

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT SCHAUER,)	
)	
Complainant,)	CASE 19309-U-05-4901
)	
vs.)	DECISION 8973 - PSRA
)	
WASHINGTON STATE - REVENUE,)	
)	
Respondent.)	PRELIMINARY RULING
)	
_____)	
ROBERT SCHAUER,)	
)	
Complainant,)	CASE 19310-U-05-4902
)	
vs.)	DECISION 8974 - PSRA
)	
WASHINGTON PUBLIC EMPLOYEES)	
ASSOCIATION,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
)	
_____)	

On March 23, 2005, Robert Schauer (Schauer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Revenue (employer) and Washington Public Employees Association (union) as respondents. The Commission docketed the complaint as two case numbers. Case 19309-U-05-4901 concerns allegations of the complaint against the employer, while Case 19310-U-05-4902 involves allegations of the complaint against the union.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on April 14, 2005, 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 against the union. Schauer was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations. Nothing further has been received from Schauer.

The Unfair Labor Practice Manager issues a preliminary ruling for the allegations of the complaint against the employer. For the complaint against the union, the Unfair Labor Practice Manager dismisses the defective allegations of the complaint for failure to state a cause of action, and finds a cause of action for interference allegations of the complaint. The employer and union must file and serve their answers to the complaints within 21 days following the date of this Decision.

DISCUSSION

Complaint against Employer

The allegations of the complaint in Case 19309-U-05-4901 concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and an "other unfair labor practice" violation of RCW 41.80.110(3), by instructing management not to

¹ 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.

answer questions from employees, offer opinions about, or discuss the parties' collective bargaining agreement, misrepresenting to employees who were not union members that they were not eligible to participate in a contract ratification vote being conducted by the union, and failing to provide adequate notice to all bargaining unit employees that they could participate in the contract ratification vote.

The deficiency notice indicated that two documents titled "Attachment 2. Statement of Facts" were included with the complaint. The first document included the additional title of "ULP against DOR management", while a second document included the additional titles of "ULP against DOR management" and "Management Interference with Employee Rights." It appears that the second document includes revisions to the first document. The deficiency notice assumed that the second document was the statement of facts that Schauer intended to file with the complaint, and indicated if that assumption was incorrect Schauer must advise the Commission and all parties in any amended complaint filed in response to the deficiency notice.

The complaint has several defects. One, the Commission is bound by the following provisions of Chapter 41.80 RCW:

RCW 41.80.120 UNFAIR LABOR PRACTICE PROCEDURES--
POWERS AND DUTIES OF COMMISSION. (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.
This power shall not be affected or impaired by any means
of adjustment, mediation, or conciliation in labor
disputes that have been or may hereafter be established
by law.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before September 23, 2004, will be considered merely as background information. The complaint is limited to allegations of employer misconduct occurring on or after September 23, 2004.

Two, the complaint alleges a violation of the free speech protections of article 1, section 5 of the Washington State Constitution. The Public Employment Relations Commission does not have jurisdiction over constitutional claims. Claims concerning an employee's constitutional rights must be pursued before a court.

Three, a copy of RCW 41.06.150(11)(a) was attached to the complaint. The union shop election provisions of Chapter 41.06 RCW expired on July 1, 2004. As of that date, union security became a subject for bargaining between the employer and union under the following provisions of Chapter 41.80 RCW, State Collective Bargaining:

RCW 41.80.100 UNION SECURITY--FEES AND DUTIES--RIGHT OF NONASSOCIATION. (1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract

administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

Under RCW 41.80.100, union security provisions are negotiated by an employer and union in the parties' collective bargaining agreement. Chapter 41.80 RCW does not provide for union shop elections by employees.

Four, a copy of RCW 41.80.080 was attached to the complaint. The Commission certifies an exclusive bargaining representative under RCW 41.80.080 to represent employees of an appropriate bargaining unit by means of a confidential cross-check of employer and union records, or a secret-ballot election by employees under the representation procedures of Chapter 391-25 WAC. RCW 41.80.080 applies to representation issues and does not apply to a contract ratification vote conducted by a union.

Five, the complaint alleges a violation of RCW 41.56.150 and .160. The provisions of Chapter 41.56 RCW are inapplicable to Schauer. Chapter 41.56 RCW covers collective bargaining relationships in cities, counties, political subdivisions, municipal corporations, school districts (classified employees only), and other public employers. The complaint indicates that Schauer is a state civil service employee within the meaning of Chapter 41.80 RCW. Schauer is covered by the statutory provisions of Chapter 41.80 RCW, but not the provisions of Chapter 41.56 RCW.

The deficiency notice stated that if Schauer did not file a timely amended complaint, a preliminary ruling would be issued on the allegations of employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and an "other unfair

labor practice" violation of RCW 41.80.110(3), and the complaint would be scheduled for a hearing before an examiner.

Complaint against Union

The allegations of the complaint in Case 19310-U-05-4902 concern union interference with employee rights in violation of RCW 41.80.110(2)(a) and an "other unfair labor practice" violation, by misrepresenting to employees who were not union members that they were not eligible to participate in a contract ratification vote, failing to provide adequate notice and allowing all bargaining unit employees to participate in the contract ratification vote, denying non-members the right to vote, and observation of voters.

Unfair labor practice complaints concerning the actions of a union during a contract ratification vote are normally dismissed as the Commission lacks jurisdiction over internal union affairs. *Lewis County*, Decision 464-A (PECB, 1978); *Lake Washington School District*, Decision 6891 (PECB, 1999). However, a different result is possible where a union delegates its representative role to a referendum of all bargaining unit employees. *Branch 6000, Letter Carriers*, 232 NLRB 263 (1977), *aff'd*, 595 F.2d 808 (D.C. Cir. 1979); *Boilermakers Local 202 (Henders Boiler & Tank Co.)*, 300 NLRB 28 (1990). In those circumstances, allegations of union interference with employee rights in violation of RCW 41.80.110(2)(a) may state a cause of action.

The deficiency notice stated that it was not possible to conclude that a cause of action existed at that time for an "other unfair labor practice" violation by the union. The complaint has several defects. One, as for the complaint against the employer, the complaint is limited to allegations of union misconduct occurring

on or after September 23, 2004. Two, as for the complaint against the employer, the union shop election provisions of RCW 41.06.150(11)(a) expired on July 1, 2004. Three, as for the complaint against the employer, RCW 41.80.080 does not apply to a contract ratification vote conducted by a union. Four, the complaint alleges a violation of RCW 41.56.150. As stated for the complaint against the employer, the provisions of Chapter 41.56 RCW are inapplicable to Schauer.

The deficiency notice indicated that if Schauer did not file a timely amended complaint: 1) The allegations of an "other unfair labor practice" violation would be dismissed; and 2) A preliminary ruling would be issued on the allegations of union interference with employee rights in violation of RCW 41.80.110(2)(a), and the complaint would be scheduled for a hearing before an examiner.

Consolidation of Complaints

Four unfair labor practice complaints filed by employees of the Washington State Department of Revenue are pending before the Commission. Three of the complaints were filed against the Washington Public Employees Association, while one complaint was filed against the employer. All of the complaints involve alleged misconduct concerning a contract ratification vote conducted by the union. The complaints were docketed by the Commission as follows:

- 1) Case 19264-U-05-4893, filed by David Lazar against the union on March 10, 2005.
- 2) Case 19309-U-05-4901, filed by Schauer against the employer on March 23, 2005.
- 3) Case 19310-U-05-4902, filed by Schauer against the union on March 23, 2005.

- 4) Case 19311-U-05-4903, filed by Frank Patti against the union on March 23, 2005.

Under WAC 391-45-010, an unfair labor practice complaint "may be filed by any employee" Class actions are not permitted under Commission rules and individual employees must file their own unfair labor practice complaint. While each complaint processed by the Commission must state a cause of action (which is summarized by a preliminary ruling) against a respondent under an applicable statute, WAC 10-08-085 provides that "multiple adjudicative proceedings involving common issues or parties . . ." may be consolidated.

Each complaint has been reviewed under WAC 391-45-110. Deficiency notices were issued for all four complaints and the complainants were provided with a 21-day period to file amended complaints to correct any defects. Lazar filed an amended complaint stating a cause of action in Case 19264-U-05-4893, and a Preliminary Ruling and Order of Partial Dismissal is being issued for the complaint. Schauer's complaint against the employer in Case 19309-U-05-4901 and his complaint against the union in Case 19310-U-05-4902 both state causes of actions, and preliminary rulings are being issued in this Decision for those complaints. Patti did not file an amended complaint in Case 19311-U-05-4903, and an Order of Dismissal is being issued for the complaint.

As the complaints filed by Lazar and Schauer involve common issues and parties, the complaints in Cases 19264-U-05-4893, 19309-U-05-4901 and 19310-U-05-4902 are consolidated under WAC 10-08-085 for further proceedings before the Commission.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference, domination or assistance, and "other unfair labor practice" allegations of the complaint in Case 19309-U-05-4901 state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW 41.80.110(1)(b), and an "other unfair labor practice" violation of RCW 41.80.110(3), by instructing management not to answer questions from employees, offer opinions about, or discuss the parties' collective bargaining agreement, misrepresenting to employees who were not union members that they were not eligible to participate in a contract ratification vote being conducted by the union, and failing to provide adequate notice to all bargaining unit employees that they could participate in the contract ratification vote.

The interference, domination or assistance, and "other unfair labor practice" allegations of the complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Assuming all of the facts alleged to be true and provable, the interference allegations of the complaint in Case 19310-U-05-4902 state a cause of action, summarized as follows:

Union interference with employee rights in violation of RCW 41.80.110(2)(a), by misrepresenting to employees who were not union members that they were not eligible to participate in a contract ratification vote, failing to provide adequate notice and allowing all

bargaining unit employees to participate in the contract ratification vote, denying non-members the right to vote, and observation of voters.

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

3. The Washington State Department of Revenue and the Washington Public Employees Association shall:

File and serve their answers to the allegations listed in paragraphs 1 and 2 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. WAC 391-45-210.

4. The allegations of an "other unfair labor practice" violation by the union in Case 19310-U-05-4902, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of June, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

Paragraph 4 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.