STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| BETHEL SCHOOL DISTRICT, Employer. | |
| TAMMY LYN PARSONS, Complainant, vs. PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Respondent. | CASE 14565-U-99-3638<br>DECISION 6847-A PECB |
| TAMMY LYN PARSONS, Complainant, vs. BETHEL SCHOOL DISTRICT, Respondent. | CASE 14566-U-99-3639<br>DECISION 6848-A PECB<br>DECISION OF COMMISSION |

This case comes before the Commission on an appeal filed by Tammy Parsons, seeking to overturn orders of dismissal issued by Executive Director Marvin L. Schurke on October 12, 1999.[1] We affirm.

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[1] Bethel School District, Decision 6847 (PECB, 1999); Bethel School District, Decision 6848 (PECB, 1999).

BACKGROUND

On May 7, 1999, Tammy Lyn Parsons filed a complaint charging unfair labor practices with the Public Employment Relations Commission, claiming that both her former employer and her former exclusive bargaining representative violated her rights under state law. Consistent with established practice, a separate case was docketed for each party being charged with misconduct: Case 14565-U-99-3638 covers the allegations against the union; Case 14566-U-99-3639 covers the allegations against the employer.

Parsons was employed as a school bus driver by Bethel School District (employer) within a bargaining unit represented by Public School Employees of Washington (union).

The body of Parsons' complaint reads in full as follows:[2]

> I resigned from Bethel District due to harassment from staff at transpertation. Although I feel it is from filing grievances. Which are from labor dispute rights, and so support from district after review of paid leave the union showed the driver was being fair. There was no direct focuse on any one group. Previous Labor dispute have been won in my favor do to nonbypass investigations done by transpertation.
> Racial harassment - I was put or paid leave and another was not not suspended and transpertation was fully aware. Favoritism to one student to another. Depends on who you are if the rules apply to you. I've had

[2] The complaint was accompanied by more than 120 pages of documents, using the "Complaint Charging Unfair Labor Practices" form as the cover sheet on the package. The assumption that alleged facts are true and provable does not compel the Executive Director to ignore conflicts within such documents.

> grievance swepted under carpet. Just egnored. But if you use it they will make you miserable. Some races can get away with bad manners and others can not. My own children are kids of color. The driver is late at least two days a week. Are they written up?
> Kathy Holt says to me "I heard you'd be trouble." Said that was from person at Rocky Ridge. But wouldn't give the name. Sounds like gossip to me or slander. After my paid leave received several calls from Bethel employees. My daughter was questioned by a bus driver of my employment! People were told I was fired. I gave cut smokes to students, bus was unsafe, found smokes on bus. The list just went on and on. This gossip wasn't in the best for my being.
> Remedies for unfair labor practice 3 years salary and attorney paid two years on medical & dental! and a apology!

The materials accompanying the complaint indicate Parsons had filed several grievances against the employer, with some success, but do not identify any previous unfair labor practice charges. The materials refer to race discrimination issues, but do not specify Parsons' race or allege specific instances of discrimination against her. Rather, the documents suggest the employer proposed Parsons' discharge because of allegations that Parsons herself discriminated against minorities.

A combined deficiency notice was issued on August 17, 1999. On August 24, 1999, Parsons filed a timely amended complaint accompanied by two hand written documents, apparently from students on her former route who wanted her to return. The body of the amended complaint reads, in full, as follows:

> Case #14565-U-99-3638 the union was fully aware of everything up until letter the last letter of finding of last allegations. at the last meeting with Bethel & union present the

> school administration didn't fill that Pat Lambert needed to be there to pick-up last letter from them. When in fact he should have been. Lambert didn't fill they had a case. So failed to be there. He was notified of the last letter from Bethel, and all it said.
> Case #14566-U-993639 Covers the Bethel School district. My own step son was kicked off Bethel buses several times. His father is American and Indian. Father is registered. Parents that made allegations about myself only did so because they're children had been given bus slips for poor behavior on bus and would get kicked off per Bethels bus conduct rules.
> Bethel did not talked to other children on this bus route to confurm allegations. This also happened on Pioneer Valley route and Bethel had to drop it when union told them to talk to other people on bus. Same kind of situation. and yes if bus rules must depend on race-color etc.
> I had a video tape on two of the boys - Bethel said nothing was on tape. But I had copied it before I turned into Joseph Hartwich just in case. One lie after another. Can get statements from other children on same route.

The Executive Director concluded that the deficiencies had not been corrected, and he dismissed the complaints for failure to state a claim for relief available through procedures before the Commission. The Executive Director found that the original and amended complaints, taken together, lacked any indication that the employer harbored anti-union animus that would connect Parsons' union activities with her discharge and contradicted Parsons' claim that she "resigned" because of employer harassment due to her union activities.

The body of Parsons' notice of appeal, received October 22, 1999, reads in full as follows:

> Yes, I do wish to appeal dissicussion! Misconduct isn't proven fairly. Did Bethel talk to to unbias parties? Was file from Bethel pulled? Not to my knowledge in either case.
>
> 1) Case where Bethel is unfair with childrens punishment.
>
> 2) Parsons was drug test for new employment and had already started work before she pick-up Bethel's final discussion. Sle has pay stubs.
>
> 3) Parsons also has video tapes the state should see.
>
> 4) Why was one parent taken off final discussion by Bethel?
>
> In one paragraph you state (some success) and under allegations (largely successful) on page. Why? Papers filed show patern by Bethel. I would like this to be looked into further and would like notice so I my sent in other statements from Bethel parents on this issue.

The body of Parsons' second notice of appeal, received on November 8, 1999, reads in full as follows:

> I do not agree with your discion! The dates of the Philips and grievances filed are all in same time frame. All problems started after fighting grievances. Bethel has also left things out of their own logical order, no grievances even on it. All evidence has not been put in on my behave. There are many questions! Union was fully aware, and Bethel was trying to get me out. So they got their wish when they put me on paid leave, had a new job 5/1/99! So it wasnt a question of being fired. I already had a job that would conflict would their hours, before I received the last letter of them not paying myself. Were allegations proven with out a dought? Or did Bethel just choose to believe them, instead of doing a fair investigation?

The body of Parsons' appeal brief, received January 6, 2000, reads in full as follows:

> In this case a parent retaliated after their children received bus slips for bad behavior on school bus. Then they contacted Bethel and said, "I was being racist." When in act I had a video tape of said children on the school bus. When in fact they had no idea what nationality my own children were. Joseph Hartwich of Bethel was given this tape to watch and infront of Pat Lambert (union) said nothing was on tape. I informed that I copied tape and still have when I need to use it. Bethel had also dropped one parent complaint, because I believe they didn't want to go there. She had called work and talked to Joan Sager and refured to myself as a white girl. Isn't that racist? All children should be treated the same. When in fact when Bethel was made to look into cases, they in fact found it wasn't the driver. But would only go the extra mile for driver if she filed grievances and followed through even to extent to go to arbitration to look at situation, and won. This last one was put on paid leave, landed another job 3/1/99 and Bethel still says I was fired. When in fact I was already employed. All bus slip had divided up and even that showed I wasn't being racist. Then when a child didn't board bus with the rest of the children, then that made me a bad driver. When in fact I would be close to last bus in line and officials from school flags us thats its okay to leave! When in fact my own step son was denied to be enrolled in challenge in Bethel, to be on waiting list - and was never contacted... When in fact with 40 plus on a school bus and of many nationalities, how many complaints came from parents of children with no bus behavior problems.

Because the complaints were dismissed at the preliminary ruling stage, the union and employer are not required to file answers or

otherwise defend in these proceedings. Thus, the respondents have not taken positions on the notice of appeal.

## DISCUSSION

Parsons marked boxes on the complaint form to allege that the employer interfered with her rights and discriminated against her for filing charges, that the union induced the employer to commit violations, and that other unfair labor practice violations occurred.

### Allegations Insufficiently Detailed

Parsons makes references to people and events without explaining who the people are, the circumstances surrounding the particular incident, or how her rights were violated under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. For example, Parsons asserts that her union representative should have accompanied her to get her "last letter." However, she provides no dates, makes no allegation that the employer prevented her union representatives from being there, and provides no details suggesting she would have been entitled to union representation.

WAC 391-45-050(2) specifically requires that an unfair labor practice complaint must contain, in separate numbered paragraphs, a clear and concise statement of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences.[3] City of Seattle, Decision 5852-C (PECB, 1998), affirmed Apostolis v. City of Seattle, 101 Wn.App.

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[3] The rule is set forth here as it existed at the time relevant to this case. It has since been amended.

300 (Division One, 2000). The facts set forth in the complaint "must be sufficient to make intelligible findings of fact in a 'default' situation." Apostolis, supra (citing Thurston County Fire District 3,[4] Decision 3830 (PECB, 1991)). A skeletal "charge" will not suffice and will not be fleshed out by agency personnel. Jefferson Transit Authority, Decision 5928 (PECB, 1997).

The Executive Director must make a preliminary ruling under WAC 391-45-110 based on what is contained within the four corners of the complaint. Apostolis, supra; Jefferson Transit Authority, supra. While it is presumed under WAC 391-45-110 that all of the facts alleged in a complaint are true and provable, the Executive Director is not empowered to make leaps of logic or to fill in gaps in a complaint. Jefferson Transit Authority, supra. On the other hand, the Executive Director cannot ignore obvious conflicts between the alleged fact and the materials filed in support of a complaint. See Spokane County, Decision 6708 (PECB, 1999). Like the Executive Director, we are confined to the facts alleged in the complaint and amended complaint. City of Bellevue, Decision 3343-A (PECB, 1990). Thus, the issue at hand is whether the complaint and amended complaint state a cause of action.

Our rules do not require that parties appearing before the Commission be represented by legal counsel, but an individual proceeds at their own peril. King County, Decision 6767-A (PECB, 1999). Whether an individual is represented by legal counsel or not, the Commission applies the same standards to the determination of whether a complaint states a cause of action. See City of Kirkland, Decision 6377-A (PECB, 1998). The Commission must

[4] The rule is set forth here as it existed at the time relevant to this case. It has since been amended.

consider the rights of other parties. See King County, Decision 5595-A (PECB, 1996).

Parsons was notified that the factual allegations appeared to be insufficient in this case, and was provided an opportunity to amend. Since Parsons provided an amended complaint in response to the deficiency notice, it must be presumed that she has provided all of the details at her disposal. The complaint and amended complaint, taken together, still do not provide the factual details needed to state a cause of action, as called for by the Commission's rules.

Commission's Duty to Investigate and Prosecute

Parsons asserts that the employer did not fairly investigate allegations made against her, and she asks the Commission to investigate those allegations. In her amended complaint, Parsons asserts "Bethel did not talked to other children on this bus route to confurm allegations." In her first notice of appeal, Parsons (1) asks "[w]as file from Bethel pulled? Not to my knowledge in either case," (2) states that she has videotapes the state should see, and (3) and concludes by adding "I would like this to be looked into further and would like notice so I my sent and other statements from Bethel parents on this issue." In Parsons' second notice of appeal she notes the following:

> All evidence has not been put in on my behave. There are many questions! . . . Were allegations proven without a dought? Or did Bethel just choose to believe them, instead of doing a fair investigation?

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, is generally patterned after the National Labor Relations Act

(NLRA). There are major differences, however, in the way the state and federal statutes are administered. A party need only file a general "charge" with the National Labor Relations Board (NLRB), after which the NLRB staff conducts a detailed investigation and issues a "complaint," where appropriate, prior to prosecuting the complaint on behalf of the injured party. In contrast, the Commission has never conducted investigation or prosecution of complaints, and parties are called upon to file and serve a "complaint." The Commission's rules require the filing of a detailed complaint which must be sufficient for the Executive Director to discern the existence of a cause of action, and then sufficient to put the respondent on notice of the charges that it will be expected to meet at hearing. Thurston County Fire District 3, supra.

The Commission cannot investigate or prosecute unfair labor practice violations, rather the burden is on the complaining party to take such action.

## Notice of Appeal Insufficiently Detailed

WAC 391-45-350(3) states in relevant part that a notice of appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.[5] The notices of appeal in these cases are insufficiently detailed.

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[5] The rule is set forth here as it existed at the time relevant to this case. It has since been amended.

## New Arguments Asserted on Appeal

On appeal, Parsons asserts a variety of new facts and arguments. For example, Parsons states that she "resigned" because she had already obtained another job prior to being fired.

The Commission does not allow parties to bring forth new facts on appeal that could have been considered in proceedings before Examiners or the Executive Director. King County, Decision 6291-A (PECB, 1998); WAC 391-45-270.[6] The Supreme Court of the State of Washington applies a similar standard for new arguments, theories, or issues not advanced below. Washburn v. Beatt Equipment Co., 120 Wn.2d 246 (1992).

Thus, the Commission cannot consider Parsons' new arguments on appeal since the applicable facts were available to her when she filed the original complaint.[7]

## Unfair Labor Practices

Parsons asserts "I resigned from Bethel District due to harassment from staff at transpertation. Although I feel it is from filing grievances." She also states the following:

> I've had grievances swept under carpet. Just egnored. But if you use it they will make you

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[6] The rule is set forth here as it existed at the time relevant to this case. It has since been amended.

[7] Even if we were to consider this new information, however, we could not ignore obvious conflicts between facts in the second notice of appeal that indicate she had a new job 5/1/99 and facts in the appeal brief that indicate she landed another job 3/1/99.

> miserable. Some races can get away with bad manners and others can not.

On the complaint form, Parsons checked a box under "Alleged Violations," indicating the employer discriminated against her for filing charges. RCW 41.56.140(3). RCW 41.56.140, which list unfair labor practices for public employers, reads:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; . . .
> (3) To discriminate against a public employee who has filed an **unfair labor practice charge**; . . .

[Emphasis by **bold** supplied.]

It could be inferred that Parsons felt discriminated against for filing grievances, which would be a violation of RCW 41.56.140(1) if sufficiently pleaded and proved. However, Parsons has not filed any previous unfair labor practice charges, which is an entirely different process than a grievance under a collective bargaining agreement. Parsons' complaint was filed in May 1999, nearly two months after her employment was terminated in March 1999. The employer could not have been discriminating against Parsons for filing an unfair labor practice charge that had not yet been filed. Therefore, Parsons has failed to allege sufficient times, places, dates, or participants to make out a claim for an unfair labor practice violation. Thus, the Executive Director properly dismissed the complaint.

No Jurisdiction to Remedy Violation of Contract Claims

Parsons asserts that she "resigned" because of employer harassment after she filed grievances. However, the extensive materials accompanying the complaint indicate the resignation occurred on March 18, 1999, which is the same day Parsons was notified of a recommendation that she be discharged based on her handling of students and her unprofessional interactions with parents.

On the complaint form, Parsons checked a box under "Alleged Violations," indicating the employer interfered with employee rights. RCW 41.56.140(1). Before the Commission, Parsons appears to dispute the recommendation that she be discharged, but does not allege she filed a grievance. Parsons questions the adequacy of the employer's investigation, and the statements from students could be part of the defenses she asserts against the recommendation that she be discharged.

It has long been established that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW. Violations of collective bargaining agreements must be pursued through grievance arbitration established within the applicable collective bargaining agreement or through the courts. City of Walla Walla, Decision 104 (PECB, 1976).

Job security rights are often a component of a collective bargaining agreement which states that employees may be disciplined or discharged only for "just cause."

The Commission is not the proper forum to determine whether Parsons was fired for just cause or whether she resigned because the

Commission does not have authority to remedy violations of collective bargaining agreements.

## No Jurisdiction in Duty of Fair Representation Cases

The Commission does not assert jurisdiction in "duty of fair representation" claims arising exclusively out of the processing of grievances because it lacks jurisdiction to remedy any underlying contract violation. Mukilteo School District, Decision 1381 (PECB, 1982). The duty of fair representation is characterized as union action which is arbitrary, discriminatory, or in bad faith. Mukilteo, supra. As a practical consideration, an arbitrator or court would need to decide whether there has been a breach of the duty of fair representation in the context of any violation of contract claim. Mukilteo, supra. Thus, it would make little sense for the Commission to rule on a fair representation claim when it cannot rule on the underlying breach of contract issue. Mukilteo, supra.

The Commission is not the proper forum to determine any complaints Parsons may have about the union's processing of her grievances because the Commission does not have authority to remedy violations of collective bargaining agreements.

## No Interference Violation

Parsons appears to allege, in her amended complaint, that the union did not properly represent her interests when the employer discharged her. In her amended complaint, Parsons states:

> [S]chool administration didn't fill that Pat Lambert needed to be there to pick-up last letter from them. When in fact he should have

> been. Lambert didn't fill they had a case. So failed to be there.[8]

Under RCW 41.56.140(1), it is an unfair labor practice for a public employer to interfere with public employees in the exercise of their rights guaranteed in Chapter 41.56 RCW or to interfere with a bargaining official.

Bargaining unit members do have a right to union representation at an investigatory interview when discipline might result:

> In National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975), the Supreme Court of the United States held that union-represented employees have a right to the presence and assistance of a union representative when confronting the employer in an investigatory interview where the employee reasonably perceives that discipline could result. That precedent has been embraced by the Public Employment Relations Commission in numerous cases.

City Seattle, Decision 6357 (PECB, 1998).

However, the right to union representation does not apply where the purpose of the meeting is merely to give an employee notice of an action being proposed (e.g., notice of an interview or hearing to be held) or a decision already made (e.g., discipline imposed). In a case where an employee was called to meetings, but conceded the employer's purpose was to either counsel her or to inform her of previously-determined discipline, the analysis was as follows:

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[8] Review of the 120 pages submitted with the complaint supports an inference that the "last letter" referred to is the notice of the superintendent's recommended discharge.

> Those meetings were therefore not "investigatory" in nature, and no Weingarten rights attached to [the employee's] participation in them.

Whatcom Transportation Authority, Decision 5276 (PECB, 1995).

We agree with the Executive Director that in the absence of facts sufficient to conclude that Parsons had a right to request union representation, there is neither a basis to conclude that the union had any obligation to represent her, nor does this allegation show the employer prevented the union representative from being present.

## No Jurisdiction to Remedy Racial Discrimination

The Public Employment Relations Commission only deals with issues of discrimination insofar as they affect collective bargaining relationships regulated by Chapter 41.56 RCW. The primary jurisdiction to deal with allegations of discrimination on the basis of race or national origin lies with the Washington State Human Rights Commission, under Chapter 49.60 RCW. See City of Seattle, Decision 205 (PECB, 1977).

The pleadings and accompanying materials referred to issues arguably involving race discrimination, but Parsons failed to supply any detailed facts to support her suggested claims of racial harassment or discrimination affecting collective bargaining relationships. The Commission is not the proper forum within which to remedy such disputes.

## Conclusion

We agree with the Executive Director that there is nothing within the four corners of the complaint or amended complaint to support

a cause of action against the union or the employer. Parsons has not alleged facts sufficient to form a conclusion that any union or employer action regarding her employment was caused by unlawful discrimination, that the union acted in reprisal for Parsons' exercise of rights protected by Chapter 41.56 RCW, that the union induced the employer to commit unfair labor practice violations, or that any other unfair labor practice violations occurred.

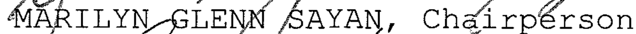
NOW, THEREFORE, it is

ORDERED

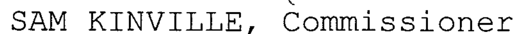
The Orders of Dismissal issued by Marvin L. Schurke in the above captioned matters on October 12, 1999, are AFFIRMED.

Issued at Olympia, Washington, this 10th day of October, 2000.

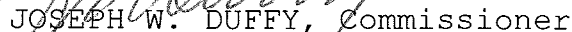
PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner