

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EUGENE WAGNER,	)	
	)	
Complainant,	)	CASE 20043-U-05-5088
	)	
vs.	)	DECISION 9278 - PSRA
	)	
COMMUNITY COLLEGE DISTRICT 19	)	
(COLUMBIA BASIN),	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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EUGENE WAGNER,	)	
	)	
Complainant,	)	CASE 20044-U-05-5089
	)	
vs.	)	DECISION 9279 - PSRA
	)	
WASHINGTON PUBLIC EMPLOYEES	)	
ASSOCIATION,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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EUGENE WAGNER,	)	
	)	
Complainant,	)	CASE 20045-U-05-5090
	)	
vs.	)	DECISION 9280 - PSRA
	)	
WASHINGTON STATE - FINANCIAL	)	
MANAGEMENT,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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EUGENE WAGNER,	)	
	)	
Complainant,	)	CASE 20046-U-05-5091
	)	
vs.	)	DECISION 9281 - PSRA
	)	
WASHINGTON STATE - PERSONNEL,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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EUGENE WAGNER,	)	
	)	
Complainant,	)	CASE 20047-U-05-5092
	)	
vs.	)	DECISION 9282 - PSRA
	)	
WASHINGTON STATE - PUBLIC	)	
EMPLOYMENT RELATIONS COMMISSION,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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EUGENE WAGNER,	)	
	)	
Complainant,	)	CASE 20082-U-05-5110
	)	
vs.	)	DECISION 9283 - PSRA
	)	
WASHINGTON STATE - OFFICE OF THE	)	
GOVERNOR,	)	
	)	ORDER OF DISMISSAL
Respondent.	)	
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On December 29, 2005, Eugene Wagner (Wagner) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC/Commission) under Chapter 391-45 WAC. Wagner listed the Washington Public Employees Association (union) as the respondent on the PERC complaint form (Form U-1, Complaint Charging Unfair Labor Practices). Wagner is an employee of Community College District 19 - Columbia Basin (Columbia Basin College). The complaint alleged statutory violations of employer interference with employee rights and union interference with employee rights.

When the complaint was filed, a review of the statement of facts attached to the complaint indicated that the complaint concerned allegations against six parties or respondents. Thus, the Commission docketed the complaint as the following six case numbers:

- 1) Case 20043-U-05-5088 concerns allegations against Columbia Basin College;

- 2) Case 20044-U-05-5089 concerns allegations against the union;
- 3) Case 20045-U-05-5090 concerns allegations against the Washington State Office of Financial Management;
- 4) Case 20046-U-05-5091 concerns allegations against the Washington State Department of Personnel;
- 5) Case 20047-U-05-5092 concerns allegations against the Washington State Public Employment Relations Commission; and
- 6) Case 20082-U-05-5110 concerns allegations against the Washington State Office of the Governor.

The complaints allege that the respondents failed to undertake various responsibilities associated with implementation of a collective bargaining agreement (Higher Education Master Agreement/agreement) between the State of Washington and the union. The agreement is effective from July 1, 2005, through June 30, 2007.

The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on February 9, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Wagner 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 Wagner. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

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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.

DISCUSSIONComplaint against Columbia Basin College

The allegations of the complaint in Case 20043-U-05-5088 concern: employer interference with employee rights in violation of RCW 41.80.110(1)(a), by denial of Eugene Wagner's inalienable human rights under the United Nations Universal Declaration of Human Rights (1948), Washington State Constitution, federal Civil Rights Act of 1964 and United States Constitution; failure to follow RCW 41.80.070 and .080 concerning appropriate bargaining units and representation questions; failure to provide alternatives under RCW 41.80.906 to payroll deduction for payment of union dues or fees; resistance to employees asserting a religious-based right of nonassociation to the payment of union dues or fees; and failure to provide a recourse for individual employees to resolve labor disputes.

The deficiency notice pointed out several defects with the complaint. One, the complaint requests remedies for "each affected state employee." Commission rules provide as follows:

WAC 391-45-010 COMPLAINT CHARGING UNFAIR LABOR PRACTICES--WHO MAY FILE. A complaint charging that a person has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

Class action complaints are not permitted under Commission rules. Individual employees must file their own unfair labor practice complaint. The complaint is limited to allegations concerning Wagner.

Two, in relation to the allegations concerning denial of Wagner's human rights, the Commission does not have jurisdiction over actions taken by the United Nations, federal law, or constitutional claims.

Three, in relation to the allegations concerning failure to follow RCW 41.80.070 and .080 involving appropriate bargaining units and representation questions, the Commission has adopted the following rule:

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, including times, dates, places and participants in occurrences.

The complaint fails to include "times, dates, places and participants in occurrences" concerning any alleged violations of RCW 41.80.070 and .080 involving Wagner. In order for such allegations to be timely under the six-month statute of limitations found in RCW 41.80.120, the complaint must contain allegations of misconduct occurring on or after June 29, 2005.

Four, in relation to the allegations concerning failure to provide alternatives to payroll deduction for payment of union dues or fees, RCW 41.80.906 reads as follows:

RCW 41.80.906 PAYROLL-RELATED BARGAINING ISSUES--CENTRAL STATE PAYROLL SYSTEM. (1) Notwithstanding the provisions of RCW 41.80.001, the parties to collective bargaining to be conducted under RCW 41.80.001 and 41.80.010 through 41.80.130 shall meet by September 1, 2003, to identify those payroll-related bargaining issues that affect the capacity of the central state payroll system, as determined by the department of personnel.

The parties shall agree on which bargaining issues will be bargained in a coalition of employee representatives and will be agreed to uniformly in each collective bargaining agreement. This agreement is effective only for collective bargaining agreements entered into for implementation during the 2005-2007 biennium. The purpose of the agreement is to minimize the risk to the payroll system resulting from agreements reached in the first round of collective bargaining under chapter 354, Laws of 2002.

(2) This section expires June 30, 2007.

The complaint asserts that state employees are not obligated by law to authorize payroll deduction for payment of union dues or fees. Chapter 41.80 RCW contains the following provisions:

RCW 41.80.100 UNION SECURITY--FEES AND DUES--RIGHT OF NONASSOCIATION.

(3) Upon filing with the employer the written authorization of a bargaining unit employee under this chapter, the employee organization that is the exclusive bargaining representative of the bargaining unit shall have the exclusive right to have deducted from the salary of the employee an amount equal to the fees and dues uniformly required as a condition of acquiring or retaining membership in the employee organization. The fees and dues shall be deducted each pay period from the pay of all employees who have given authorization for the deduction and shall be transmitted by the employer as provided for by agreement between the employer and the employee organization.

RCW 41.80.100(3) does not require payroll deduction for payment of union dues or fees, or prohibit employees from making direct payment of dues or fees to the union. *City of Seattle*, Decision 3872-A (PECB, 1992). Employees who do not sign up for payroll deduction accept the responsibility of keeping their union dues or fees payments current. *City of Seattle*, Decision 3835 (PECB, 1991).

The parties' agreement attached to the complaint contains the following provisions:

**ARTICLE 35  
UNION SECURITY**

**35.1 Union Dues**

When an employee provides written authorization to the Employer, the Union has the right to have deducted from the employee's salary, an amount equal to the fees or dues required to be a member of the Union.

Consistent with RCW 41.80.100(3), the parties' agreement requires written authorization by an employee before payroll deduction of union dues or fees.

RCW 41.80.906 placed requirements on "parties to collective bargaining" to meet by September 1, 2003, to identify payroll-related bargaining issues related to the central state payroll system. Columbia Basin College and the union are the sole "parties to collective bargaining" under RCW 41.80.906, and Wagner has no standing to assert rights of Columbia Basin College or union under that statute.

Five, in relation to the allegations concerning resistance to employees asserting a religious-based right of nonassociation to the payment of union dues or fees, Chapter 41.80 RCW provides as follows:

RCW 41.80.100 UNION SECURITY--FEES AND DUTIES--  
RIGHT OF NONASSOCIATION.

. . . .

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the

employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

A public employer is not a party to a nonassociation proceeding under RCW 41.80.100(2). Disputes between an employee and employee organization concerning an employee's right of nonassociation are resolved under Commission rules found at Chapter 391-95 WAC. An employee or employee organization may initiate a nonassociation proceeding with the Commission by filing PERC Form N-1 (Petition for Ruling on Nonassociation Claim). RCW 41.80.100(2) does not require that an employee organization grant an employee's requested right of nonassociation. If the employee organization does not agree with the employee's request, the dispute must be submitted to the Commission for a hearing and decision. Wagner's complaint fails to state a cause of action concerning resistance to employee requests asserting the right of nonassociation.

Commission docket records indicate that on January 20, 2006, Wagner filed a letter with the Commission asserting the right of nonassociation. His letter was treated as a petition for ruling on nonassociation claim and the petition was docketed as Case 20109-N-06-50. On February 9, 2006, a preliminary ruling was issued in Case 20109-N-06-50, sending Wagner's petition to an examiner for a hearing under WAC 391-95-230.



Six, in relation to the allegations concerning failure to provide a recourse for individual employees to resolve labor disputes, the complaint cites the following provision of Chapter 41.80 RCW:

RCW 41.80.005 DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

. . . .

(11) "Labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.

The only references in Chapter 41.80 RCW to the term "labor dispute" are found in RCW 41.80.120(1) and RCW 41.80.130(4) and (5). Those sections concern unfair labor practices and grievances.

Chapter 41.80 RCW contains the following provision concerning the processing of employee grievances:

RCW 41.80.080 REPRESENTATION--ELECTIONS--RULES.

. . . .

3) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

The provisions of RCW 41.80.080(3) can be contrasted to the following similar provisions in Chapter 41.56 RCW covering local government employees:

RCW 41.56.080 CERTIFICATION OF BARGAINING REPRESENTATIVE--SCOPE OF REPRESENTATION. The bargaining

representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

Under RCW 41.56.080, a local government employee has limited rights to present an individual grievance to an employer. RCW 41.80.080(3) does not provide similar rights to state employees. Under RCW 41.80.080(3), an individual employee may only present a grievance to an employer with the concurrence of the certified exclusive bargaining representative.

The parties' agreement contains the following provision:

**ARTICLE 25  
GRIEVANCE PROCEDURE**

**25.1 Terms and Requirements**

. . . .

B. Filing a Grievance

Grievances may be filed by the Union on behalf of an employee or on behalf of a group of employees.

Consistent with RCW 41.80.080(3), the parties' agreement does not allow an individual employee to file a grievance without the concurrence of the union. The complaint fails to state a cause of action concerning failure of the parties to provide a recourse for individual employees to resolve labor disputes.

Complaint against Union

The complaint in Case 20044-U-05-5089 concerns union interference with employee rights in violation of RCW 41.80.110(2)(a), by the same allegations listed for the complaint against Columbia Basin College.

The deficiency notice pointed out that the same defects and explanations noted for the complaint against Columbia Basin College, are present for Wagner's complaint against the union.

Complaint against Office of Financial Management (OFM)

The complaint in Case 20045-U-05-5090 concerns employer interference with employee rights in violation of RCW 41.80.110(1)(a), by the same allegations listed for the complaint against Columbia Basin College and additional allegations through failure of OFM Labor Relations Office Director Steve McLain to provide consistent guidelines for agency directors concerning the parties' agreement.

The deficiency notice pointed out that the same defects and explanations noted for the complaint against Columbia Basin College are present for Wagner's complaint against OFM. In relation to the additional allegations against OFM, the complaint fails to reference any provisions of Chapter 41.80 RCW that place affirmative obligations on OFM to provide guidelines for agency directors concerning administration of collective bargaining agreements.

Complaint against Department of Personnel (DOP)

The complaint in Case 20046-U-05-5091 concerns employer interference with employee rights in violation of RCW 41.80.110(1)(a), by the same allegations listed for the complaint against Columbia

Basin College and additional allegations through comments by Director Eva Santos that employees opposed to the parties' agreement need to "clean up their act."

The deficiency notice pointed out that the same defects and explanations noted for the complaint against Columbia Basin College, are present for Wagner's complaint against DOP. In relation to the additional allegations against DOP, RCW 41.80.110(1)(a) prohibits employer interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by employer officials, are unlawful. However, the alleged facts are insufficient to conclude that DOP made any threats of reprisal or force or promises of benefit, in violation of RCW 41.80.110(1)(a).

Complaint against Public Employment Relations Commission (PERC)

The complaint in Case 20047-U-05-5092 concerns employer interference with employee rights in violation of RCW 41.80.110(1)(a), by the same allegations listed for the complaint against Columbia Basin College and additional allegations through failure of Executive Director Marvin Schurke to provide employees with information related to implementation of the parties' agreement.

The deficiency notice pointed out that the same defects and explanations noted for the complaint against Columbia Basin College, are present for Wagner's complaint against PERC. In relation to the additional allegations against PERC, the complaint fails to reference any provisions of Chapter 41.80 RCW that place affirmative obligations on PERC to provide information related to the implementation of collective bargaining agreements.

Complaint against Office of the Governor (Governor)

The complaint in Case 20082-U-05-5110 concerns employer interference with employee rights in violation of RCW 41.80.110(1)(a), by the same allegations listed for the complaint against Columbia Basin College and additional allegations through failure of Governor Christine Gregoire to provide leadership related to the parties' agreement.

The deficiency notice pointed out that the same defects and explanations noted for the complaint against Columbia Basin College, are present for Wagner's complaint against the Governor. In relation to the additional allegations against the Governor, the allegations are so vague that they fail to support an interference violation for such conduct.

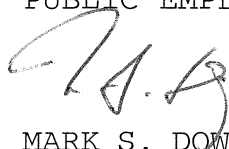
NOW, THEREFORE, it is

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 12<sup>th</sup> day of April, 2006.

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.