

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF)	
ENUMCLAW,)	
)	
Complainant,)	CASE 13840-U-98-3393
)	
vs.)	DECISION 6349 - PECB
)	
ENUMCLAW SCHOOL DISTRICT,)	ORDER OF PARTIAL
)	DISMISSAL
Respondent.)	
)	
)	

On April 8, 1998, Public School Employees of Enumclaw (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging the Enumclaw School District (employer) violated RCW 41.56.140. At issue was an alleged pattern of anti-union activity and harassment engaged in by Transportation Supervisor Bonnie Miller over the period from May 20, 1997 through February of 1998.

The complaint was reviewed pursuant to WAC 391-45-110. At this stage of the proceedings, all the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.¹ A deficiency notice was issued on May 5, 1998, informing the union of several problems with its complaint and establishing a 14-day

¹ This procedure conforms to RCW 34.05.419(2), which requires administrative agencies to:

Examine the application, notify the applicant of any errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require.

period for the union to file and serve an amended complaint correcting the problems, or face dismissal of the inadequate allegations. Nothing further has been received from the union.

The Timeliness Requirement

RCW 41.56.160 both authorizes and limits the Commission's processing of unfair labor practice charges, providing in part:

[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

This complaint filed on April 8, 1998 was thus timely, on its face, only as to incidents occurring on or after October 8, 1997.²

The Specificity Requirement

The Commission's rules for processing unfair labor practice complaints provide, at WAC 391-45-050, that a complaint must contain:

Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

Such details are required both for the agency's evaluation of a complaint under WAC 391-45-110, and to put the respondent on notice

² While no remedy is available for events that occurred more than six months before a complaint was filed, evidence concerning such events may still be admissible to establish background for later incidents and/or to establish the existence of union animus. See, Port of Tacoma, Decision 4626-A (PECB, 1995).

of the charges against it so that it can investigate the alleged incident and prepare a defense.

The Allegations

The complaint's statement of facts was supplemented by a March 3, 1998 letter summarizing the alleged incidents, to which numerous statements and other letters were attached. The following paragraphs of the March 3, 1998 letter allege incidents that are both timely, and sufficiently detailed to state causes of action:

- A. Miller's December 4, 1997 interrogation, in her office and behind closed doors, of Barry King about a union meeting on December 3, 1997;
- C. Miller's practice of socially isolating union adherents, as on an unidentified day in February, 1998, when Miller put her fingers to her lips as union president Lillian Weygandt passed a table where Miller and other employees were sitting;
- D. Denial of a job upon Judy Thorsett's November 26, 1997 return to her former classification, after she had questioned union leaders in September, 1997 about her rights in such a situation;
- E. A written reprimand of Robert Servis for leaving work during his shift to make a glove purchase which had been routinely done in the past without objection, after his November 3, 1997, overtime grievance was settled;
- H. (Part) Miller's requiring bargaining unit employees to come in during their Christmas holiday for training (although the complaint is untimely as to Miller's related statement May 20, 1997);

- I. Miller's direction to Cheryl Trichea, both as stated in her office on October 8, 1997 and among others during a December 9, 1997 Transportation Advisory meeting, to stop taking workplace concerns to the union and bring them to Miller instead; and
- J. Miller's January 9, 1998 assertion that Trichea had hit the mirror of another school bus on an unidentified date, while refusing to give Trichea a copy of the accident report, all of which Trichea believed was related to her union activities.

The foregoing allegations will be the subject of further proceedings under Chapter 391-45 WAC.

The May 5, 1998 deficiency notice informed the union that the following paragraphs of the March 3, 1998 letter alleged incidents that lacked sufficient details to determine whether they were timely or stated a cause of action:

- B. Miller's undated recommendation that bargaining unit members choose their friends wisely, which is not rehabilitated by repetition in a November, 1997 memo;
- F. Termination of longstanding permission for employee Chris Nissen to take the mechanic's truck home, after he filed a grievance on an unidentified date in 1997;
- G. An undated change of reporting times for employees Dave Burton and Bob Servis, after they refused (on an unidentified date) to attend training on their own time in violation of the collective bargaining agreement; and
- H. (Part) Miller's May 20, 1997 statement to Christy Murgado that Miller was unhappy with the union's refusal to waive holiday pay for training on the Friday before Labor Day, and she would

see how the union liked training during the Christmas break (although this paragraph partly states a cause of action as described above).

These allegations do not state a cause of action in and of themselves.

NOW, THEREFORE, it is

ORDERED

1. The allegations in Paragraphs B, F, G, of the March 3, 1998 letter accompanying the complaint, along with the allegation in paragraph H about a May 20, 1997 statement, are dismissed as untimely and/or insufficiently detailed to state a cause of action.
2. The allegations referred to in Paragraphs A, C, D, E, H (with regard to training during the Christmas break), I, and J of the March 3, 1998 letter accompanying the complaint state a cause of action and are referred to Examiner Pamela G. Bradburn for further proceedings under Chapter 391-45 WAC.
3. Pursuant to WAC 391-45-110(2), the Enumclaw School District shall, within 21 days following the date of this order:

File and serve its answer to the allegations in Paragraphs A, C, D, E, H with regard to training during the Christmas break, I, and J of the March 3, 1998 letter accompanying the complaint.

An answer filed by a respondent shall:

- (1) Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is

without knowledge of the facts, it shall so state, and that statement will operate as a denial; and


- (2) Assert any affirmative defenses that are claimed to exist in the matter.

The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

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 complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

Issued at Olympia, Washington, on the 9th day of July, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on that matter unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.