

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Complainant,)	CASE 19874-U-05-5040
)	
vs.)	DECISION 9189 - PSRA
)	
WASHINGTON STATE - EMPLOYMENT)	
SECURITY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Complainant,)	CASE 19876-U-05-5042
)	
vs.)	DECISION 9190 - PSRA
)	
WASHINGTON STATE - EMPLOYMENT)	
SECURITY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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On October 20, 2005, the Washington Federation of State Employees (union) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Employment Security (employer) as respondent. The complaints contain similar allegations involving different bargaining units. The allegations concerning the supervisors bargaining unit were docketed as Case 19874-U-05-5040, while the allegations concerning the non-supervisory employees unit were docketed as Case 19876-U-05-5042.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 15, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. The union 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 the union. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint Involving Supervisors Unit

The allegations of the complaint in Case 19874-U-05-5040 concern employer interference with employee rights in violation of RCW 41.80.110(1)(a) and refusal to bargain in violation of RCW 41.80.110(1)(e), by circumventing the union in a reduction-in-force (RIF) process through direct dealing with employees represented by the union, by subcontracting employment services work previously performed by bargaining unit employees without providing an opportunity for bargaining, and by its refusal to provide relevant collective bargaining information requested by the union concerning the RIF process.

The complaint has several defects. One, the complaint alleges that the employer's actions in contracting out bargaining unit work violated Chapter 41.06 RCW. The Commission has no jurisdiction

¹ 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.

over the provisions of Chapter 41.06 RCW, State Civil Service Law. The Commission has jurisdiction over alleged unfair labor practice violations of Chapter 41.80 RCW, State Collective Bargaining.

Two, the complaint indicates that the union filed a lawsuit in Thurston County Superior Court on June 30, 2005, "for causes of action including . . . an unfair labor practice." Parties to a collective bargaining agreement may enforce their contractual and statutory rights by filing a lawsuit in the courts. In *City of Yakima*, 117 Wn.2d 655 (1991), the Supreme Court held that the superior courts and the Commission have concurrent jurisdiction to resolve unfair labor practice complaints involving the interpretation of public employee collective bargaining statutes. The union in *City of Yakima* filed an unfair labor practice complaint with the Commission in February, 1989. The employer filed a declaratory judgment action against the union and the Commission in superior court in August 1989. The superior court declined jurisdiction over the employer's action under the priority of action rule. In affirming the superior court's holding, the Supreme Court explained that under the priority of action rule, the tribunal first gaining jurisdiction of a matter retains exclusive authority over it until the matter is resolved.

Unfair labor practice complaints may be filed with the Commission or a superior court. Once a lawsuit is filed in superior court, the complainant cannot file a case with the Commission on the same subject matter. The priority of action rule controls the outcome of this case. The Commission must decline jurisdiction over the complaint.

Complaint Involving Non-Supervisory Employees Unit

The allegations of the complaint in Case 19876-U-05-5042 concern employer interference with employee rights in violation of RCW

41.80.110(1)(a) and refusal to bargain in violation of RCW 41.80.110(1)(e), by circumventing the union in a reduction-in-force (RIF) process through direct dealing with employees represented by the union, by subcontracting employment services work previously performed by bargaining unit employees without providing an opportunity for bargaining, and by its refusal to provide relevant collective bargaining information requested by the union concerning the RIF process.

The complaint has several defects. One, as for the complaint involving the supervisors bargaining unit, the Commission has no jurisdiction over the provisions of Chapter 41.06 RCW. Two, as for the complaint involving the supervisors unit, the Commission must decline jurisdiction over the complaint under the priority of action rule.

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 14th day of December, 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.