB, 2003). This Commission has previously held that the only exception to the strict enforcement of the six-month statute of limitations is where the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Pasco*, Decision 4197-A (PECB, 1994).

Dougherty filed his original complaint on August 13, 2010. Accordingly, the only events that are properly before this Commission are those that occurred within six months of his filing, or February 13, 2010. Events alleged in his original complaint that occurred prior to this date cannot form the basis of a violation.

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<sup>1</sup> *Bellevue School District*, Decision 10868 (PECB, 2010). The employer did not file a brief on appeal.

Form of the Complaint

WAC 391-45-050(2) requires that an unfair labor practice complaint must contain, in separate numbered paragraphs, a clear and concise statement of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences. *Bethel School District*, Decision 6484-A (PECB, 2000). Although a failure to specify facts in individually numbered paragraphs is not necessarily fatal to a complaint, the facts set forth in the complaint must nevertheless be sufficiently detailed to make intelligible findings of fact in a 'default' situation, such as when a respondent fails to answer a complaint. *Apostolis v. City of Seattle*, 101 Wn. App. 300, 306 (2000), citing *Thurston County Fire District 3*, Decision 3830 (PECB, 1991). A skeletal charge will not suffice and will not be fleshed out by agency personnel. *Jefferson Transit Authority*, Decision 5928 (PECB, 1997). The Executive Director or his or her designee must make a preliminary ruling under WAC 391-45-110 based on what is contained within the four corners of the complaint. *Bethel School District*, Decision 6484-A, citing *Apostolis v. City of Seattle*.

Commission Lacks Jurisdiction to Adjudicate Contract Violations

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment.

Furthermore, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1977). Most of Dougherty's claims concern violations of the existing collective bargaining agreement, including:

- The allegation that the employer violated Article 1.1 of the existing agreement by refusing to mention to bargaining unit employees that Dougherty is the local union's vice-president who can assist them with union matters.

- The allegation that the employer attempted to force Dougherty into violating Article 1.3 of the agreement by performing union activities during working hours.
- The allegation that the employer violated Article 3.9 of the collective bargaining agreement by discriminating against employees on the basis of race or age.<sup>2</sup>
- The allegation that the employer violated Article 5 of the collective bargaining agreement by disciplining employees without just cause.
- The allegation that the employer violated Article 11 of the parties' collective bargaining agreement by failing to hire or promote employees with diverse backgrounds.

The appropriate forum for resolution of these types of contractual violations is the arbitration mechanism of the parties' collective bargaining agreement or the superior courts.

Finally, in almost all of these instances, Dougherty failed to comply with WAC 391-45-050(2) by providing specific times and dates when the alleged events occurred. General statements of time, such as providing the season of the year or month in which the event occurred are not specific enough to satisfy the notice pleading requirements of WAC 391-45-050(2) as to allow this Commission or a respondent party the ability to ascertain if the complained-of actions fell within the six-month statute of limitation.

#### Other Alleged Violations

In addition to the above-referenced contract violations, Dougherty also alleged that the employer committed other unfair labor practices through various acts during the spring and summer of 2010. With respect to many of the complained-of events, Dougherty failed to properly provide the specific dates and times on which the events occurred. However, even where Dougherty provided specific dates and times of events, his allegations nevertheless fail to state claims that can be redressed by Chapter 41.56 RCW, including:

- The allegation that the employer asked a co-worker to inspect his work.
- The allegation surrounding removal of specific equipment from Dougherty's control.
- The allegation that the employer was spying on him.

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<sup>2</sup> With respect to Dougherty's other allegations that the employer has discriminated against employees on the basis of race and age not related to the parties' collective bargaining agreement, this Commission lacks the jurisdiction to redress those claims.

- The allegation that the employer and other employees slandered Dougherty and discussed whether he should be fired.
- The allegation that other employees were discussing Dougherty behind his back.
- The allegation that the employer declined to assign additional workers to Dougherty.

Dougherty has not alleged that the employer took any of these adverse actions in reprisal for Dougherty's exercise of a specific union activity protected by RCW 41.56.030. Rather, it appears from the face of Dougherty's complaint that he is alleging that the employer retaliated against him for filing a whistleblower complaint. Accordingly, the Unfair Labor Practice Manager's decision must be affirmed.


ORDER


The Order of Dismissal issued by Unfair Labor Practice Manager is AFFIRMED and adopted as the Order of Dismissal of the Commission.

ISSUED at Olympia, Washington, this 11th day of January, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

  
THOMAS W. McLANE, Commissioner



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PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY/S/ ROBBIE DUFFIELD

CASE NUMBER: 23443-U-10-05975 FILED: 08/13/2010 FILED BY: PARTY 2  
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