

State - Employment Security (Washington Federation of State Employees), Decision 8998 (PSRA, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - EMPLOYMENT)	
SECURITY,)	
)	
Employer.)	
-----)	
KENNETH WALDEN,)	
)	
Complainant,)	CASE 19347-U-05-4911
)	
vs.)	DECISION 8998 - PSRA
)	
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

On March 31, 2005, Kenneth Walden (Walden) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Federation of State Employees (union) as respondent. Walden is employed by the Washington State Department of Employment Security (employer). An amended complaint was filed by Walden on April 22, 2005. The amended complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 16, 2005, indicated that it

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.

was not possible to conclude that a cause of action existed at that time. Walden 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 Walden. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the amended complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a), by failing to provide proper notice to all eligible voters of a contract ratification vote and by failing to disclose that the contract included a union security clause.

Unfair labor practice complaints concerning the actions of a union during a contract ratification vote are normally dismissed as the Commission lacks jurisdiction over internal union affairs. *Lewis County*, Decision 464-A (PECB, 1978); *Lake Washington School District*, Decision 6891 (PECB, 1999). However, a different result is possible where a union delegates its representative role to a referendum of all bargaining unit employees. *Branch 6000, Letter Carriers*, 232 NLRB 263 (1977), *aff'd*, 595 F.2d 808 (D.C. Cir. 1979); *Boilermakers Local 202 (Henders Boiler & Tank Co.)*, 300 NLRB 28 (1990). In those circumstances, allegations of union interference with employee rights in violation of RCW 41.80.110(2)(a) may state a cause of action.

The amended complaint has several defects. One, the Commission is bound by the following provisions of Chapter 41.80 RCW:

RCW 41.80.120 UNFAIR LABOR PRACTICE PROCEDURES--
POWERS AND DUTIES OF COMMISSION. (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.
This power shall not be affected or impaired by any means
of adjustment, mediation, or conciliation in labor
disputes that have been or may hereafter be established
by law.

The amended complaint refers to a contract ratification vote "in
the fall of 2004," but does not allege a specific date for the vote
occurring within the six-month limitations of RCW 41.80.120. On
May 6, 2005, the union filed a motion to dismiss the complaint on
the grounds of untimeliness. The union's motion indicates that the
contract ratification vote was concluded on September 28, 2004.
The amended complaint does not meet the requirements of RCW
41.80.120. In order for the amended complaint to be timely under
RCW 41.80.120, the complaint must contain specific allegations of
union misconduct occurring on or after September 30, 2004.

Two, the Commission has adopted the following rule concerning the
filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each
complaint charging unfair labor practices shall contain,
in separate numbered paragraphs:

.. .
(2) Clear and concise statements of the facts
constituting the alleged unfair labor practices, includ-
ing times, dates, places and participants in occurrences.

The amended complaint fails to include "times, dates, places and
participants in occurrences" concerning the alleged unfair labor
practices. The complaint does not conform to the requirements of
WAC 391-45-050.

Three, on April 12, 2005, the union filed a motion to dismiss the complaint due to lack of service. WAC 391-08-120 provides as follows:

SERVICE ON OTHER PARTIES

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

Under WAC 391-08-120(3), a party filing papers with the Commission shall serve a copy of those papers upon all other parties to the case. On April 22, 2005, Walden filed an amended complaint and a "Certificate of Servicing" indicating that service of the complaint was completed on April 20, 2005. It appears that the "Certificate of Servicing" refers to service of the amended complaint. There is insufficient proof that Walden met the service "no later than the day of filing" requirements of WAC 391-08-120(3) for the original complaint. The deficiency notice stated that if the provisions of this rule were followed for the original complaint, Walden must promptly provide proof of service under WAC 391-08-120(4) to the Commission. In *King County*, Decision 7221-A (PECB, 2001), the Commission affirmed dismissal of a case for insufficient service of process.

NOW, THEREFORE, it is

ORDERED

The amended 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 24th day of June, 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.