

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-A - PECB

DECISION OF COMMISSION

Schwerin Campbell Barnard Iglitzin & Lavitt, L.L.P., by *Kathleen Phair Barnard*,
Attorney at Law, for the union.

Preg O'Donnell & Gillett, P.L.L.C., by *Curtis M. Leonard*, Attorney at Law, and
Lara R. Hruska, Attorney at Law, for the employer.

At the preliminary ruling stage, the facts alleged in an unfair labor practice complaint are assumed true and provable. The International Union of Operating Engineers, Local 609 (union) alleged the Seattle School District (employer) placed an employee on administrative leave, the union requested information, and the employer misstated the truth thereby providing the union with false and misleading information in response to the information request. The Unfair Labor Practice Manager dismissed the complaint on the grounds that the information allegation was based on whether the employer breached a Memorandum of Understanding over the process for placing an employee on administrative leave, a question over which the Commission does not have jurisdiction. The union appealed.

The issue in this case is whether the union's unfair labor practice complaint states a cause of action. We reverse the Unfair Labor Practice Manager. Assuming the facts are true and provable, the union's complaint states a cause of action for refusal to provide information.

ANALYSIS

Legal Standards

An unfair labor practice complaint will be reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. When a complaint is reviewed under WAC 391-45-110, all alleged facts are assumed to be true and provable. *Whatcom County*, Decision 8246-A (PECB, 2004). Despite this assumption, vague or nonspecific factual allegations will be insufficient to establish a cause of action at the preliminary ruling phase. *Kitsap County*, Decision 11610-A (PECB, 2013).

Application of Legal Standards

In its amended complaint the union alleged that on December 6, 2013, the employer placed an employee on administrative leave in violation of the collective bargaining agreement. On December 9, 2013, union Business Manager David Westberg sent an e-mail to the employer's Senior Labor Relations Analyst Eva Edwards. In the December 9, 2013 e-mail, Westberg requested information relating to the employer placing the employee on administrative leave. Edwards responded that the employee had not been placed on administrative leave. The union alleged that the employer began the process of placing the employee on administrative leave, but then put the process "on hold."

At the employer's request, on December 9, 2013, Westberg attended a meeting with School Security Manager Ed Liebel and Assistant Superintendent for Human Resources Paul Apostle to discuss the issue of the employee being placed on administrative leave. Westberg asked where the employee was. Liebel told Westberg Liebel sent the employee home. Westberg asked if the employee was on administrative leave. Liebel answered, "I guess so." The employee was subsequently returned to work.

The union alleged that by misstating the truth about whether the employer placed the employee on administrative leave, the employer provided false information in response to an information request, thereby breaching its duty to bargain in good faith.

The Unfair Labor Practice Manager dismissed the union's complaint. The Order of Dismissal framed the allegations as refusal to bargain by the employer's actions regarding administrative leave. The Unfair Labor Practice Manager concluded the Commission does not have jurisdiction over the dispute because it would be necessary to determine whether the employer placed the employee on administrative leave in violation of the MOU, thereby breaching the MOU, prior to determining whether the employer failed to provide information.

For purposes of determining whether the complaint states a cause of action, the starting point is not whether the employer breached the MOU. The question is whether the union alleged it made a relevant request for information and the employer failed or refused to provide requested information.

The union alleged it requested information about an employee being placed on administrative leave and the employer misstated the truth, thereby refusing to provide information. The Unfair Labor Practice Manager was correct; the Examiner will make a ruling based on the facts presented at hearing. The union will have to establish that it made a relevant request for information and the employer refused or failed to provide information. While the question of whether the employee was on administrative leave may be an issue in the hearing, it is not the starting point for determining whether the union's complaint states a cause of action.

At the preliminary ruling stage of the proceedings, it is necessary to assume all of the alleged facts are true and provable. Assuming that the employer provided the union with false information in response to an information request, the union alleged sufficient facts for a preliminary ruling. The union bears the burden of proving at a hearing that the employer refused to provide information.

NOW, THEREFORE, it is

ORDERED

1. The Order of Dismissal issued by Unfair Labor Practice Manager David I. Gedrose is VACATED.

2. The complaint charging an unfair labor practice filed in this matter has been reviewed under WAC 391-45-110. The allegation concerns:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its refusal to provide relevant information requested by the union.

3. The employer shall file and serve its answer to the allegations listed in Paragraph 2 of this Order within 21 days following the date of this Order.

ISSUED at Olympia, Washington, this 19th day of June, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

MARK E. BRENNAN, Commissioner