STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. PORT ANGELES SCHOOL DISTRICT, Respondent.	)	CASE 15197-U-00-3835 DECISION 7198 - PECB PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On May 18, 2000, Public School Employees of Washington filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, naming the Port Angeles School District as respondent. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice was issued on September 8, 2000.

The deficiency notice pointed out that no facts were alleged which would provide basis for finding a violation under RCW 41.56.140(2), and that the facts alleged were insufficient to form an opinion that the employee involved was entitled to union representation under Commission precedent. Allegations concerning a threat of increased discipline if the affected employee went to the union were found to state a cause of action for interference in violation of RCW 41.56.140(1), but were held in abeyance pending the outcome

[1] At that stage of the proceedings all of the facts alleged in a 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.

of the deficiency notice procedure. The union filed an amended complaint on September 22, 2000, and it has also been reviewed under WAC 391-45-110.

"Domination" Allegation Remains Unsupported

The union marked the box on the complaint form to allege a violation under RCW 41.56.140(2). Although not an exact copy, that provision has been interpreted and applied in a manner consistent with the interpretation and application of Section 8(a)(2) of the National Labor Relations Act, as amended. The federal law was clearly aimed at preventing improper involvement by employers in the internal affairs of unions. See, Washington State Patrol, Decision 2900 (PECB, 1988).

Like its original complaint, the union's amended complaint does not set forth any facts which could be a basis for finding a violation of RCW 41.56.140(2). None of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union". See, City of Anacortes, Decision 6863 (PECB, 1999). Dismissal of that allegation is thus indicated.

Right to Union Representation Claim Clarified

In numerous decisions, as far back as City of Montesano, Decision 1101 (PECB, 1981), and as recent as Cowlitz County, Decision 6832-A (PECB, 2000) and Clover Park School District, Decision 7073 (PECB, 2000), the Commission and its staff have applied the "right to union representation" principles enunciated by the Supreme Court of the United States in National Labor Relations Board v. Weingarten,

Denying the request of Keith Wright for union representation at an investigatory interview;

Threatening employee Keith Wright with reprisals if he sought union representation; and/or

Making promises of benefit to Keith Wright to dissuade him from exercise of his right to union representation under Chapter 41.56 RCW.

a. PLEASE TAKE NOTICE THAT, the person or organization charged with an unfair labor practice in this matter (the "respondent") shall:

File and serve its answer to the complaint within 21 days following the date of this order.

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 complaint. Service shall be completed no later than the day of filing. An answer shall:

i. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

ii. Assert any affirmative defenses that are claimed to exist in the matter.

Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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 a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

Inc., 420 U.S. 251 (1975). A key fact in such situations is that the right to union representation operates when an employee is called in by the employer for an *investigatory* interview.

The union's amended complaint in this case now alleges that bargaining unit employee Keith Wright was questioned on February 10, 2000, regarding his conduct and his work, and that the session at issue was part of an ongoing disciplinary plan of improvement. Those allegations now state a cause of action.

Threat of Reprisal Allegations

As noted in the Deficiency Notice letter, the original complaint sufficiently alleged a cause of action for "interference" by means of a threat to impose harsher discipline if Wright contacted the union. The amended complaint adds a further allegation that employer official Allen Bredy made a statement about the treatment Wright would receive if he did not have union representation. Those allegations state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. The alleged violation of RCW 41.56.140(2) is DISMISSED, and no further proceedings shall be conducted on that allegation.

2. The complaint charging unfair labor practices, as amended, is found to state causes of action for:

> Employer interference with employee rights, in violation of RCW 41.56.140(1), by:

3. An Examiner will be assigned, in due course, to conduct further proceedings in this matter under Chapter 391-45 WAC. Until an Examiner is assigned, all motions and arguments shall be directed to the undersigned.

Issued at Olympia, Washington, on the 16th day of October, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Director of Administration

Paragraph 1 of this order will be the final order of the agency on the matter covered, unless a notice of appeal is filed with the Commission under WAC 391-45-350.