

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 286,)	
)	
Complainant,)	CASE 20857-U-07-5314
)	
vs.)	DECISION 9603 - PECB
)	
LAKE WASHINGTON SCHOOL DISTRICT,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
)	
)	

On January 18, 2007, International Union of Operating Engineers, Local 286 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Lake Washington School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on January 25, 2007, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint. The union was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. Nothing further has been received from the union.

This Decision dismisses defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for interference and refusal to bargain allegations of the complaint.

¹ 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.

The employer must file and serve its answer to the complaint within 21 days following the date of this Decision.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its refusal to provide relevant collective bargaining information requested by the union concerning the termination of Dusan Lazovic, and by failing to provide a Loudermill hearing to Lazovic.

The deficiency notice stated that the allegations of the complaint concerning refusal to provide information appeared to state a cause of action and would be assigned to an examiner for further proceedings under Chapter 391-45 WAC, after the union had an opportunity to respond to the deficiency notice. The deficiency notice indicated that a cause of action did not exist for the allegations concerning failure to provide a Loudermill hearing to Lazovic. The deficiency notice pointed out several defects with the complaint.

One, the Commission does not enforce the right to a "due process" hearing under *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). Claims concerning Loudermill rights must be pursued before a court.

Two, one of the remedies requested in the complaint was that "the employer . . . reinstate . . . Lazovic . . . until a proper Loudermill hearing takes place" Refusal to provide information violations typically result in an order requiring the production of information. Refusal to provide information violations do not result in an order making the employee whole through reinstatement to their previous position with back pay. A

reinstatement remedy would need to be pursued by the union through the courts, or through the grievance procedure under 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).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and refusal to bargain allegations of the complaint state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by its refusal to provide relevant collective bargaining information requested by the union concerning the termination of Dusan Lazovic.

The interference and refusal to bargain allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Lake Washington School District shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the complaint, except if a respondent states it is

without knowledge of the fact, that statement will operate as a denial; and

- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the complaint concerning employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4), by failing to provide a Loudermill hearing to Dusan Lazovic, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of February, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Field Services Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.