

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 609,

Complainant,

vs.

SEATTLE SCHOOL DISTRICT,

Respondent.

CASE 26171-U-13-6693

DECISION 11995 - PECB

ORDER OF DISMISSAL

On December 30, 2013, the International Union of Operating Engineers, Local 609, (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Seattle School District (employer) as respondent. The union amended the complaint on January 2, 2014. The first amended complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on January 10, 2014, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve a second amended complaint or face dismissal of the case.

On January 31, 2014, the union filed a second amended complaint. The Unfair Labor Practice Manager dismisses the second amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the second amended complaint concern employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative interference in violation of RCW 41.56.140(1)], by its actions regarding administrative leave.

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.

The deficiency notice pointed out the defects to the first amended complaint.

First Amended Complaint

The union alleges, in summary, that on December 6, 2013, employer official Terry Meisenburg directed another official to place a bargaining unit member on administrative leave “immediately.” The union alleges that the employer did not put the union on notice of the action, and that a memorandum of understanding (MOU) between the employer and union requires such notice. The union made an information request about the employer’s action on December 9, 2013, and was informed on that date that the employee had not been formally placed on administrative leave. On the same date, based upon a decision by employer official Paul Apostle, the employer told the union that the employee was not on administrative leave and asked to meet with the union to discuss the matter.

The union alleges that the employer violated its contractual duties by not giving notice to the union on December 6 regarding placing the bargaining unit member on administrative leave, and refused to provide relevant information requested by the union “by misstating the truth” when it told the union on December 9 that the member was not on administrative leave.

The allegation that the employer violated the MOU, regarding the notice required for administrative leave actions, concerns a contractual matter. The Commission does not have jurisdiction over contractual disputes in unfair labor practice proceedings. The union must seek a remedy through the grievance and arbitration procedures of the relevant collective bargaining agreement or through the courts.

The contractual dispute appears to center on the actual date the administrative leave began. The dispute regarding the alleged refusal to provide information also hinges on the date the administrative leave began. The union alleges that the employer “misstated the truth” about the date the administrative leave commenced and thus refused to provide accurate information.

However, the initial issue that must be decided is the date employer actually placed the bargaining unit member on administrative leave, not whether the employer refused to provide information by “misstating the truth” about the effective date of the leave. The questions that must be answered are: Did the employer breach the MOU on December 6 by failing to notify the union of the administrative leave action? or conversely, did the employer provide proper notice on December 9? Prior to any consideration of an unfair labor practice claim for refusal to provide information, an arbitrator or judge would need to decide whether or not the employer breached the MOU. At this time, the Commission does not have jurisdiction in this dispute.

Second Amended Complaint

The second amended complaint provides additional facts relevant to the union’s claim that the employer “gave false and misleading information in response to an information request.” The second amended complaint does not provide additional facts indicating that the Commission has jurisdiction in this dispute. As pointed out in the deficiency notice, the union claims that employer officials placed the bargaining unit member on administrative leave on December 6, 2013, but that on December 9, 2013, employer officials told the union that the bargaining unit member was not on administrative leave.

The union’s premise is that the employer placed the bargaining unit member on administrative leave on December 6 and “lied” about it to the union representative on December 9. A Commission examiner would not begin from that premise, but would evaluate evidence presented at the hearing by both parties prior to reaching a conclusion. Although the union filed the present claim for refusal to provide information, and not for breach of contract, the refusal to provide information allegation is based upon whether the bargaining unit member was or was not placed on administrative leave on December 6: That is, did the employer breach the MOU? The Commission does not have the statutory authority to answer that question in an unfair labor practice proceeding. *City of Walla Walla*, Decision 104 (PECB, 1976).

NOW, THEREFORE, it is

ORDERED

The second amended complaint charging unfair labor practices in Case 26171-U-13-6693 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 20th day of February, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David I. Gedrose", written over the printed name below.

DAVID I. GEDROSE, Unfair Labor Practice Manager

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



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 02/20/2014

The attached document identified as: **DECISION 11995 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS
COMMISSION


BY:/S/ DIANE THOVSEN

CASE NUMBER: 26171-U-13-06693 FILED: 12/30/2013 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: SECURITY
DETAILS: -
COMMENTS:

EMPLOYER: SEATTLE SCHOOL DISTRICT
ATTN: JOSE BANDA
PO BOX 34165
MS 32-151
SEATTLE, WA 98124-1165
Ph1: 206-252-0180

REP BY: CURTIS M LEONARD
PREG O'DONNELL GILLET
901 FIFTH AVE STE 3400
SEATTLE, WA 98164-2026
Ph1: 206-287-1775

PARTY 2: IUOE LOCAL 609
ATTN: DAVID WESTBERG
2800 1ST AVE STE 311
SEATTLE, WA 98121
Ph1: 206-441-8544 Ph2: 206-255-7452

REP BY: KATHLEEN PHAIR BARNARD
SCHWERIN CAMPBELL BARNARD
18 W MERCER ST STE 400
SEATTLE, WA 98119-3971
Ph1: 206-285-2828 Ph2: 800-238-4231