

State - Revenue, Decision 9515 (PSRA, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FAIR WASHINGTON LABOR ASSOCIATION

Complainant,

vs.

WASHINGTON STATE - REVENUE,

Respondent.

CASE 20390-U-06-5192

DECISION 9515 - PSRA

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

FAIR WASHINGTON LABOR ASSOCIATION,

Complainant,

vs.

WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION,

Respondent.

CASE 20391-U-06-5193

DECISION 9516 - PSRA

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

Richmond Law Group, by *James P. Richmond*, Attorney at Law, for
Washington Fair Labor Association.

Rob McKenna, Washington State Attorney General, by *Franklin
Plastowe*, Assistant Attorney General, for Washington State
Department of Revenue.

Schwerin Campbell Barnard, by *Lawrence R. Schwerin*, Attorney at
Law, for Washington Public Employees Association.

On May 12, 2006, Fair Washington Labor Association (FWLA) filed two complaints with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the above-named respondents committed unfair labor practices within the meaning of Chapter 41.80 RCW. On June 22, 2006, in its preliminary ruling, the Commission consolidated the complaints. The Commission found causes of action to exist against the Washington State Department of Revenue (DOR) and Washington Public Employees Association (WPEA) for interference with Dennis Redmon's collective bargaining rights under Chapter 41.80 RCW (PSRA). Neither the FLWA nor Redmon objected to the causes of action set forth in the preliminary ruling. The Commission assigned Examiner David I. Gedrose to conduct further proceedings. A hearing was set for December 5 and 6, 2006.

On October 16, 2006, WPEA filed a motion for summary judgment. WPEA's basis for its motion is that Redmon was a member of the Washington Management Service (WMS) at the time of the actions that were the basis for the complaints. WPEA asserts that because the PSRA excludes WMS employees from its coverage, the Commission lacks jurisdiction to pursue this case. On October 27, 2006, DOR also filed a motion for summary judgment, on the same basis as WPEA.

On November 17, 2006, FWLA responded to the motions. FWLA asserts that a question of material fact exists as to whether Redmon was a manager, although admitting he was a member of the WMS at the time relevant to the actions cited in complaints. FWLA also argues that Redmon acted on behalf of other employees and potential employees, and that the respondents' actions against him interfered with the bargaining rights of the other employees and potential employees.

The Examiner grants the respondents' motions for summary judgment and dismisses further proceedings in these cases, under WAC 10-08-135.

ISSUES PRESENTED

1. Does a question of material fact exist regarding Dennis Redmon's status as a member of the Washington Management Service at the time of the actions that were the basis for the complaints?
2. Does a question of material fact exist regarding the scope of the complaints?

ANALYSISSummary Judgment

WAC 10-08-135 provides for summary judgment where there is no genuine issue of material fact and where the moving party is entitled to judgment as a matter of law. The Commission does not take these motions lightly. *Port of Seattle*, Decision 7000 (PECB, 2000). The Commission issues summary judgements only where a defect or defense is so conclusive that no hearing is necessary. *Renton School District*, Decision 3121 (PECB, 1989).

Redmon Was a Member of the Washington Management Service

Redmon was a member of the WMS at the time FWLA asserts that the unfair labor practices occurred. Thus, the Commission lacks jurisdiction over these cases. RCW 41.80.005(6)(c) specifically excludes members of the WMS from the PSRA. RCW 41.80.120 grants the Commission enforcement powers for the provisions of RCW 41.80.110. Those statutory sections limit enforcement to employees covered by the PSRA. The Commission interprets the statutes it administers by ascertaining the statutes' words and giving them the full effect intended by the legislature. Unless statutes are ambiguous, the Commission accords them their plain and ordinary meanings. *City of Yakima*, Decision 3503-A (PECB, 1990); *State-Transportation*, Decision 8317-B (PSRA, 2005).

FWLA admits in its response to the summary judgment motions - through Redmon's own declaration, that Redmon was a WMS member at the time of the actions cited in its complaints.

The statute is unambiguous. WMS members are not covered by the PSRA. The Commission has no jurisdiction to proceed with these cases.

FWLA's argument that Redmon was not a manager under RCW 41.06.022, and Redmon's apparent contention that he should not have been included in WMS, do not raise genuine issues of material fact necessary to the outcome of these cases. Both respondents assert that Redmon was a WMS member during the pertinent time period. Redmon admits this in his declaration. The admission compels summary judgment as a matter of law.

The Scope of the Complaints Is Limited to Actions Against Redmon

The Commission's preliminary rulings define the scope of unfair labor practice complaints. The preliminary ruling in the present cases found causes of action for interference by the union and employer for alleged actions against Redmon. However, FLWA argues that its complaints apply not only to Redmon, but to a class of employees that includes: other DOR employees; officers, members, and potential members of FWLA; and all current and potential public employees.

FWLA's argument fails, based on Commission precedent. First, the Commission prohibits examiners from deciding cases beyond the scope detailed in preliminary rulings. In the present case, the Examiner has no jurisdiction to conduct a hearing regarding Redmon, for the reasons stated above. The Examiner is similarly precluded from conducting a hearing centered on evidence of employer and union interference against employees who are not named complainants in the preliminary ruling. Expanding the scope of the preliminary ruling to include employees other than Redmon would run counter to clear direction from the Commission. *Lake Washington Technical College*, Decision 4721-A (PECB, 1995); *King County*, Decision 6994-B (PECB, 2002).

Second, the Commission does not permit class actions. *Spokane School District*, Decision 8716 (EDUC, 2004). Individual employees covered by Chapter 41.80 RCW could have joined the FWLA complaints, but did not. Nothing in Commission rules or precedent allows bootstrapping other individuals into the FWLA complaints.

FLWA and Redmon fail to raise issues of material fact regarding the Commission's jurisdiction and the scope of the complaints. Respondents WPEA and DOR are entitled to summary judgments against FWLA and Dennis Redmon as a matter of law.

FINDINGS OF FACT

1. The Washington Department of Revenue (DOR) is a public employer within the meaning of RCW 41.80.010(4).
2. The Washington Public Employees Association (WPEA), an employee organization within the meaning of RCW 41.80.005(7), is the exclusive bargaining representative of certain employees of DOR.
3. On May 12, 2006, Fair Washington Labor Association (FWLA) filed unfair labor practice complaints, alleging interference by DOR and WPEA with Dennis Redmon's collective bargaining rights.
4. At the time of the actions that were the basis for the complaints, Redmon was a DOR employee and a member of the Washington Management Service (WMS).
5. RCW 41.80.005(6)(c) excludes members of WMS from the definition of employees covered by Chapter 41.80 RCW.
6. In the preliminary ruling of June 22, 2006, the Commission ruled that causes of action existed solely for claims of interference involving Redmon.
7. Neither FLWA nor Redmon objected to the Commission's preliminary ruling.

CONCLUSIONS OF LAW

1. On the basis of Findings of Fact 4 and 5, the Public Employment Relations Commission does not have jurisdiction in these matters under RCW 41.80.120 and Chapter 391-45 WAC.

2. On the basis of Findings of Fact 6 and 7, the scope of the complaints are limited to alleged violations against Dennis Redmon. No other basis exists for Commission jurisdiction in these matters under RCW 41.80.120 and Chapter 391-45 WAC.

ORDER

The complaint charging an unfair labor practice by Department of Revenue, filed in case 20390-U-06-5192, is DISMISSED as a matter of law.

The complaint charging an unfair labor practice by Washington Public Employees Association, filed in case 20391-U-06-5193, is DISMISSED as a matter of law.

ISSUED at Olympia, Washington, this 11th day of December, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

DAVID I. GEDROSE, Examiner

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.