STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT, Employer.	
COLETTE SWENSON Complainant, vs. SEATTLE EDUCATION ASSOCIATION Respondent.	CASE 131495-U-19 DECISION 13058 - EDUC PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On May 10, 2019, Colette Swenson filed a complaint charging unfair labor practices with the Public Employment Relations Commission under chapter 391-45 WAC, naming the Seattle Education Association (union) as respondent. The complaint was docketed by the Commission as 131495-U-19. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on June 7, 2019, indicating that it was not possible to conclude that a cause of action existed at that time. Swenson was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the complaint.

On June 28, 2019, Swenson filed an amended complaint. The allegations of the amended complaint concern:

> Union interference in violation of RCW 41.59.140(2)(a), within six months of the date the complaint was filed, by breaching its duty of fair representation by aligning its interests against bargaining unit members during negotiations with the Seattle School District.

[1] 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.

> Union inducement of employer to commit an unfair labor practice in violation of RCW 41.59.140(2)(b) [and if so derivative interference in violation of RCW 41.59.140(2)(a)] by causing or attempting to cause the employer to discriminate against bargaining unit members during negotiations.

The allegation that the union breached its duty of fair representation states a cause of action and will be subject to further proceedings under chapter 41.59 RCW and chapter 391-45-WAC. The union must file and serve an answer to the amended complaint within 21 days following the date of this Decision. The allegation of the union attempting to cause the employer to discriminate against bargaining unit members during negotiations failed to state a cause of action and is dismissed.

BACKGROUND

Swenson is a certificated educational support associate who works as a secondary school counselor in the District. The union represents her for purposes of collective bargaining with the employer.

According to the amended complaint, on September 8, 2018, the employer and union reached a tentative agreement for a successor collective bargaining agreement. The tentative agreement that was presented to the union's membership contained specific provisions relating to certificated educational support employees.

The amended complaint alleges that Swenson filed a grievance on October 29, 2018, challenging the procedural aspects of the 2017-2018 comprehensive summative evaluation. The complainant alleges she filed the grievance based upon the contract language found in the September 8, 2018, tentative agreement. On November 21, 2018, the complainant filed a second grievance challenging the procedural aspects of the evaluation process, personal improvement plan, and implicit bias by the evaluator process provisions of the agreement. The complainant alleges she filed the grievance based upon the contract language found in the September 8, 2018, tentative agreement. However, the final contract language that was signed and implemented by the union

and employer lacked many of the provisions applicable to educational support associates that appeared in the September 8, 2018 tentative agreement.

The amended complaint suggested that the evaluation provisions that previously existed for educational support associates was eliminated because of a new Peer Assistance & Review program that is applicable to the certificated teachers. The complaint asserts that the Peer Assistance & Review is not applicable to the educational support associates.

Swenson also alleges that the employer and union entered into a November 14, 2018, career ladder and support memorandum of understanding that applied to the district office based educational support associates. Swenson asserts that the November 14, 2018, agreement does not apply to the building based educational support associates.

ANALYSIS

Applicable Legal Standard

RCW 41.59.140(2)(b) makes it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of [RCW 41.59.140(1)(c)]." To induce an employer to commit an unfair labor practice, a union must be requesting that the employer do something unlawful. For example, a union cannot demand that an employer discharge an employee for non-payment of a union political action fee or based upon the employee's race, sex, religion, or national origin. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989). A classic scenario occurs when a union induces the employer to discriminate against an employee based upon union membership. *State – Natural Resources*, Decision 8458-B (PSRA, 2005).

In *Municipality of Metropolitan Seattle* the union was seeking limitations on assignments that were made available to part-time drivers. At the bargaining table, the employer could legally agree to restrict part-time drivers' shifts. The Commission explained that the mere designation of "part-time" status does not bring an employee into a classification protected from invidious

discrimination. Since the employer ultimately could have legally agreed to what the union was seeking, the union was not asking the employer to commit an illegal act.

Application of Standard

The complaints lacked supporting facts as to how this union attempted to induce the employer to commit an unfair labor practice in violation of the RCW 41.59.140(1)(c). The facts allege the employer engaged in bargaining with the union as it was legally required to do. There were no facts in the complaints indicating the union asked the employer to commit other unlawful acts in violation of the statute.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the amended complaint in Case 131495-U-19 state a cause of action, summarized as follows:

> Union interference in violation of RCW 41.59.140(2)(a), within six months of the date the complaint was filed, by breaching its duty of fair representation by aligning its interests against bargaining unit members during negotiations with the Seattle School District.

The interference allegations of the amended complaint will be the subject of further proceedings under chapter 391-45 WAC.

The Seattle Education Association shall:

> File and serve their 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 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.

2. The allegations of the amended complaint in case 131495-U-19 concerning union inducement in violation of RCW 41.59.140(2)(b) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 26th day of August, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 08/26/2019

DECISION 13058 - EDUC has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 131495-U-19

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