

State - Fish and Wildlife (Washington Public Employees Association), Decision 8683 (PSRA, 2004)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - FISH AND	)	
WILDLIFE,	)	
	)	
Employer.	)	
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SUSAN GUNNYON,	)	CASE 18715-U-04-4756
	)	
Complainant,	)	DECISION 8683 - PSRA
	)	
vs.	)	
	)	
WASHINGTON PUBLIC EMPLOYEES	)	
ASSOCIATION,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
	)	

On July 8, 2004, Susan Gunnyon (Gunnyon) filed a letter with the Public Employment Relations Commission, taking issue with the conduct of a Washington Public Employees Association (union) official in connection with the processing of Case 18424-C-04-1182. Gunnyon is employed by the Washington State Department of Fish and Wildlife (employer). Case 18424-C-04-1182 originated as a petition to "perfect" an existing bargaining unit by an accretion of fish counters under WAC 391-35-026, and it was closed by an order issued on June 15, 2004. *State - Fish & Wildlife*, Decision 8582 (PSRA, 2004).

Gunnyon's letter is arguably an "application" for a proceeding before the Commission within the meaning of the state Administrative Procedure Act (APA), Chapter 34.05 RCW, but the Commission had some uncertainty as to how to proceed. A deficiency notice issued on July 22, 2004, explained that among the possibilities considered were:

- Treating the letter as a notice of appeal from the decision issued on June 15, but individual employees lack standing to be parties in unit clarification proceedings under Chapter 391-35 WAC; or
- Treating the letter as a claim of aggravated misconduct (fraud) under WAC 391-08-020, but an exclusion of a union official from practice before the agency would not provide any remedy to the affected employee(s); or
- Treating the letter as a complaint charging unfair labor practices under Chapter 391-45 WAC.

The latter interpretation was adopted (partly because the letter indicated that a copy had been served on the union).

The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and the deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time. Gunnyon was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

No further information has been filed by Gunnyon. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

### DISCUSSION

The complaint contains several defects.

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<sup>1</sup> 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.

Form and Format of Proceedings

The deficiency notice advised Gunnyon that she may or may not desire to go forward with an unfair labor practice proceeding. A copy of the rules applicable to unfair labor practice proceedings was supplied to Gunnyon with the deficiency notice, so that she could evaluate the burdens placed on a complainant. The deficiency notice indicated that by either failing to respond or by expressly withdrawing the claim at any time, Gunnyon could terminate the proceeding. A copy of the complaint form promulgated by the Commission was supplied to Gunnyon with the deficiency notice.

Limited Standing of Individual Employees

Gunnyon's letter filed on July 8 was accompanied by letters from two other employees. Although individual employees have the right to file and pursue unfair labor practice cases on their own behalf, one individual employee cannot pursue rights on behalf of another employee. If the other individuals (whose letters did not indicate on their face that they had been served on the union) desire to pursue any claims against the union, they would need to file and serve their own unfair labor practice complaints, naming the union as respondent and setting forth the factual details supporting their claim(s).

Absence of Critical Fact

Fraud and forgery arguably provide basis to find unlawful interference with employee rights, in violation of RCW 41.56.150(1). For Gunnyon to have a cause of action against the union, however, she would need to allege and prove that an authorization card she signed was actually used by the union in a fraudulent manner (in

the underlying proceedings before the Commission) after she had notified the union she had withdrawn her authorization. Such an allegation is lacking.

The deficiency notice advised Gunnyon that it would be inappropriate for any member of the Commission staff to breach the confidentiality of the showing of interest process, and that she might want to verify the use of her authorization card (or lack thereof) with the Commission staff member who conducted the underlying proceeding, before deciding whether to go forward with her case.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 23<sup>rd</sup> day of August, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.