STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| OROVILLE SCHOOL DISTRICT, | ) | |
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| Complainant, | ) | CASE 12403-U-96-2940 |
| | ) | |
| vs. | ) | DECISION 5667 - PECB |
| | ) | |
| WASHINGTON EDUCATION ASSOCIATION, | ) | |
| | ) | PARTIAL ORDER OF |
| Respondent. | ) | DISMISSAL |
| | ) | |
| | ) | |

On March 20, 1996, the Oroville School District (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, under Chapter 391-45 WAC. The employer alleged that the Washington Education Association (union) committed unfair labor practices in violation of RCW 41.56.150(4), by its conduct during negotiations for a collective bargaining agreement between the parties.[1] The employer's complaint was reviewed for the purposes of making a preliminary ruling under WAC 391-45-110,[2] and a letter issued on June 17, 1996 found a cause of action to exist as to certain allegations. Other allegations were found insufficient to state a cause of action, and the employer was given a period of 14 days in which to file and serve an amended complaint with respect to the insufficient allegations, or face dismissal of those allegations. Nothing further has been received from the employer on the allegations identified as insufficient.

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[1] The same negotiations were the basis of unfair labor practice charges filed by the union against the employer, and docketed separately as Case 12394-U-96-2939.

[2] 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.

Bargaining Table Tactics and Refusal to Meet

The employer's allegations that the union committed "refusal to bargain" violations (RCW 41.56.150(4)) by its bargaining table conduct are summarized, as follows:

> The union's refusal to directly respond to an employer proposal submitted at a scheduled negotiation meeting on March 14, 1996; and the union's walking out of the meeting when the employer indicated it was ready to continue to negotiate open contract items.

Assuming all of those facts to be true and provable, it appears that unfair labor practice violations could be found on those allegations.

Designation of Union's Negotiator

The employer further alleged that the union had committed some violation of the law by having Ken Ivey serve as chief negotiator and spokesperson for the union, where Ivey is not employed by the union, is "untrained" and "unskilled", and is not a member of the bargaining unit.

Chapter 41.56 RCW gives employees the right to select representatives of their own choosing. RCW 41.56.040. The organization selected by the majority of the employees in an appropriate bargaining unit acquires status as the "exclusive bargaining representative" of all of the employees in that unit. RCW 41.56.080. Public employers are prohibited from interfering with the right of their employees to select representatives of their own choosing, RCW 41.56.140(1), and from controlling or dominating any employee organization, RCW 41.56.140(2). Thus, the language of the statute does not give either the employer or the Commission jurisdiction over the internal affairs of the exclusive bargaining representative. An employer must deal with the representatives put

forth by a union, just as a union must deal with the representatives put forth by an employer. To the extent that the allegations in this complaint are directed at Ivey's level of skill, or at his alleged "personal friendship" with UNISERV representative Warren Henderson (who is also negotiating on behalf of the union), these allegations do not form a sufficient basis to state a cause of action.

NOW, THEREFORE, it is

ORDERED

1. The allegations in the complaint regarding the designation of Ken Ivey as the union's negotiator are DISMISSED for failing to state a cause of action.

2. The allegations in the complaint regarding bargaining table tactics and refusal to meet are found to state a cause of action for further proceedings under Chapter 391-45 WAC. The union shall:

   **File and serve its answer to the complaint within 21 days following the date of this order.**

   Except for good cause shown, a failure to file an answer within the time specified, or the failure of 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 under WAC 391-45-210, and as a waiver of a hearing as to the facts so admitted.

   An answer filed by a respondent shall:

   A. Specifically admit, deny, or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.

B. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.

C. Assert any other affirmative defenses that are claimed to exist in the matter.

The original answer and three copies shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on counsel or other representative of the Oroville School District.

3. Kathleen O. Erskine of the Commission staff is designated as Examiner, to conduct further proceedings in this matter under Chapter 391-45 WAC consolidated with Case 12394-U-96-2939.

Issued at Olympia, Washington this 9th day of September, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on the matters covered therein, unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.