

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	
)	
Complainant,)	CASE 12080-U-95-2845
)	
vs.)	DECISION 5428 - PECB
)	
SPOKANE COUNTY,)	
)	
Respondent.)	PARTIAL ORDER
)	OF DISMISSAL
)	
)	

The complaint charging unfair labor practices was filed in the above-captioned matter on September 28, 1995. That complaint was the subject of a preliminary ruling letter issued pursuant to WAC 391-45-110 on December 15, 1995.¹

Paragraphs 7 of the statement of facts (when read in conjunction with other allegations) was found to state a cause of action for "interference" with employee rights, based on the employer imposing restrictions on communications among employees regarding the contents of disciplinary notices.

Paragraph 8 was found to state a cause of action for "discrimination" by giving preference to a non-union applicant, subject to the complaint supplying the name of the beneficiary of the alleged discrimination.²

¹ At that 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.

² The complainant has subsequently identified the beneficiary of the alleged discrimination as M. Kathryn Lee.

The preliminary ruling letter identified problems with other allegations set forth in the statement of facts, and the complainant was given a period of time to file and serve an amended complaint. The union responded with a letter filed on January 10, 1996, and the case is again before the Executive Director for a preliminary ruling under WAC 391-45-110.

Paragraphs 4 and 5 of the original complaint concerned a unilateral change of an evaluation procedure. The preliminary ruling letter pointed out Commission precedent which gives employers an inherent right to evaluate their employees and programs, with or without the consent of the union representing those employees, and called for additional details. The union's response acknowledges the precedents on evaluation, but submits that the evaluation processes have historically affected employee wages and benefits, that employer and union had successfully completed negotiations on evaluation procedures, and that the employer thereafter created a new type of evaluation which could be (and in fact was) used for discipline, promotions, demotions, transfers and/or the withholding of step increases. As amended, the allegations of paragraphs 4 and 5 state a cause of action based on a "unilateral change" theory.

The preliminary ruling letter found Paragraph 6, which concerned an "event/counseling report" given to another employee, insufficiently detailed to support an independent "refusal to bargain" claim. The additional information supplied by the complainant on paragraph 6 merely supports the "interference" cause of action previously found to exist in paragraph 7. Further proceedings on paragraph 6 will be limited to the "interference" claim.

Paragraph 9 of the original complaint was found to be conclusionary, and lacking in facts sufficient to give rise to an independent cause of action. The amendment supplied for paragraph 9 continues to be a conclusionary allegation that the employer has engaged in

an unlawful course of conduct, and does not set forth facts giving rise to any independent cause of action.


NOW, THEREFORE, it is

ORDERED

1. Paragraph 9 of the complaint, as amended, is dismissed as failing to state a cause of action.
2. Paragraph 6 of the complaint, as amended, is found to state a cause of action only in connection with the "interference" claim detailed in paragraph 7 of the complaint.
3. Katrina I. Boedecker of the Commission staff is designated as Examiner to conduct further proceedings on the complaint, except as described in paragraphs 1 and 2 of this order, pursuant to Chapter 391-45 WAC.

Issued at Olympia, Washington, on the 25th day of January, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 2 of this order will be the final order of the agency on those matters unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.