

a deficiency notice issued on December 14, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Hankerson 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 Hankerson. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint against Employer

The allegations of the complaint in Case 20779-U-06-5291 concern employer interference with employee rights in violation of RCW 41.80.110(1)(a) and domination or assistance of a union in violation of RCW 41.80.110(1)(b), by its written reprimand of Missile Hankerson.

The deficiency notice pointed out several defects with the complaint.

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.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described

in the complaint occurring before May 29, 2006, will be considered merely as background information. The complaint fails to meet the requirements of RCW 41.80.120. In order for the complaint to be timely under RCW 41.80.120, the complaint must contain allegations of employer misconduct occurring on or after May 29, 2006.

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

(3) A statement of the remedy sought by the complainant.

The complaint does not conform to the requirements of WAC 391-45-050.

Three, 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 the employer made any threats of reprisal or force or promises of benefit, in violation of RCW 41.80.110(1)(a).

Four, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.80.110(1)(b), 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).

Complaint against Union

The allegations of the complaint in Case 20780-U-06-5292 concern union interference with employee rights in violation of RCW 41.80.110(2)(a) and refusal to bargain in violation of RCW 41.80.110(2)(d), by failing to represent Missile Hankerson in the processing of a grievance.

The deficiency notice pointed out several defects with the complaint.

One, as for the complaint against the employer, the complaint fails to meet the requirements of RCW 41.80.120. In order for the complaint to be timely under RCW 41.80.120, the complaint must contain allegations of union misconduct occurring on or after May 29, 2006.

Two, as for the complaint against the employer, the complaint does not conform to the requirements of WAC 391-45-050.

Three, if bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes a duty of fair representation to bargaining unit employees, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.

Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Four, as for the complaint against the employer, 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).

Five, the duty to bargain under Chapter 41.80 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.80.110(2)(d) can only be enforced by an employer. Individual employees do not have standing to process refusal to bargain allegations.

Motion to Dismiss Filed by Union

On December 13, 2006, the union filed a motion to dismiss the complaint in Case 20780-U-06-5292, indicating that Hankerson had failed to serve a copy of the complaint on the union. 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. The deficiency notice indicated that if the provisions of this rule had been followed, Hankerson must provide proof of service under WAC 391-08-120(4) to the Commission. The deficiency notice stated that if the complaint was not served on the union, the complaint was subject to dismissal for insufficient service of process. *King County*, Decision 7221-A (PECB, 2001).

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 19th 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.