South Whidbey School District, Decision 11134-A (EDUC, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ERIC HOOD, Complainant, vs. SOUTH WHIDBEY SCHOOL DISTRICT, Respondent.	CASE 24048-U-11-6151 DECISION 11134-A - EDUC DECISION OF COMMISSION

Eric Hood, appeared pro se.

On June 15, 2011, Eric Hood (Hood) filed a complaint alleging that the South Whidbey School District (employer)[1] committed certain unfair labor practices when it terminated him at the end of the 2009-2010 school year. Hood had been in a bargaining unit represented by the South Whidbey Education Association, and that association and the employer were parties to a collective bargaining agreement that covered Hood's terms and conditions of employment.[2]

Unfair Labor Practice Manager David I. Gedrose issued a deficiency notice stating that the alleged facts in Hood's complaint were either not timely, were contract violations that could not be remedied through the unfair labor practice proceedings, or were claims that were already dismissed or that this Commission had no jurisdiction over. Hood was given a period of twenty-one days to cure the defects in his complaint. On July 7, 2010, Hood timely filed an amended complaint that attempted to cure the defects identified by the deficiency notice. On August 2,

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1 The employer did not file a brief on appeal.

2 The South Whidbey Education Association is not a party to this proceeding.

2011, the Unfair Labor Practice Manager issued a decision dismissing Hood's original and amended complaints.[3] Hood appeals.

DISCUSSION

Because the complainant seems to have lingering confusion about this Commission's role, we take this time to once again detail the role that this Commission occupies in Washington State labor-management relations. The Legislature has empowered this Commission to protect certain employee rights guaranteed by the statutes it has been charged to administer, including the Educational Employment Relations Act, Chapter 41.59 RCW. As a collective bargaining statute, Chapter 41.59 RCW governs the procedures that school districts and labor organizations must follow when they collectively bargain the terms and conditions of employment of certificated teachers. Other than the rights and protections guaranteed through the collective bargaining statutes, this Commission does not have authority to govern other aspects of the employer/employee relationship, including enforcing rules promulgated under the statutes administered by other entities.

Rights of Employees and Unfair Labor Practices

RCW 41.59.060 enumerates the rights protected by Chapter 41.59 RCW. Those rights include "the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing." RCW 41.59.060 also states that employees "shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter." Actions or behaviors that fall outside of these rights are not protected by the unfair labor practice provisions.

RCW 41.59.140(1)(a) makes it an unfair labor practice for a public employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060. RCW 41.59.140(1)(c) makes it an unfair labor practice to encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or

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[3] *South Whidbey School District*, Decision 11134 (EDUC, 2011).

condition of employment, and RCW 41.59.140(1)(e) makes it an unfair labor to refuse to bargain collectively with the representatives of its employees.[4]

Contract Violations are Not Enforceable Through the Unfair Labor Practice Provisions

This Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), *citing City of Walla Walla*, Decision 104 (PECB, 1976). Thus, the Commission has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *Tacoma School District*, Decision 5722-E (EDUC, 1997).

Individual Employees Lack Standing to File Refusal to Bargain Claims

Typically, the exclusive bargaining representative of the organized employees, rather than the individual employee, is the party that seeks enforcement of the statute. For example, a duty to bargain exists only between the employer and the organization holding status as the incumbent exclusive bargaining representative of the employees. *Renton School District*, Decision 6300-A (PECB, 1998). Thus, only the employer and the union that are parties to a particular bargaining relationship have legal standing to file or pursue "refusal to bargain" claims. *Renton School District*, Decision 6300-A.

Although individual employees lack standing to bring "refusal to bargain" allegations, employees do have standing to raise interference or discrimination violations, as those violations can either apply to an individual or the group collectively. Examples of this include, but are not limited to, instances where an employer terminates or disciplines an employee attempting to organize fellow employees for purposes of collective bargaining, or when an employer prevents an employee from conferring with their exclusive bargaining representatives about a grievance. However, in order for an employee to have standing before the agency, the rights being exercised must still be rights protected by RCW 41.59.060.

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[4] The other unfair labor practices enumerated by RCW 41.56.140(1) are not applicable, as Hood has not alleged that the employer was attempting to dominate the exclusive bargaining representative of the employees or that his termination was in response to his filing of an unfair labor practice.

Statute of Limitations

RCW 41.59.150 provides that this Commission is empowered to prevent any unfair labor practice enumerated in RCW 41.59.140, provided that the complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint. Hood filed his original complaint on June 15, 2011; therefore, any event occurring before December 15, 2010, cannot form the basis for a violation.

Application of Standards

Hood alleged that the employer kept a secret file on him in violation of the 2009-2011 collective bargaining agreement between his union and the employer, and that the file was used to justify his termination. Hood also alleged that keeping a secret file on him violates WAC 357-22-040 and RCW 41.59.910, and when employer officials allowed the contents of the file to be viewed and disclosed, that was a retaliatory act that violated RCW 41.59.140. Finally, Hood alleged that he was terminated for questioning the employer's student attendance and enrollment reports during the 2008-2010 school years, that the employer falsified its student attendance and enrollment information in violation of WAC 181-87-080, and also falsified Hood's performance evaluations in violation of WAC 181-87-080.

Certain Claims are Barred

Hood's allegations that the employer discriminatorily terminated him for questioning the employer's student enrollment and attendance reports during the 2008-2010 school years were already the subject of a previous complaint that was dismissed by this Commission. *South Whidbey School District*, Decision 10880-A (EDUC, 2011). Additionally, this Commission has previously held that Hood's allegations that the employer violated WAC 181-87-080 when it falsified his performance evaluations were claims that could not be redressed by Chapter 41.59 RCW. *South Whidbey School District*, Decision 10880-A. The fact that Hood has raised new allegations in his complaint and re-raised certain allegations that were previously dismissed in a complaint does not revive the previously dismissed claims. *See City of Seattle*, Decision 5852-C (PECB, 1998)(discussing claim preclusion). Finally, the fact that the State Auditor may have verified Hood's allegations that the employer provided misleading student attendance and

enrollment information does not make Hood's claim an unfair labor practice as defined by RCW 41.59.110.

Hood's new claims once again center on the fact that while employed he questioned the employer's student enrollment and attendance reports, and that even after his termination the employer continues to retaliate against him for questioning those reports. *See South Whidbey School District*, Decision 10880-A. Once again, Hood has not asserted that the employer took such action in retaliation for his forming, joining, or assisting a union. Without a nexus between union activity and Hood's questioning of the employer's reporting practices, Hood's actions were not protected by Chapter 41.59 RCW. Accordingly, Hood's allegation that the employer retaliated against him for questioning the enrollment and attendance reports by maintaining and sharing the information contained in a secret file was also properly dismissed.

Hood's allegation that the employer kept a secret file on him in violation of Article IV, section 5 of the collective bargaining agreement that once covered him is a matter that is governed by contract, and any violation of this provision must be addressed through the collective bargaining agreement's grievance procedure or through the courts. Hood's assertion that the existence of a secret personnel file violates WAC 357-22-040 is also misplaced. Not only does this Commission not have jurisdiction over enforcement of WAC 357-22-040, that administrative rule only applies to state civil service employees covered by Chapter 41.06 RCW, and not certificated teachers such as Hood. *See* WAC 357-04-010.

Finally, Hood's assertion that by not processing his complaint, the agency is not abiding by the Legislature's directive to adopt rules conforming to the best practices of labor relations is an argument without merit. RCW 41.59.110 directs this Commission to promulgate, revise, or rescind rules that the Commission deems "necessary and appropriate to administer the provisions of [Chapter 41.59 RCW], in conformity with the intent and purpose of [Chapter 41.59 RCW], and consistent with the best standards of labor-management relations." RCW 41.56.090 provides a similar directive. The rules adopted under these legislative directives and codified in Title 391 WAC are, for the most part, procedural rules that govern how cases brought before this

agency are to be processed. This agency's interpretations of law, such as what constitutes an unfair labor practice, are announced through the caselaw.

NOW, THEREFORE, it is

ORDERED

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

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	24048-U-11-06151	FILED:	06/15/2011	FILED BY:	PARTY 2
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BAR UNIT:	TEACHERS				
DETAILS:	-				
COMMENTS:					

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