

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KEITH DOUGHERTY,

Complainant,

vs.

BELLEVUE SCHOOL DISTRICT,

Respondent.

CASE 23443-U-10-5975

DECISION 10868 - PECB

ORDER OF DISMISSAL

On August 13, 2010, Keith Dougherty (Dougherty) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Bellevue School District as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on September 13, 2010, indicated that it was not possible to conclude that a cause of action existed at that time. Dougherty was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. On September 17, 2010, Dougherty filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern: Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1); employer domination or assistance of a union in violation of RCW 41.56.140(2); employer refusal to bargain in violation of RCW 41.56.140(4); union interference with employee rights in violation of RCW 41.56.150(1); and union refusal to bargain in violation of RCW 41.56.150(4), all in relation to Dougherty.

The deficiency notice pointed out the defects to the complaint. First, RCW 41.56.160(1) provides that unfair labor practice complaints must be filed within six months of the alleged violations. The document submitted by Dougherty does not make clear the dates of the alleged violations.

¹ At this 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.

Second, WAC 391-45-050 requires that complaints contain clear and concise statements of facts in numbered paragraphs, give complete information concerning the parties, include a copy of the collective bargaining agreement, and contain information on times, dates, places, and participants in occurrences. The complaint does not include a collective bargaining agreement. In addition, although claims are asserted against a union, there is no information about the respondent union. Further, it is impossible to ascertain from the narrative (non-numbered) form of the complaint what Dougherty is alleging as unfair labor practices, including those which he ascribes to the employer and those which he ascribes to the union.

Third, the complaint alleges refusal to bargain violations against both the employer and the union, but individual employees such as Dougherty do not have standing to process refusal to bargain claims. Only employers and exclusive bargaining representatives have standing to pursue such claims.

Fourth, the Commission does not have jurisdiction to remedy all employment related disputes, but only those arising out of the collective bargaining relationship of employers, unions, and employees, as authorized under collective bargaining statutes (in this case, Chapter 41.56 RCW). The Commission has jurisdiction over claims brought by individual employees concerning their collective bargaining rights, but may not intercede where employees claim other forms of harassment or discrimination. Here, the complaint appears to include a variety of claims by Dougherty, but does not make clear the nature of Dougherty's union activities, other than his union position, nor the connection between his union activities and the alleged retaliation by the employer and the union.

Amended Complaint

Dougherty did not submit an amended complaint form; thus, the amended complaint is considered to reaffirm the causes of action identified on the original complaint form. The amended complaint includes additional dates and a collective bargaining agreement, but does not cure the remaining defects to the complaint. The amended complaint does not:

- identify the respondent union;
- contain numbered paragraphs;
- provide information indicating Dougherty's standing to pursue refusal to bargain claims;
- identify the nature of Dougherty's union activities; and
- identify the connection between his union activities and the alleged retaliation by the employer and union.

The amended complaint refers to alleged unfair treatment of Dougherty in the work place, but does not indicate that the alleged unfair treatment is connected with Dougherty's union activities. The amended complaint also alleges age discrimination. The Commission does not have jurisdiction to remedy Dougherty's claims. Dougherty must seek relief through the civil court system.

The amended complaint restates the claim of employer domination or assistance of a union, but does not provide facts indicating that the employer has interfered with the internal affairs or finances of the union, or attempted to create, fund, or control a company union.

NOW, THEREFORE, it is

ORDERED

The amended 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 22nd day of September, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

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