

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHORELINE SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
BILL YOUNG,	)	
	)	
Complainant,	)	CASE 18690-U-04-4750
	)	
vs.	)	DECISION 8718 - PECB
	)	
WASHINGTON EDUCATION ASSOCIATION,	)	
	)	
Respondent.	)	
_____	)	
	)	
BILL YOUNG,	)	
	)	
Complainant,	)	CASE 18691-U-04-4751
	)	
vs.	)	DECISION 8719 - PECB
	)	
SHORELINE SCHOOL DISTRICT,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	

On July 9, 2004, Bill Young (Young) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The first complaint named the Washington Education Association (union) as respondent and was docketed as Case 18690-U-04-4750. The second complaint named the Shoreline School District (employer) as respondent and was docketed as Case 18691-U-04-4751.

The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on August 13, 2004, indicated that it was not possible to conclude that a cause of action existed at that time. Young was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

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

## DISCUSSION

### Complaint Against Union

The allegations of the complaint in Case 18690-U-04-4750 concern union interference with employee rights in violation of RCW 41.56.150(1), by failing to respond to phone calls and requests for information, failing to keep documents related to the termination of Bill Young, failing to investigate actions of employees of the union, and misrepresenting the union's position on a reinstatement offer from the employer of September 2002.

The complaint is defective for several reasons. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR  
PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That 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. . . .

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before January 9, 2004, will be considered merely as background information. The complaint fails to meet the requirements of RCW 41.56.160. In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of union misconduct occurring on or after January 9, 2004.

Two, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Three, the complaint requests that the Commission "convene a fact finding/investigation hearing to determine the facts of this case and which labor practices and laws have been broken." Unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The Commission explained its procedure for processing unfair labor practice

complaints in *State - Corrections (Teamsters Local 313)*, Decision 8581 (PSRA, 2004) as follows:

The Commission processes unfair labor practice complaints under Chapter 391-45 WAC and the state Administrative Procedure Act, Chapter 34.05 RCW. The Commission staff makes an initial review of unfair labor practice complaints under WAC 391-45-110, applying an assumption that all of the facts alleged in the complaint are true and provable. [footnote omitted] The purposes of that preliminary ruling process is to, "[D]etermine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute." Thereafter:

- If a complaint is found to be insufficient to state a cause of action (either as to some procedural deficiency or as a matter of law), a deficiency notice letter is issued under RCW 34.05.419(2), and the party that filed the complaint is given a period of time in which to either correct the deficiency or face dismissal of the case.
- If a complaint is found to state a cause of action, a preliminary ruling letter is issued and the party that has been accused of wrongdoing is directed to file and serve its answer to the complaint. The case is then assigned to an examiner for an evidentiary hearing. The party that filed the complaint must present its own case, and has the burden of proof as to the factual allegations of its complaint. See WAC 391-45-270(1)(a). The examiner then issues a decision based on the merits of the evidence and testimony presented.

Parties have a right of appeal to the Commission under Chapter 391-45 WAC, either from a dismissal issued under WAC 391-45-110, [footnote omitted] or from a decision issued by an examiner on the merits of a case. [footnote omitted]

Four, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976).

Complaint Against Employer

The allegations of the complaint in Case 18691-U-04-4751 concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by retaliatory actions of employer officials against Bill Young for reporting a crime on school district property, failing to investigate personnel matters, and failing to adhere to the parties' collective bargaining agreement, district policies, and state and federal laws, in reprisal for union activities protected by Chapter 41.56 RCW.

The complaint is defective for several reasons. One, as for the complaint against the union, the complaint fails to meet the requirements of RCW 41.56.160. Two, the Commission does not have jurisdiction concerning due process and equal protection allegations under state and federal laws. Claims concerning an employee's constitutional rights must be pursued before a court.

Three, as for the complaint against the union, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. Four, as for the complaint against the union, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements.

Five, in reference to the allegations of discrimination under RCW 41.56.140(1), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW. Six, in relation to the allegations of violation of RCW 41.56.140(3), a violation concern-

ing discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Seven, the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by an employee organization. Individual employees do not have standing to process refusal to bargain allegations.


NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 14<sup>th</sup> day of September, 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.