

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KULDEEP NAGI,)	
)	
Complainant,)	CASE 10768-U-93-2500
)	
vs.)	DECISION 5237-A - EDUC
)	
SEATTLE SCHOOL DISTRICT,)	
)	
Respondent.)	INTERIM ORDER
)	
)	

Judith A. Lonquist, Attorney at Law, appeared on behalf of the complainant.

Karr Tuttle Campbell, by Lawrence B. Ransom, Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on a timely petition for review filed by Seattle School District, seeking to overturn a decision issued by Examiner Pamela G. Bradburn.¹

BACKGROUND

Complainant Kuldeep Nagi filed an unfair labor practice charge with the Commission on November 5, 1993. Nagi alleged the Seattle School District (employer) had non-renewed his certificated employment contract due to retaliation for exercising his rights pursuant to RCW 41.59.060. Examiner Pamela G. Bradburn held a hearing on March 16, 17, and 22, 1995, and issued Findings of Facts, Conclusions of Law and Order on August 24, 1995.

After the employer filed its petition for review and brief supporting the petition, the complainant filed a brief in opposition. The employer then filed a reply brief.

¹ Seattle School District, Decision 5237 (EDUC, 1995).

On October 30, 1995, the complainant moved to strike the employer's reply brief. The employer opposed the complainant's motion in a response filed November 6, 1995. The sole issue before the Commission at this time is whether to accept the employer's reply brief.

POSITIONS OF THE PARTIES

The complainant cites WAC 391-45-350, which is the rule relating to the filing of a petition for review, and argues that nothing in the rules permits the filing of a reply brief. He contends that the employer's reply brief contains arguments that were not, but could have been, made in the employer's original brief. Arguing that he has no opportunity to respond to the employer's reply brief under the rules, the complainant claims that he would be prejudiced by the unauthorized receipt of a reply brief. He asserts that the Commission should not sanction an attempt by the employer to take unfair advantage against him, and requests the reply brief be stricken.

The employer argues that no administrative regulation prohibits the filing of a reply brief, and that an appropriate goal for the Commission should be to have as much information and authority available as possible to enable it to decide the issues raised. It contends that the reply brief is an attempt to provide additional information and authority in response to arguments raised in the complainant's brief. The employer argues that any prejudice to the employee could be overcome by permitting the complainant to file a responsive brief. The employer requests the motion to strike its brief be denied.

DISCUSSION

Administrative agencies have broad discretion and have the duty to determine what remedy is required in specific situations to effect

the purposes of the Legislature. Municipality of Metropolitan Seattle, 60 Wn.App. 232 (1991), reversed, 118 Wn.2d 621 (1992), reinstating, Decision 2845-A (PECB, 1988). The case here to be decided is a case of first impression involving potential conflicts between two laws, Chapter 41.59 RCW, and Chapter 28A.405 RCW. Significant legal issues are raised of the kind that warrant serious scrutiny.

The Commission has discretion to allow or request additional information from the parties on a case-by-case basis, and has even entertained oral argument on occasion, where deemed appropriate. It is critical that we have as much information as possible to make a proper decision that may set forth guidance and precedent for the future. Prejudice to the complainant would only result if he was not allowed to respond, so we conclude it is appropriate to allow the employer's filing, and to give the complainant an opportunity to respond.


NOW, THEREFORE, it is

ORDERED

1. The employer's reply brief, filed on October 25, 1995, is accepted.
2. The complainant is allowed 14 days from the date of this order to file a response brief.

Issued at Olympia, Washington, the 18th day of December, 1995.

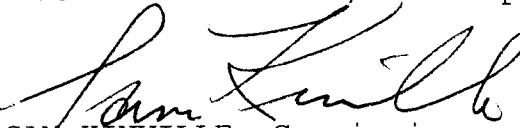
PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANET L. GAUNT, Chairperson


JOSEPH W. DUFFY, Commissioner

DISSENTING OPINION

I agree with my colleagues that the issues in this case are significant. I do not agree that a reply brief and a response brief should be allowed. The parties have had adequate opportunity to brief the issues. Allowing further submittals simply delays processing of the case. The question becomes, at what point do we stop parties replying to the opposite side's brief. I would stop it after the reply to the petition for review. One brief from each party on appeal is enough. For this reason, I respectfully dissent.



SAM KINVILLE, Commissioner