

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| LINDA PARKER, |) | |
| |) | |
| Complainant, |) | CASE 13200-U-97-3209 |
| |) | |
| vs. |) | DECISION 6523-A - PECB |
| |) | |
| COWLITZ COUNTY, |) | (CORRECTED) |
| |) | PARTIAL DISMISSAL AND |
| Respondent. |) | ORDER FOR FURTHER |
| |) | PROCEEDINGS |
| |) | |

This case is before the Executive Director for further processing under WAC 391-45-110. Based on a convoluted procedural history which includes a substitution of an individual employee as complainant in place of the union that filed the original complaint, some of the original allegations now fail to state a cause of action, while other allegations warrant further processing.

PROCEDURAL BACKGROUND

This proceeding was initiated on June 2, 1997, by a complaint charging unfair labor practices filed by Teamsters, Local 58, under Chapter 391-45 WAC. The complaint alleged that Cowlitz County (employer) had violated RCW 41.56.140, by unilaterally changing a policy concerning call-outs for overtime work (initially affecting one employee on light-duty restrictions, but later affecting a broader range of situations), without negotiation with the employees' exclusive bargaining representative and/or in retaliation for the filing of a grievance. There was no reference at that time to Linda Parker being an individual complainant.

A preliminary ruling was issued on June 24, 1997, finding a cause of action to exist. The preliminary ruling letter was addressed to the union representative who had filed the complaint. An Examiner was assigned, and a hearing was scheduled for May 1, 1998. Prior to the start of the hearing, the Examiner granted the parties' request for additional time to attempt resolution of the matter.

Teamsters, Local 58, subsequently lost its status as exclusive bargaining representative of the bargaining unit involved,¹ and thereupon lost its legal standing to pursue any "refusal to bargain" claim. A deficiency notice was then issued under WAC 391-45-110 on September 1, 1998, stating in part:

The boxes on the complaint form to allege "interference", "discrimination", and "refusal to bargain" were all checked. In that context:

- Paragraphs 1, 2 and 3 of the statement of facts appear to involve an earlier controversy, when Linda Parker was not called out for an overtime assignment.
- Paragraph 4 alleges that Parker filed and successfully prosecuted a grievance protesting the failure to call her for the previously-described overtime assignment. That would constitute protected activity under the statute, and could constitute a basis for a "**discrimination**" claim filed by either an individual or the union in this case.
- Paragraphs 1,4 and 5 all make reference to and/or detail an alleged unilateral change of the employer's policy concern-

¹ A representation petition was filed in April of 1998, but this case was not asserted as a "blocking charge" under WAC 391-25-370, and an election was conducted. The Cowlitz County Jail Employees Guild won majority support in the election, and was certified as exclusive bargaining representative on July 8, 1998.

ing overtime call-outs. That could constitute a basis for "refusal to bargain" claim by the exclusive bargaining representative, but not for a claim advanced by an individual employee.

- Paragraph 6 of the complaint alleged **discrimination** in reprisal for Parker's grievance, which would state a cause of action for unfair labor practice proceedings before the Commission.
- Paragraph 6 also alleged a violation of a "Pregnancy Disability Act", but does not supply any Revised Code of Washington citation for such a statute. Since the term or title does not appear in any statute administered by the Commission, this aspect of paragraph 6 does not state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.
- Paragraph 7 of the complaint alleges a violation of the "Americans with Disabilities Act", which is understood to refer to the federal statute of that name. This aspect of paragraph 7 does not state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.
- Paragraph 7 also alleges that Parker had filed another grievance, which would again be a protected activity under the collective bargaining statute administered by the Commission. While the paragraph goes on to allege that it was anticipated that the employer would deny that grievance, it does not allege any other action against Parker which could constitute a basis for an additional "discrimination" claim. Moreover, the merits of that grievance are not a matter over which the Commission could assert jurisdiction, since the Commission does not remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.

City of Walla Walla, Decision 104 (PECB, 1976).

- Paragraph 8 of the complaint alleges that the employer has relied upon a management rights clause which is too vague to support its arguments. As with the "merits" aspect of paragraph 7, the interpretation of the collective bargaining agreement would be for an arbitrator to decide under the grievance and arbitration machinery established by the contract.
- Paragraph 9 makes claims on behalf of two other named employees, apparently under the "unilateral" theory in the absence of facts supporting a "discrimination" theory as to those individuals. These claims could state a cause of action if advanced by the exclusive bargaining representative, but an individual employee lacks legal standing to assert claims on behalf of another employee.

[Emphasis by **bold** in original.]

The parties were given a period of 14 days to show cause why the unilateral change and refusal to bargain claims should not be dismissed. The attorney for Teamsters, Local 58, responded with a request that the union be removed from the case. Another attorney responded with a request that his appearance be entered on behalf of Linda Parker as complainant on the discrimination issue alone.

NOW, THEREFORE, it is

ORDERED

1. The following allegations are DISMISSED as failing to state a cause of action:

- a. Paragraphs 1, 2 and 3 (inasmuch as they are untimely).
 - b. Paragraphs 4 (inasmuch as it concerns unilateral changes) and 5 (inasmuch as the organization which had legal standing to assert a "refusal to bargain" claim under RCW 41.56.140 at the time the complaint was filed has since lost its status as exclusive bargaining representative).
 - c. Paragraph 6 (insofar as it concerns violation of a "Pregnancy Disability Act" that is not within the jurisdiction of the Public Employment Relations Commission).
 - d. Paragraph 7 (insofar as it concerns violation of an "Americans with Disabilities Act" that is not within the jurisdiction of the Public Employment Relations Commission, and inasmuch as the Commission lacks jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute).
 - e. Paragraph 8 (inasmuch as the Public Employment Relations Commission lacks jurisdiction to enforce the grievance and arbitration procedures of a collective bargaining agreement).
 - f. Paragraph 9 (inasmuch as it makes claims on behalf of employees other than Linda Parker).
2. The following allegations state a cause of action warranting further proceedings under Chapter 391-45 WAC:

- a. Paragraph 4, to the extent that it alleges that the employer's failure to call Linda Parker for an overtime assignment was in reprisal for her having previously filed and prosecuted a grievance protesting a failure to call her for an overtime assignment.
 - b. Paragraph 6, to the extent that it alleges that the employer otherwise discriminated against Linda Parker in reprisal for her having previously filed and prosecuted a grievance protesting a failure to call her for an overtime assignment.
3. Linda Parker is substituted as complainant in this proceeding, in place of Teamsters Local 58.
 4. Cowlitz County shall be entitled to amend the answer which it filed on April 7, 1998, by filing and serving an amended answer within 21 days following the date of this order.
 5. This matter is remanded to Examiner Jack T. Cowan for further proceedings under Chapter 391-45 WAC limited to the causes of action identified in paragraph 2 of this order with respect to paragraphs 4 and 6 of the complaint.

Issued at Olympia, Washington, on the 23rd day of December, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on those matters unless a notice of appeal is filed with the Commission pursuant to WAC 391-45-350.