

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DOUGLAS LEWIS,	)	
	)	
Complainant,	)	CASE 16957-U-02-4407
	)	DECISION 8206 - EDUC
vs.	)	
	)	
WENATCHEE SCHOOL DISTRICT,	)	PARTIAL DISMISSAL AND
	)	ORDER FOR FURTHER
Respondent.	)	PROCEEDINGS
_____	)	
DOUGLAS LEWIS,	)	
	)	
Complainant,	)	CASE 16958-U-02-4408
	)	DECISION 8207 - EDUC
vs.	)	
	)	
WENATCHEE SCHOOL DISTRICT,	)	CASE 16959-U-02-4409
	)	DECISION 8208 - EDUC
Respondent.	)	
_____	)	ORDER OF DISMISSAL

On November 25, 2002, Douglas Lewis (Lewis) filed three complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Wenatchee School District (employer) as respondent. The first complaint involves allegations concerning Joan Wright, executive director of human resources, and was docketed by the Commission as Case 16957-U-02-4407. A second complaint involves allegations concerning Jeanine Butler, a district administrator, and was docketed as Case 16958-U-02-4408. A third complaint involves allegations concerning Nancy Duffy, a district employee, and was docketed as Case 16959-U-02-4409.

The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on August 27, 2003, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations in Case 16957-U-02-4407, and for the complaints in Cases 16958-U-02-4408 and 16959-U-02-4409. Lewis was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the defective allegations in Case 16957-U-02-4407, and the complaints in Cases 16958-U-02-4408 and 16959-U-02-4409. Nothing further has been received from Lewis.

The Unfair Labor Practice Manager dismisses the defective allegations in Case 16957-U-02-4407, and the complaints in Cases 16958-U-02-4408 and 16959-U-02-4409, for failure to state a cause of action.

## DISCUSSION

### Complaint Involving Joan Wright

The allegations of the complaint in Case 16957-U-02-4407 concern employer interference with employee rights in violation of RCW 41.59.140(1)(a), by questioning Lewis about his duties as a union building representative, conducting an illegal investigation that violated Lewis' due process rights under the parties' collective bargaining agreement and the U.S. Constitution, making negative

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

comments to other employees, and the involuntary transfer of Lewis in violation of the parties' agreement.

The deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time for the allegations concerning violation of the parties' collective bargaining agreement and the U.S. Constitution. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). Claims concerning an employee's constitutional rights must be pursued before a court.

The deficiency notice stated that in reference to actions taken by Wright on May 20, 2002, the Commission is bound by the following provisions of Chapter 41.59 RCW:

RCW 41.59.150 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES -- SCOPE. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: 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 complaint is limited to allegations of employer misconduct occurring on or after May 25, 2002.

The deficiency notice stated that the interference allegations of the complaint under RCW 41.59.140(1)(a) concerning transfer of Lewis in reprisal for his union activities protected by Chapter 41.59 RCW appeared to state a cause of action, and would be assigned to an examiner for further proceedings under Chapter 391-

45 WAC, after Lewis had an opportunity to respond to the deficiency notice.

Complaint Involving Jeanine Butler

The allegations of the complaint in Case 16958-U-02-4408 concern employer interference with employee rights in violation of RCW 41.59.140(1)(a), and domination or assistance of a union in violation of RCW 41.59.140(1)(b), by criticizing Lewis in a meeting with other employees in violation of the parties' collective bargaining agreement.

The deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). The deficiency notice stated that in relation to the allegation of employer domination or assistance of a union in violation of RCW 41.59.140(1)(b), none of the facts alleged in the complaint suggested that the employer had involved itself in the internal affairs or finances of the union, or that the employer had attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

Complaint Involving Nancy Duffy

The allegations of the complaint in Case 16959-U-02-4409 concern employer interference with employee rights in violation of RCW

41.59.140(1)(a), by criticizing Lewis in front of another employee in violation of the parties' collective bargaining agreement.

The deficiency notice indicated that it was not possible to conclude that a cause of action existed at that time. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976).

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint in Case 16957-U-02-4407 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.59.140(1)(a), by the transfer of Douglas Lewis in reprisal for his union activities protected by Chapter 41.59 RCW.

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

2. Wenatchee 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.

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. See WAC 391-45-210.

3. The allegations of the complaint in Case 16957-U-02-4407 concerning employer interference with employee rights in violation of RCW 41.59.140(1)(a), by questioning Lewis about his duties as a union building representative, conducting an illegal investigation that violated Lewis' due process rights under the parties' collective bargaining agreement and the U.S. Constitution, and making negative comments to other employees in violation of the parties' agreement, are DISMISSED for failure to state a cause of action.

4. The complaints charging unfair labor practices in Cases 16958-U-02-4408 and 16959-U-02-4409 are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 23<sup>rd</sup> day of September, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, and paragraph 4 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.