

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| KIMBERLY JOHNSON, |) | |
| |) | |
| Complainant, |) | CASE 19521-U-05-4954 |
| |) | |
| vs. |) | |
| |) | |
| WASHINGTON STATE - FINANCIAL |) | DECISION 9044 - PSRA |
| MANAGEMENT, |) | |
| |) | |
| Respondent. |) | ORDER OF DISMISSAL |
| |) | |
| |) | |

On June 2, 2005, Kimberly Johnson (Johnson) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Office of Financial Management (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on June 22, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. Johnson 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 Johnson. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and

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.

discrimination in violation of RCW 41.80.110(1)(c), by submitting the Governor's budget proposal to the Legislature providing non-represented employees with lower insurance benefits than union-represented employees, while a petitioner was gathering showing of interest cards in support of a decertification petition, in reprisal for union activities protected by Chapter 41.80 RCW. The allegations relate to a pending decertification petition in Case 19356-E-05-3063 filed on April 1, 2005, by Bill Ireland, involving a bargaining unit of nonsupervisory employees of the employer. The incumbent exclusive bargaining representative of the unit is the Washington Federation of State Employees (WFSE).

The complaint has several defects. One, the complaint alleges a violation of RCW 41.56.040. The provisions of Chapter 41.56 RCW are inapplicable to Johnson. Chapter 41.56 RCW covers collective bargaining relationships in cities, counties, political subdivisions, municipal corporations, school districts (classified employees only), and other public employers. The complaint indicates that Johnson is a state civil service employee within the meaning of Chapter 41.80 RCW. Johnson is covered by the statutory provisions of Chapter 41.80 RCW, but not the provisions of Chapter 41.56 RCW. The provisions of RCW 41.80.050 are similar to the provisions of RCW 41.56.040 referenced by Johnson.

Two, a public employer is not required under state collective bargaining laws to provide the same level of benefits to both non-represented and union-represented employees.

Three, the complaint alleges a violation of the following provisions of WAC 391-25-140:

WAC 391-25-140 NOTICE TO EMPLOYEES--LIMITATIONS ON
EMPLOYER ACTIONS

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(3) The employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees.

Under WAC 391-25-140(2), a public employer is prohibited from making changes in mandatory subjects of bargaining while a representation petition is pending. The complaint alleges that the Governor made a proposal to the Legislature providing non-represented employees with lower insurance benefits than union-represented employees. The complaint fails to allege that the employer actually made a change in insurance benefits for non-represented employees while a representation petition was pending.

WAC 391-25-140(3) provides that an "employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees." The petition in Case 19356-E-05-3063 seeks to decertify WFSE as the incumbent exclusive bargaining representative of employees in the nonsupervisory employee bargaining unit. There is only one union involved in Case 19356-E-05-3063, and competing employee organizations are not seeking to represent bargaining unit employees in that case. WAC 391-25-140(3) is inapplicable to Case 19356-E-05-3063.

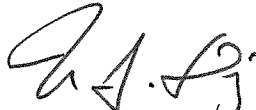
NOW, THEREFORE, it is

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 27th day of July, 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.