

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT SCHAUER,)	
)	
Complainant,)	CASE 19804-U-05-5018
)	
vs.)	DECISION 9174 - PSRA
)	
WASHINGTON STATE - REVENUE,)	PRELIMINARY RULING
)	AND ORDER OF PARTIAL
Respondent.)	DISMISSAL
)	
)	

On September 22, 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) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 1, 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. 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.

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.

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 certain interference and domination allegations of the complaint. The employer 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 employer interference with employee rights in violation of RCW 41.80.110(1)(a) and domination or assistance of a union in violation of RCW 41.80.110(1)(b), by actions of management officials to encourage union representation.

The deficiency notice indicated that the interference and domination or assistance allegations in paragraphs 11 through 14 of the statement of facts attached to the complaint, related to a March 23, 2005, ethics training meeting conducted by human resource manager Chris Parsons, stated a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice indicated that a cause of action did not exist for other allegations of the complaint, due to 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.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts occurring before March 22, 2005, will be considered merely as background information.

Two, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

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 allegations contained in paragraphs 1 through 10, and 15 of the statement of facts do not conform to the requirements of WAC 391-45-050. The complaint fails to include "times, dates, places and participants in occurrences" concerning those allegations.

Three, unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for presentation of evidence supporting its complaint at a hearing before an examiner in accord with WAC 391-45-270.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference and domination allegations of paragraphs 11

through 14 of the statement of facts state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.80.110(1)(a) and domination or assistance of a union in violation of RCW 41.80.110(1)(b), by actions of management officials to encourage union representation related to a March 23, 2005 ethics training meeting conducted by human resource manager Chris Parsons.

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

2. Washington State Department of Revenue 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 paragraphs 11 through 14 of the statement of facts, 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 paragraphs 11 through 14 of the statement of facts, 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 in paragraphs 1 through 10, and 15 of the statement of facts concerning employer interference with employee rights in violation of RCW 41.80.110(1)(a) and domination or assistance of a union in violation of RCW 41.80.110(1)(b), are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of November, 2005.

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.