

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORTHPORT EDUCATION ASSOCIATION,)	
)	
Complainant,)	CASE 22125-U-08-5638
)	
vs.)	DECISION 10261 - EDUC
)	
NORTHPORT SCHOOL DISTRICT,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
_____)	

On November 21, 2008, the Northport Education Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Northport School District (employer) as respondent. The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.59.140(1)(a), by threats of reprisal or force or promises of benefit concerning union activities by actions and statements of the school board toward bargaining unit members on November 18, 2008.

The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 3, 2008, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint.

On December 11, 2008, the union filed an amended complaint, which made allegations of employer discrimination in violation of RCW

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.

41.59.140(1)(c) and 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)].

The Unfair Labor Practice Manager dismisses allegations of the amended complaint concerning employer discrimination for failure to state a cause of action and finds causes of action for the refusal to bargain and derivative interference 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 defect in the original complaint. 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 fails to identify either the employer or union individuals who participated in the meeting of November 18, 2008. References to the "Board" and "members of the NEA bargaining unit" are not specific enough to state a cause of action. The complaint does not comply with WAC 391-45-050(2).

The Amended Complaint

The amended complaint asserts that the employer committed an unfair labor practice by sending a letter on November 19, 2008, to

bargaining unit members concerning their union activities. The union has provided sufficient facts to indicate that a cause of action exists for an allegation concerning employer refusal to bargain by circumvention of the union, through the school board's direct dealing with bargaining unit members in sending the November 19 letter, before the letter was presented to the union.

The union did not check the box on the amended complaint form for employer interference, but rather substituted a claim for employer discrimination. The amended statement of facts makes clear the union's intent to pursue a discrimination claim based upon the November 19 letter; the union apparently withdraws its independent interference allegation.

Regarding the discrimination claim, it is an unfair labor practice for an employer to discriminate against employees in reprisal for union activities protected under Chapter 41.59 RCW. Discrimination claims must indicate a deprivation of an ascertainable right, status, or benefit. While the contents of the November 19 letter support a cause of action for circumvention and derivative interference, the union has not presented evidence that the employer has, through sending the letter, deprived bargaining unit members ascertainable rights, status, or benefits. The union has not stated a claim for employer discrimination in violation of RCW 41.59.140(1)(c).

NOW, THEREFORE, it is

ORDERED

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

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 circumvention of the union through direct dealing with employees, when on November 19, 2008, the school board sent a letter to bargaining unit members concerning union activities, before the letter was presented to the union.

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

2. The Northport 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 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 discrimination in violation of RCW 41.59.140(1)(c) are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 29th 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.