

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	CASE 19886-U-05-5048
-----)	
PATRICIA BAILEY,)	DECISION 9360-B - EDUC
)	
Complainant,)	
vs.)	
)	
SEATTLE EDUCATION ASSOCIATION,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	

Patricia Bailey appeared *pro se*.

Michael J. Gawley, Attorney at Law, for the union.

On October 26, 2005, Patricia Bailey filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the Seattle Education Association (union) as respondent. On December 1, 2005, a deficiency notice was issued, noting several problems with the complaint as filed. Bailey amended her complaint on December 19, 2005.

On June 16, 2006, a preliminary ruling issued under WAC 391-45-110 found a cause of action existed on allegations summarized as union interference with employee rights. That ruling dismissed the other allegations for failing to state a cause of action.

On June 26, 2006, I was assigned as Examiner for this case. On June 28, 2006, I notified the parties I would conduct a conference call on August 8, 2006, to schedule a hearing.

The union filed a timely response to the complaint on July 3, 2006, as ordered by the June preliminary ruling. On July 3, 2006, Bailey appealed to the Commission to overturn the dismissal of other allegations of her complaint. As a result, on July 12, I notified the parties that the conference call would be postponed.

On January 31, 2007, the Commission upheld the dismissals and ordered the matters processed in accordance with the preliminary ruling. Due to an oversight, the Commission ordered the union to file and serve its answer within 21 days of its order.

On February 12, 2007, the union filed a motion for summary judgment and dismissal of the complaint. On March 19, 2007, Bailey filed a cross motion for summary judgment and responded to the union's motion. Between March 20 and 27, I exchanged electronic messages with the union and Bailey concerning procedural matters. I attempted to schedule a conference call with the parties to discuss those procedural issues. Bailey refused to participate in a conference call and informed me she would "accept whatever schedule I arrange[d]." I sent out a notice of hearing setting a hearing date of June 5, 2007.

On April 10, 2007, Bailey appealed the notice of hearing to the Commission, asserting that I should have ruled on the motions for summary judgment. On May 2, 2007, I denied both the union motion for summary judgment and Bailey's cross motion, and affirmed the scheduling of the hearing for June 5, 2007. WAC 10-08-135 permits summary judgment only when there are "no genuine issue[s] as to any material fact." Because I identified paragraphs 6 through 13 of the amended complaint as disputed material facts, I denied both motions for summary judgment. Bailey also asserted her motion should be granted because the union failed to respond to the

Commission's order issued on January 31, 2007. I denied that as a basis for dismissal because the union had responded in a timely manner to the amended complaint, and the Commission's order was in error in ordering a second, and therefore duplicate, response to the identical charges.

On May 16, 2007, Bailey again filed an appeal and requested that her motion for summary judgment be granted. On May 30, 2007, in my absence, Executive Director Cathleen Callahan notified Bailey by letter that my ruling could not be forwarded to the Commission at that stage of the proceedings. Callahan informed Bailey again that a motion for summary judgment could not be granted if issues of material fact existed. She reiterated that the hearing set for June 5 would go forward as scheduled.

On June 4, 2007, Bailey sent an electronic message directly¹ to Callahan with copies to the Commission and to me,² protesting the denial of her motions for summary judgment. Bailey asserted that because some of the facts had been admitted by the union, "an immediate finding was warranted." She declared she would "not attend the hearing nor present her case any further." I responded by e-mail to Bailey on June 4 that the hearing would go forward the following day as scheduled.

Hearings conducted by the Commission and its examiners in unfair labor practice cases are adjudicative proceedings subject to the provisions of Chapter 34.05 RCW, the Administrative Procedure Act. RCW 34.05.440 provides:

¹ Under Commission rules, electronic documents are only officially filed if sent to filing@perc.wa.gov.

² Members of the Commission do not have electronic mail boxes at the perc.wa.gov address, so Bailey's e-mail message did not reach them.

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

WAC 391-45-270 provides that a complainant is responsible for presentation of its unfair labor practice case, and has the burden of proof. It also provides that the examiner is neither authorized nor expected to undertake the responsibilities of the complainant (or respondent).

I held the hearing on June 5, 2007. Bailey did not appear although I waited fifteen minutes before opening the hearing. After I opened the record, the union moved for dismissal for lack of prosecution. I granted the motion.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practice in the above captioned matter is DISMISSED for lack of prosecution.

ISSUED at Olympia, Washington, this 29th day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Starr Knutson by *hmsn*
STARR KNUTSON, Examiner

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

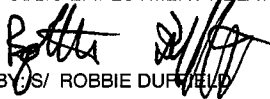
112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/29/2007

The attached document identified as: **DECISION 9360-B - EDUC** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 19886-U-05-05048 FILED: 10/26/2005 FILED BY: PARTY 2
DISPUTE: UN INTERFERENCE
BAR UNIT: TEACHERS
DETAILS: -
COMMENTS:

EMPLOYER: SEATTLE S D
ATTN: RAJ MANHAS
MS 32-150
PO BOX 34165
SEATTLE, WA 98124-1165
Ph1: 206-252-0100

REP BY: FAYE CHESS-PRENTICE
SEATTLE S D
PO BOX 34165
MS 31-151
SEATTLE, WA 98124-1165
Ph1: 206-252-0116 Ph2: 206-252-0110

PARTY 2: PATRICIA BAILEY
ATTN:
11250 26TH AVE SW
SEATTLE, WA 98146
Ph1: 206-242-5156

PARTY 3: WASHINGTON EDUCATION ASSN
ATTN: JERRY PAINTER
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7020 Ph2: 253-946-7232

REP BY: WENDY KIMBALL
SEATTLE EDUCATION ASSN
5501 4TH AVE S STE 101
SEATTLE, WA 98124
Ph1: 206-283-8443

REP BY: MICHAEL J GAWLEY
WASHINGTON EDUCATION ASSN
32032 WEYERHAEUSER WAY S
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7026 Ph2: 800-622-3393