

Community College District 23 (Edmonds), Decision 10250 (CCOL, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMERICAN FEDERATION OF TEACHERS,)	
LOCAL 4254,)	
)	
Complainant,)	CASE 22084-U-08-5624
)	
vs.)	DECISION 10250 - CCOL
)	
COMMUNITY COLLEGE DISTRICT 23)	
(EDMONDS),)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
-----)	

On October 31, 2008, the American Federation of Teachers, Local 4254 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Community College District 23 - Edmonds (employer) as respondent. The allegations of the complaint concern employer interference with employee rights in violation of RCW 28B.52.073(1)(a), domination or assistance of a union in violation of RCW 28B.52.073(1)(b), and discrimination in violation of RCW 28B.52.073(1)(c), by its termination of Margaret West (West) in reprisal for union activities protected by Chapter 28B.52 RCW; and refusal to bargain in violation of RCW 28B.52.073(1)(e). by its unilateral change in its policy regarding termination of part-time academic employees when it terminated West, without providing an opportunity for bargaining.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 14, 2008, indicated that it was not possible to conclude that a cause of action existed at that time for allegations concerning employer domination or assistance of a union. 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 of the complaint. On November 25, 2008, the union filed an amended complaint. The Unfair Labor Practice Manager dismisses the allegations of the amended complaint concerning domination or assistance of a union for failure to state a cause of action and finds causes of action for the interference, discrimination, and refusal to bargain allegations. The employer must file and serve its answer to the amended complaint within 21 days following the date of this decision.

DISCUSSION

The deficiency notice pointed out the defects to the complaint. The union did not check the box on the complaint form alleging employer domination or assistance of a union; however, in both the statement of facts and remedy the union asserts a violation of RCW 28B.52.073(1)(b). While the facts alleged in the complaint state causes of action for employer interference, discrimination, and refusal to bargain in its actions involving West, the facts do not indicate that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union."

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 Amended Complaint

The union checked the box on the amended complaint form for "employer domination or assistance of a union." However, the statement of facts and requested remedy attached to the amended complaint are identical to the those attached to the original complaint. The amended complaint fails to assert new facts indicating a cause of action for employer domination or assistance of a union.

It is an unfair labor practice for an employer to involve itself in the internal affairs of a union, to include interfering with the selection of union officers. The union alleges that the employer's termination of West interferes with "the union's right to elect its officers and govern itself." The union's theory appears to be that one instance of alleged employer discrimination against a union officer is factually sufficient to support a cause of action for employer domination of a union. However, the claim concerning the employer's alleged discrimination regarding West does not necessarily indicate that the employer also intended to dominate the union's internal operations. The union must show such a connection through facts, not by implication. The deficiency notice gave the union the opportunity to provide additional facts to support its domination claim; it failed to do so.

NOW, THEREFORE, it is

ORDERED

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

[1] employer interference with employee rights in violation of RCW 28B.52.073(1)(a) and discrimination in violation of RCW 28B.52.073(1)(c), by its termination of Margaret West (West) in reprisal for union activities protected by Chapter 28B.52 RCW; and [2] employer interference with employee rights in violation of RCW 28B.52.073(1)(a) and refusal to bargain in violation of RCW 28B.52.073(1)(e), by its unilateral change in its policy regarding the termination of part-time academic employees when it terminated West, without providing an opportunity for bargaining.

These allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC. The cause of action for discrimination precludes deferral to arbitration.

2. Community College District 23 - Edmonds 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 amended 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 amended 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 amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the amended complaint concerning employer domination or assistance of a union in violation of RCW 28B.52.073(1)(b) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 5th day of December, 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 on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.