Lake Washington School District, Decision 6443-A (EDUC, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAN T. GRINER, Complainant, vs. LAKE WASHINGTON SCHOOL DISTRICT 414, Respondent.	)	CASE 13919-U-98-3429 DECISION 6443-A - EDUC CORRECTED ORDER OF DISMISSAL

On May 14, 1998, Dan T. Griner filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. Griner identified himself as an employee of the Lake Washington School District. From documents filed with the complaint form, it appeared the controversy concerns alleged violations of the collective bargaining agreement between the employer and the Lake Washington Education Association, in regard to the administration of an evaluation procedure for substitute teachers. The complaint also alleged that school district administrators directed "unprofessional" conduct toward Griner, in the process of "defending" entries they made in evaluation forms concerning his teaching assignment on November 25, 1997.

The complaint was considered for the purpose of making a preliminary ruling under WAC 391-45-110[1], and a deficiency notice issued on July 29, 1998, pointed out certain problems with the complaint, as filed.

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[1] At this stage of the proceedings, all facts alleged in a complaint are assumed to be true and provable. The question is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

Insufficient Detail to Establish a Violation

No statement of facts was provided with the complaint form. Attached to the complaint were copies of a May 11, 1998 grievance letter, and other forms and documents apparently related to that grievance. Also enclosed with the complaint form was a copy of the collective bargaining agreement between the employer and the Lake Washington Education Association. WAC 391-45-050(2) requires:

> **WAC 391-45-050 Contents of complaint charging unfair labor practices.** Each complaint shall contain, in separate numbered paragraphs:
> ...
> (2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences. ...

Rulings under WAC 391-45-110 must be based on what is contained within the four corners of a statement of facts, and the agency is not at liberty to fill in gaps or make leaps of logic. The deficiency notice advised Griner that it was not possible to conclude from the materials filed that a cause of action existed.

No "Violation of Contract" Jurisdiction

The most likely theory for Griner's complaint seemed to be that there had been a contract violation. The Public Employment Relations Commission does not, however, assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). The deficiency notice advised Griner that remedies for contract violations must be sought through the grievance and arbitration machinery within the contract, or through the courts.

"Unprofessional Conduct" and Scope of Authority

Substitute teachers who work a sufficient amount of days to be considered "regular part-time" employees of a particular school district have bargaining rights under the Educational Employment Relations Act, Chapter 41.59 RCW,[2] but no provision of that statute is cited or found which could constitute a basis for inquiry into allegations of "unprofessional conduct". The deficiency notice pointed out that the name of the Public Employment Relations Commission is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment. Thus, the allegation that administrators engaged in unprofessional conduct toward Griner did not state a cause of action before the Commission.

Opportunity to Amend and the Response Filed

The complainant was given 14 days in which to file and serve an amended complaint or face dismissal of the case. On August 11, 1998, the Commission received a letter from the complainant, in which he stated:

> Thank you for clarifying the limits of jurisdiction of the Public Employment Relations Commission. It is interesting and perplexing, but understood as stated: "Remedies for Con-

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[2] See, Columbia School District, et al., Decision 1189-A (EDUC, 1981). The standard of state-wide application adopted there was that substitute teachers will be deemed to be regular part-time employees (and included in the bargaining unit with contracted teachers) if they work 20 consecutive days in the same assignment or 30 days in a one-year period.

> tract violations must be sought through the grievance and arbitration machinery within the contract, or through the courts." In other words, **you have stated that having exhausted "---the grievance and arbitration machinery within the contract----"**, the next option is to seek all remedies through the courts and therefore such action is no longer subject to P.E.R.C. nor bargaining contract deadlines.
>
> Such a decision on my part, will take some more thought, preparation and legal counsel beyond the P.E.R.C. Case. Therefore, for purposes of the unfair labor practices complaint filed as above and according to your letter of July 29, 1998, and further to proceed beyond the P.E.R.C. jurisdiction, I must agree that this complaint filed as a P.E.R.C. Case must be dismissed.

[Emphasis by **bold** supplied.]

That response was not taken to be an unqualified withdrawal of the complaint, for which the normal response would have been a pro forma order closing the case. Further, the portion set forth in **bold** appears to either rely on facts external to the filed complaint (i.e., that the grievance and arbitration machinery has been exhausted) or to place an unwarranted interpretation on the deficiency notice (which could not, of its nature, constitute a ruling that the grievance and arbitration machinery had been exhausted). Finally, the response was stated in terms of a "dismissal", rather than as a "withdrawal" of the complaint. Given that no cause of action was found to exist in the deficiency notice, and that an amended complaint was not filed, dismissal is appropriate at this time.

CORRECTIONS TO ORDER

A typographical error as to the date of the deficiency notice and an error in characterizing the complainant's response as "undated"

were discovered after decision 6443 - EDUC was issued. This decision is being issued under WAC 391-45-330 to correct those errors.

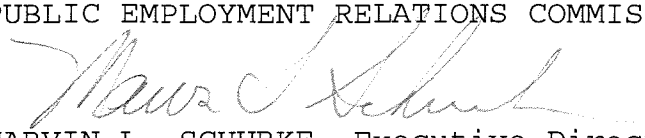
NOW THEREFORE, IT IS

ORDERED

The complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

Issued at Olympia, Washington, this 9th day of October, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.