

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 925,)	
)	CASE 19539-U-05-4958
Complainant,)	
)	DECISION 9055 - PECB
vs.)	
)	
BELLEVUE SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

On June 8, 2005, Service Employees International Union, Local 925 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Bellevue School District (employer) as respondent. The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2), by its refusal to provide relevant collective bargaining information requested by the union concerning investigations and discipline of Phyllis Alverdes.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on July 5, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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.

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

DISCUSSION

The complaint has several defects. One, in relation to the allegations of employer domination or assistance of a union in 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." *City of Anacortes*, Decision 6863 (PECB, 1999).

Two, allegations of refusal to provide information can only be processed under the refusal to bargain provisions of RCW 41.56.140(4). If such allegations are found to constitute a violation of RCW 41.56.140(4), a derivative interference violation is automatically found under RCW 41.56.140(1). Allegations of refusal to provide information do not state a cause of action for an independent interference violation under RCW 41.56.140(1). The complaint is defective as it only alleges an interference violation under RCW 41.56.140(1) and not a refusal to bargain violation under RCW 41.56.140(4).

The complaint requests a remedy of a "motion for temporary relief." The unions's request is governed by the following provisions of WAC 391-45-430:

WAC 391-45-430 MOTION FOR TEMPORARY RELIEF. In addition to the remedies available under WAC 391-45-410, a complainant in an unfair labor practice proceeding may make a motion requesting that the commission seek appropriate temporary relief through the superior court, and all such motions shall be processed as provided in this section.

(1) When the complaint is filed, or as soon thereafter as facts giving rise to the request for temporary relief become known, the complainant shall file written notice of its intent to make a motion for temporary

relief with the executive director as required by WAC 391-08-120(1), and shall serve a copy of the notice on each of the other parties to the proceedings as required by WAC 391-08-120 (3) and (4).

(2) Upon the filing of a notice of intent to make a motion for temporary relief, the processing of the matter shall be expedited under WAC 391-45-110.

(3) After a determination that the complaint states a cause of action under WAC 391-45-110, the complainant may file and serve, as required by WAC 391-08-120, a motion for temporary relief together with affidavits as to the risk of irreparable harm and the adequacy of legal remedies.

(4) If there is a motion for temporary relief, the due date for counter-affidavits from other parties is seven days following the date on which that party is served with a motion for temporary relief. The counter-affidavits shall be filed and served as required by WAC 391-08-120.

(5) The executive director shall forward all motions and affidavits to the commission, which shall determine whether an injunction pendente lite should be sought. In making its determination, the commission shall adhere to the following policy:

"The name and authority of the public employment relations commission shall not be invoked in connection with a request for temporary relief prior to the completion of administrative proceedings under WAC 391-45-010, et seq., unless it appears that one or more of the allegations in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and the complainant would suffer irreparable harm unless the status quo be preserved pending the completion of administrative proceedings."

(a) If the commission concludes that temporary relief should be sought, the executive director, acting in the name and on behalf of the commission and with the assistance of the attorney general, shall petition the superior court of the county in which the main office of the employer is located or wherein the person who is alleged to be engaging in unfair labor practices resides or transacts business for an injunction pendente lite.

(b) Whenever temporary relief has been procured, the complaint which has been the basis for the temporary relief shall be heard expeditiously and the case shall be given priority over all other cases except cases of like character.

(c) A determination by the commission that temporary relief should not be sought at a particular time shall not bar renewal of the motion for temporary relief

following the completion of administrative proceedings in which unfair labor practice violations have been found to exist.

The Commission does not grant temporary relief itself but will, under limited circumstances, invoke its authority under state collective bargaining laws, such as RCW 41.56.160(3), to seek temporary relief by authorizing the Attorney General of Washington to file suit in the courts to preserve the status quo pending the outcome of unfair labor practice proceedings. See *Energy Northwest*, Decision 8797 (PECB, 2004).

The union's requested remedy of a "motion for temporary relief" does not comply with the provisions of WAC 391-45-430. If the union is seeking relief under this rule, its first step would be to file a written notice of intent to make a motion for temporary relief under WAC 391-45-430(1).

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 15th day of August, 2005.

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.