

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                   |   |                      |
|-----------------------------------|---|----------------------|
| WASHINGTON EDUCATION ASSOCIATION, | ) |                      |
|                                   | ) |                      |
| Complainant,                      | ) | CASE 21052-U-07-5374 |
|                                   | ) |                      |
| vs.                               | ) | DECISION 9784 - EDUC |
|                                   | ) |                      |
| VANCOUVER SCHOOL DISTRICT,        | ) |                      |
|                                   | ) | ORDER OF DISMISSAL   |
| Respondent.                       | ) |                      |
| _____                             | ) |                      |

On May 7, 2007, the Washington Education Association (WEA) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Vancouver School District as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on June 6, 2007, indicated that it was not possible to conclude that a cause of action existed at that time. The WEA was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

The WEA has not filed any further information. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

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<sup>1</sup> 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.

DISCUSSION

The allegations of the complaint concern employer refusal to bargain in violation of RCW 41.59.140(1)(e) [and if so, derivative "interference" in violation of RCW 41.59.140(1)(a)], by its breach of good faith bargaining obligations in ending a collective bargaining meeting over the interpretation of ground rules regarding the union's intent to make an audio recording of the meeting. The complaint also alleges an "other unfair labor practice," described as "impasse over a permissive subject of bargaining."

It is not possible to conclude that a cause of action exists at this time for the allegations of the complaint. The deficiency notice pointed out several defects.

One, the Commission has adopted the following rule regarding 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.

The union checked the box on the complaint for "other unfair labor practice" and added the statement, "impasse over a permissive subject of bargaining." The intent of this statement is unclear. The statement of facts attached to the complaint does not allege that the employer declared an impasse in bargaining. If the statement simply means that the parties are at impasse over a

permissive subject of bargaining, then that assertion does not constitute a violation. The complaint does not allege facts sufficient to conclude that other unfair labor practices could be found.

Two, regarding the allegation of employer refusal to bargain, mandatory subjects of bargaining, including wages, hours, and working conditions, are matters over which employers and unions must bargain in good faith. It is an unfair labor practice for either party to fail or refuse to bargain a mandatory subject. *Skagit County*, Decision 8746-A (PECB, 2006). Permissive subjects of bargaining are subjects over which the parties may negotiate, but are not obligated to do so. Each party is free to bargain or not to bargain. *Skagit County*, Decision 8746-A. Management decisions concerning permissive subjects need not be bargained to impasse. *Kitsap County*, Decision 8402-B (PECB, 2007). The union admits in its statement of facts that ground rules are a permissive subject of bargaining. The complaint does not allege facts sufficient to conclude that the employer breached its duty to bargain in good faith when it declined to bargain over ground rules concerning the union's attempt to make an audio recording of the collective bargaining meeting.

Three, the statement of facts alleges that the collective bargaining agreement between the parties should determine the interpretation of ground rules for negotiation, specifically, whether audio recordings of meetings are permitted. The Commission does not have jurisdiction over disputes regarding the ground rules between the parties engaged in collective bargaining. The Commission has long held that agreements by parties on ground rules to guide their negotiations become private contracts, and that any remedy for alleged violations of agreed-upon ground rules must be sought

through contractual procedures, e.g., grievance arbitration or the courts. *City of Sumner*, Decision 6210 (PECB, 1998). The Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provision of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). An arbitrator or judge must decide the question of whether audio recordings are permitted under the collective bargaining agreement.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 21052-U-07-5374 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29<sup>th</sup> day of June, 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

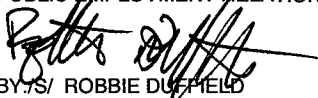
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The attached document identified as: **DECISION 9784 - EDUC** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: TS/ ROBBIE DUFFIELD

CASE NUMBER: 21052-U-07-05374 FILED: 05/07/2007 FILED BY: PARTY 2  
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COMMENTS:

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