

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| INTERNATIONAL UNION OF OPERATING | ) |                       |
| ENGINEERS, LOCAL 286,            | ) |                       |
|                                  | ) |                       |
| Complainant,                     | ) | CASE 21594-U-08-5506  |
|                                  | ) |                       |
| vs.                              | ) | DECISION 10049 - PECB |
|                                  | ) |                       |
| PUYALLUP SCHOOL DISTRICT,        | ) | PRELIMINARY RULING    |
|                                  | ) | AND ORDER OF PARTIAL  |
| Respondent.                      | ) | DISMISSAL             |
|                                  | ) |                       |

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On March 13, 2008, the 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 Puyallup School District (employer) as respondent. The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on March 19, 2008, 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. The union has not filed any further information. The Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state causes of action and finds causes of action as set forth in the preliminary ruling below. The employer must file and serve its answer within 21 days following the date of this Order.

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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 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 (1) its unilateral change to the job share benefit available to bargaining unit employees, without providing an opportunity for bargaining, and (2) its unilateral change in working conditions by implementing a new school bus drivers' handbook, without providing an opportunity for bargaining.

The allegations of the complaint concerning interference and refusal to bargain regarding the implementation of the school bus drivers' handbook state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice set forth the defects to the complaint.

First, the following statute applies to the timeliness of unfair labor practice complaints.

RCW 41.56.160--COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The union filed the complaint on March 13, 2008. Allegations of the complaint subject to remedial orders must have occurred on or after September 13, 2007. The complaint alleges that the employer discontinued the job share benefit on August 21, 2007. This allegation is untimely.

Second, Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. Complaints must conform to WAC 391-45-050.

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 statement of facts implies continuing unfair labor practices resulting from the employer's actions on August 21, 2007, by alleging that the employer's decision regarding the job share benefit had an adverse impact on employees on or after September 13, 2007. However, the statement of facts does not supply information concerning times, dates, places, and participants in the alleged occurrences.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, interference and refusal to bargain allegations of the complaint state causes 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 unilateral change in working conditions by implementing a new school bus drivers' hand-book, without providing an opportunity for bargaining.

These allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Puyallup 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.
- c. Specify whether "deferral to arbitration" is requested and, if so:
  - i. Indicate whether a collective bargaining agreement was in effect between the parties at the time of the alleged unilateral change;
  - ii. Identify the contract language requiring final and binding arbitration of grievances;
  - iii. Identify the contract language which is claimed to protect the employer conduct alleged to be an unlawful unilateral change;

iv. Provide information (and copies of documents) concerning any grievance being processed on the matter at issue in this unfair labor practice case; and

v. State whether the employer is willing to waive any procedural defenses to arbitration.

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 its unilateral change to the job share benefit available to bargaining unit employees, without providing an opportunity for bargaining, are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 21<sup>st</sup> day of April, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

Paragraph 3 of 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.