STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GREEN RIVER COMMUNITY COLLEGE UNITED FACULTY COALITION, Complainant,	)	CASE 8934-U-90-1966
vs.	)	DECISION 3861 - CCOL
GREEN RIVER COMMUNITY COLLEGE, Respondent.	)	PRELIMINARY RULING

On December 10, 1990, the United Faculty Coalition of Green River Community College (UFC) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Green River Community College had violated RCW 28B.52.073 in connection with contract negotiations between the parties. The matter was considered by the Executive Director for the purposes of making a preliminary ruling pursuant to WAC 391-45-110, and a letter was sent to the parties on December 21, 1990, calling attention to various defects in the complaint as filed. In particular, the UFC was required to provide details as to the times, places and participants in occurrences, in accordance with WAC 391-45-050(3).

An amended statement of facts filed on January 15, 1991[1] is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is assumed that all of the facts alleged are 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.

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[1] An extension of the specified time period was granted by a member of the Commission staff.

Paragraph 1 alleges that the employer has refused to bargain concerning various groups of employees, as follows:

(a) Japanese Branch. The parties previously had separate unfair labor practice and unit clarification cases pending before the Commission concerning a branch campus in Japan. After a similar case was decided in another community college district, the parties were asked to comment on the applicability of that precedent to the situation at Green River. Those cases were then withdrawn and/or dismissed. The same result is indicated here.

(b) Education and Training Center in Kent. The parties currently have separate unfair labor practice and unit clarification cases pending before the Commission concerning a branch campus in Kent. Considerations of administrative efficiency dictate that all issues concerning that situation be decided in those proceedings. The issue will be stricken from this case.

(c) Campus "Intensive English as a Second Language", counselors, librarians and media specialists. In each of these cases, the employees involved arguably fall within the definition of "academic employee" contained in RCW 28B.52.020(2), as follows:

> "Academic employee" means **any teacher, counselor, librarian**, or department head, **who is employed by any community college district, whether full or part time**, with the exception of the chief administrative officer of, and any administrator in, each community college district. [emphasis by **bold** supplied]

A generalized refusal to bargain concerning one or more subgroups of bargaining unit employees could be the basis for finding an unfair labor practice under RCW 28B.52.073(1)(e).

PARAGRAPH 2 alleges a "circumvention" of the exclusive bargaining representative, as follows:

(a) Separate meetings with counselors, librarians and media specialists. Discussion of bargaining issues directly with employees could be the basis for finding a circumvention of the exclusive bargaining representative, and a basis for finding an unfair labor practice under RCW 28B.52.073(1)(e).

(b) Distribution of purported contract document. While an employer retains some "free speech" rights, actions which appear to or in fact deliver bargaining proposals or positions directly to bargaining unit employees in advance of their presentation to the exclusive bargaining representative can constitute a basis for finding an unfair labor practice under RCW 28B.52.073(1)(e).

PARAGRAPH 3 alleges "repeated", but otherwise unspecified, refusals to bargain concerning mandatory subjects "such as" parking, faculty office space and discretionary days off. While the three specific examples given arguably come within the subjects of mandatory collective bargaining as "wages" and/or "working conditions", the allegation is so vague as to fail to give the employer adequate notice of the charges against it. It clearly does not conform to the requirements of WAC 391-45-050(3), as reiterated in the earlier preliminary ruling letter, and is thus insufficient to state a cause of action.

PARAGRAPH 4 alleges that the employer reneged on an offer on April 30, 1990, after its acceptance by the union. Actions of parties to withdraw from offers previously made at the bargaining table can be the basis for finding a breach of the "good faith" obligation that is part of the duty to bargain. This allegation would be untimely under either the National Labor Relations Act (NLRA), the Public

Employees Collective Bargaining Act (PECBA),[2] or the Educational Employment Relations Act (EERA),[3] all of which impose a six-month "statute of limitations" on the filing of unfair labor practice charges. No such limitation is found in Chapter 28B.52 RCW, and none has been adopted by the Commission in its rules for the processing of unfair labor practice cases, Chapter 391-45 WAC. It thus appears that the union is entitled to a hearing on this allegation.

PARAGRAPH 5 alleges that the employer has sought to re-bargain agency shop language negotiated in a previous contract but never implemented. The Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of various state collective bargaining laws, City of Walla Walla, Decision 104 (PECB, 1976), so any issue about implementation of the previous contract would have to be processed through arbitration or the courts. The duty to bargain defined in RCW 28B.52.020(8) uses language familiar from the NLRA, the PECBA and the EERA, and does not include a duty to agree. Nothing would preclude the employer from re-visiting issues previously negotiated and agreed upon, so long as that is done in good faith. In this case, the complaint does not detail any breach of good faith in connection with what could easily be a lawful bargaining proposal by the employer.

PARAGRAPH 6 alleges "interference" violations by harassment of UFC bargainers on May 23, 1990 in regard to their bargaining activities. Given the absence of a statute of limitations, the allegation appears to be sufficient under WAC 391-45-050(3) only with regard to incidents on the May 23, 1990 date specified.

PARAGRAPH 7 alleges that, on various specified dates, the employer conditioned agreement on the withdrawal of pending unfair labor

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[2] Chapter 41.56 RCW, at RCW 41.56.160.

[3] Chapter 41.59 RCW at RCW 41.59.150(1).

practice charges. The Commission has previous found unfair labor practices by such conduct, and this allegation must be processed.

PARAGRAPH 8 alleges that the employer and/or its negotiator have engaged in various breaches of the duty to meet at reasonable times and places for the purposes of collective bargaining.

(a) Delay tactics during bargaining sessions. Incidents on two specific dates are sufficient to warrant a hearing.

(b) Negotiator unavailability. Vague and general allegations that the employer's negotiator was unavailable on dates when the UFC was available for bargaining are not sufficient to state a cause of action under WAC 391-45-050(3).

(c) Negotiator unprepared. Incidents on several specific dates are sufficient to warrant a hearing.

PARAGRAPH 9 alleges discrimination on unspecified dates against an unnamed union official. While reprisals for union activity could clearly be found unlawful, these allegations are not sufficient to state a cause of action under WAC 391-45-050(3).

PARAGRAPH 10 alleges that the employer first brought issues to the bargaining table concerning the counselors and librarians, and then refused to modify its positions. Again, details are lacking under WAC 391-45-050(3). The allegation appears to be inconsistent with paragraph 1, which seems to allege a complete refusal to bargain concerning these classes of employees. Finally, the allegation does not cross the bridge from "refusal to agree" to "breach of good faith", as discussed in relation to paragraph 5, above.

PARAGRAPH 11 alleges unilateral changes concerning grievances, sick leave and payroll deductions on November 1, 1990. It appears that

unfair labor practices could be found on these allegations under RCW 28B.52.073(1)(a).

NOW, THEREFORE, it is

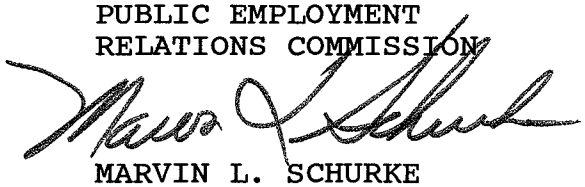
ORDERED

1. The allegations set forth in paragraphs 1(a), 1(b), 3, 5, 8(b), 9 and 10 of the amended statement of facts are DISMISSED for failure to state a cause of action.

2. The remaining allegations of the complaint, subject to the limitations set forth herein, shall be subject to further processing pursuant to Chapter 391-45 WAC.

Dated at Olympia, Washington, the 6th day of September, 1991.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director

Paragraph 12 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.