

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - SOCIAL AND	)	
HEALTH SERVICES,	)	
	)	
Employer.	)	
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JO ANN HERBERT,	)	
	)	
Complainant,	)	CASE 20737-U-06-5282
	)	
vs.	)	DECISION 9545 - PSRA
	)	
SERVICE EMPLOYEES INTERNATIONAL	)	
UNION, DISTRICT 1199 NW,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
_____	)	

On October 27, 2006, Jo Ann Herbert (Herbert) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Service Employees International Union (SEIU), District 1199 NW (union) as respondent. Herbert is employed by the Washington State Department of Social and Health Services (DSHS/employer). The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on December 4, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Herbert was given a

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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.

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 Herbert. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

#### DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a) and an unspecified "other unfair labor practice," by negotiating provisions in the parties' collective bargaining agreement that provide different benefits for temporary (non-permanent) employees.

The complaint has several defects. One, the complaint alleges that the union negotiated provisions in the parties' collective bargaining agreement that provide different benefits for temporary (non-permanent) employees. A union is not required under state collective bargaining laws to negotiate provisions in a collective bargaining agreement that provide the same level of benefits or rights to all union-represented employees.

Two, RCW 41.80.110(2)(a) prohibits union interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by union officials, are unlawful. However, the alleged facts are insufficient to conclude that the union made any threats of reprisal or force or promises of benefit, in violation of RCW 41.80.110(2)(a).

Three, the statement of facts attached to the complaint makes reference to provisions of the parties' collective bargaining

agreement. 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).

Four, in relation to the allegations of an "other unfair labor practice," the complaint fails to explain and specify what "other" rule or statute has been violated by the union's actions.

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 8<sup>th</sup> day of January, 2007.

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.