

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
DAVID FISHER,	)	
	)	
Complainant,	)	CASE 19974-U-05-5069
	)	
vs.	)	DECISION 9242 - EDUC
	)	
WASHINGTON EDUCATION ASSOCIATION,	)	PRELIMINARY RULING
	)	AND ORDER OF PARTIAL
Respondent.	)	DISMISSAL
	)	
_____	)	

On November 29, 2005, David Fisher (Fisher) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association (union) as respondent. Fisher is a certificated employee of the Seattle School District (employer). The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on January 13, 2006, 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.

Fisher 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 Fisher.

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<sup>1</sup> 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 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 other allegations of the complaint. The union must file and serve its answer to the allegations that state a cause of action, within 21 days following the date of this Decision.

#### DISCUSSION

The allegations of the complaint concern an "other unfair labor practice" by the union, for inclusion of language in the parties' collective bargaining agreement that was not ratified by union members, and for failure to provide Fisher with a copy of the agreement under WAC 391-95-010.

The deficiency notice indicated that the allegations of the complaint concerning failure to provide a copy of the collective bargaining agreement, state a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission. However, those allegations also make reference to an alleged violation of article I, section D5 of the parties' collective bargaining agreement. The 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 Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997). The cause of action for failure to provide a copy of the collective bargaining agreement is confined to an alleged "other unfair labor practice" under WAC 391-95-010.

The allegations of the complaint concerning inclusion of language in the parties' collective bargaining agreement that was not ratified by union members, are defective. While ratification of a tentative agreement reached in collective bargaining negotiations by a vote of union members is customary, and may even be required by a union's constitution and bylaws, it is not a requirement imposed by state law. In *Naches Valley School District*, Decision 2516 (EDUC, 1987), *aff'd*, Decision 2516-A (EDUC, 1987), an Examiner held as follows:

Nothing in Chapter 41.59 RCW (or, for that matter, in the NLRA [National Labor Relations Act] or Chapter 41.56 RCW) requires employee ratification of the agreements reached between employers and unions duly recognized or certified as exclusive bargaining representative of those employees.

Inclusion of language in a collective bargaining agreement that has not been ratified by union members is not an unfair labor practice.

The process used by a union to decide what proposals to accept in contract negotiations, is purely of a union's own creation. Such process is part of a union's internal affairs and is often controlled by a union's constitution and/or bylaws. The constitution and bylaws of a union are the contracts among the members of a union for how the organization is to be operated. Disputes concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts. *Enumclaw School District*, Decision 5979 (PECB, 1997).

NOW, THEREFORE, it is

ORDERED

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

An "other unfair labor practice" by the union, for failure to provide David Fisher with a copy of the parties' collective bargaining agreement under WAC 391-95-010.

These allegations will be the subject of further proceedings under Chapter 391-45 WAC.

2. Washington Education Association 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. WAC 391-45-210.

3. The allegations of the complaint concerning an "other unfair labor practice" by the union, for inclusion of language in the parties' collective bargaining agreement that was not ratified by union members, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 10<sup>th</sup> day of February, 2006.

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, unless a notice of appeal is filed with the Commission under WAC 391-45-350.