

Washington State University (Washington Federation of State Employees), Decision 9661 (PSRA, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE UNIVERSITY,)	
)	
Employer.)	
-----)	
DWIGHT SWANSON,)	
)	
Complainant,)	CASE 20934-U-07-5343
)	
vs.)	DECISION 9661 - PSRA
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On February 23, 2007, Dwight Swanson (Swanson) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Federation of State Employees (union) as respondent. Swanson is an employee of Washington State University (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 1, 2007, indicated that it was not possible to conclude that a cause of action existed at that time. Swanson was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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.

On March 19, 2007, Swanson filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a), by distributing false and misleading information to employees during the collection of authorization cards in support of a representation petition.

The deficiency notice pointed out several defects in the complaint. One, misrepresentations of fact or law are prohibited in a representation proceeding under Commission rules. For mail ballot elections, the rule reads as follows:

WAC 391-25-470 MAIL BALLOT ELECTION PROCEDURES--ELECTIONEERING--OBJECTIONABLE CONDUCT. The executive director shall have discretion to conduct elections by mail ballot procedures designed to preserve the secrecy of employee voting

(1) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

. . . .
(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occurring at a time which prevents others from effectively responding; and

(iv) Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(3) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

Similar prohibitions on objectionable conduct for on-site election procedures are found in WAC 391-25-490.

Commission docket records indicate that three representation petitions were filed by the union on January 24, 2007, involving employees of the employer. See Cases 20876-E-07-3216, 20877-E-07-3217, and 20878-E-07-3218. An investigation conference was held with the parties to those cases by Representation Coordinator Sally Iverson on February 27.

Commission rules prohibit misrepresentations of fact or law in a representation proceeding under certain circumstances. However, to set aside an election the misrepresentation must occur at a time which prevents others from effectively responding to the asserted falsehoods. No election date has been scheduled by the Commission for the above-referenced cases. There is ample time for others, such as Swanson, to respond to the alleged misrepresentations made by the union. The complaint fails to state a cause of action.

Two, the complaint alleges violations of RCW 41.56.040, 41.56.150, and 41.59.140. Chapter 41.56 RCW covers collective bargaining relationships in cities, counties, political subdivisions, municipal corporations, school districts (classified employees only), and other public employers. Chapter 41.59 RCW provides collective bargaining rights to certificated employees of school districts. The complaint indicates that Swanson is a state civil service employee within the meaning of Chapter 41.80 RCW. As such,

Swanson is covered by the statutory provisions of Chapter 41.80 RCW, but not the provisions of Chapters 41.56 or 41.59 RCW.

Amended Complaint

The amended complaint corrects the second defect by eliminating references to Chapters 41.56 and 41.59 RCW and citing alleged violations under Chapter 41.80 RCW.

However, the amended complaint fails to correct the underlying defect of the original complaint: No election violation can occur when no election has been scheduled or conducted. The amended complaint adds details regarding time, places, and persons to the facts alleged in the original complaint, a theory as to why the union's information constitutes misrepresentation, and an explanation regarding Swanson's inability to respond to the union's claims.

Swanson's theory regarding the union's alleged misrepresentations seems to be that the union cannot guarantee benefits because no elections have taken place, the union is not the bargaining representative, and therefore it cannot promise said benefits. Swanson further asserts that he lacks the addresses of other employees which would allow him to respond to the union's claims and does not have time during the work day to personally contact each prospective bargaining unit member in order to dispute the union.

Swanson thus alleges misrepresentation based upon two events which have not occurred: the elections and the union's possible loss of the elections. WAC 391-25-470 provides that alleged misrepresentations of fact or law may be only asserted to set aside elections

that *have occurred*. He further alleges that his inability to counter the union rests completely on having addresses of employees as well as using his working hours to contact other employees. He does not explain why those are the only two avenues of publicity open to him. Swanson's amended complaint does not allege facts showing that the union has violated WAC 391-25-470 and does not state a cause of action under Chapter 41.80 RCW.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day of May, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 20934-U-07-05343 FILED: 02/23/2007 FILED BY: PARTY 2

DISPUTE: UN INTERFERENCE

BAR UNIT: SKILLED MAINT

DETAILS: Pay Raises and Health Care Lumpsum payments to members

COMMENTS:

EMPLOYER: WASHINGTON STATE UNIVERSITY

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