

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 11256-U-94-2634
)	
vs.)	DECISION 5086 - EDUC
)	
TACOMA EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
-----)	
LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 11257-U-94-2635
)	
vs.)	DECISION 5087 - EDUC
)	
TACOMA SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
-----)	

On August 1, 1994, Lois Mehlhaff filed two unfair labor practice complaints with the Public Employment Relations Commission. A complaint filed against the Tacoma Education Association (union) was docketed by the Commission as Case 11256-U-94-2634. The complaint filed against the Tacoma School District (employer) was docketed as Case 11257-U-94-2635.

The complaints allege, generally, that the union and employer interfered with Mehlhaff's rights as a certificated employee under RCW 41.59.140(1)(a) and (2)(a), by knowingly bargaining pay rates for substitute teachers that were not in compliance with the minimum compensation requirements of RCW 28A.400.200. A preliminary ruling letter issued on January 18, 1995, pursuant to WAC 391-

45-110,¹ advised Mehlhaff that certain problems existed with the complaints, as filed. Specifically, it was noted that resolution of these complaints would rest primarily on the interpretation of statutes which were not directly under the jurisdiction or expertise of the Public Employment Relations Commission. Mehlhaff was given 14 days in which to provide the following information:

1. Citations to (or copies of) any court decisions interpreting the sections of statute which were cited as authority for her claim that the school laws establish a minimum salary for certificated instructional employees working as substitute teachers; and

2. Detailed information concerning the venue, parties, nature, and resolution of a court case mentioned in a document filed as an attachment to the complaints.

Mehlhaff filed her response to the request for additional information on January 27, 1995. She indicated she had no citations of any court decisions supporting her claim that there was a minimum salary for substitute certificated employees. Her response identified the previously referenced court case as a lawsuit filed against the employer in the Pierce County Superior Court by five former "cadre" teachers. Mehlhaff's response did not indicate that she was involved in that lawsuit, but asserted that the lawsuit and her unfair labor practice complaints were "the same with respect to the interference with the rights of nonsupervisory certificated employees to statutory minimum compensation".

In a letter issued on February 23, 1995, the Executive Director expressed concern that Mehlhaff's response had not provided any

¹ At that stage of the proceedings, all of the facts alleged in a 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.

information concerning interpretation of the cited statutes by the courts or administrative agencies responsible for their administration. Mehlhaff was advised that these cases would be held in abeyance until the conclusion of the "cadre" lawsuit, or until such point in time as additional information was provided. On March 14, 1995, the employer and union were invited to submit information regarding the legal issues raised in these unfair labor practice complaints. Those parties were asked to submit their responses within 14 days.

The employer submitted a letter on March 28, 1995, containing the following information:

1. The pending "cadre" lawsuit involves the question of whether the employer conferred a right to a continuing contract on such employees. The employer noted that Mehlhaff was not a "cadre" member, and is not a party to that lawsuit.

2. Mehlhaff filed an individual lawsuit against the employer in Pierce County Superior Court on October 24, 1994. The employer asserts that Mehlhaff's lawsuit raises allegations similar to those set forth in her unfair labor practice complaints.

3. As support for its claim that the minimum salary requirements of RCW 28A.400.200 enacted in 1987 do not apply to substitute teachers, the employer notes that state budgets adopted since 1987 have included funding for the cost of substitutes as a separate and distinct allocation from the funding provided for certificated staff salaries.

The union submitted information and a motion for dismissal on March 28, 1995. It argues that RCW 28A.400.200 is inapplicable to certificated substitute employees, for the following reasons:

1. RCW 28A.400.200 refers to salaries for "certificated instructional staff". The term "basic education certificated instructional staff" is defined in RCW 28A.150.100 as "all full time equivalent certificated instructional staff".

2. Substitute certificated employees are employed on a casual or part-time basis.

The employer submitted an additional letter on March 30, 1995, in which it supplied various instructions issued to school districts by the state Superintendent of Public Instruction (SPI) on how to complete the S-275 form.² Those instructions specifically exclude substitute teachers from the definition of certificated staff for whom compensation must be reported on the S-275 form.

DISCUSSION

The office of the state Superintendent of Public Instruction is responsible for the allocation of funds from the state to local school districts. The Washington Administrative Code rules adopted by SPI on such matters have the force of law, unless successfully challenged in the courts under RCW 34.05.570. The Public Employment Relations Commission is entitled to rely on the validity of the rules adopted by SPI, in the absence of any indication to the contrary. In this case, the SPI rules concerning the S-275 form directly contradict the theory advanced by Mehlhaff.

To the extent that Mehlhaff's pending lawsuit in the Superior Court for Pierce County raises allegations similar to these complaints before the Commission, the interpretation of RCW 28B.200.400 and the validity of the SPI rules could perhaps be determined by the court. In such an event, the court would have jurisdiction to make a remedial order favoring Mehlhaff, so that it is not necessary to keep any proceeding pending before the Commission.

² The S-275 form is the vehicle prescribed by SPI to report the salaries paid by common school districts to their certificated employees.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above-entitled matters are hereby DISMISSED.

DATED at Olympia, Washington, this 1st day of May, 1995.

~~PUBLIC EMPLOYMENT RELATIONS COMMISSION~~


MARVIN L. SCHURKE, Executive Director

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