

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
NORMA J. WEBSTER,)	
)	
Complainant,)	CASE 10879-U-94-2532
)	
vs.)	DECISION 4917-A - EDUC
)	
SEATTLE EDUCATION ASSOCIATION,)	
)	DECISION OF COMMISSION
Respondent.)	
)	
)	

This matter comes before the Commission on a petition for review filed by Norma Webster, seeking reversal of a dismissal order issued by Executive Director Marvin L. Schurke on November 21, 1994.

BACKGROUND

On January 11, 1994, Norma J. Webster filed a complaint charging unfair labor practices with the Commission. Webster identified herself as a business education teacher employed by the Seattle School District, and identified the Seattle Education Association as the exclusive bargaining representative of certificated employees of the Seattle School District under the Educational Employment Relations Act, Chapter 41.59 RCW. The complaint named Wes Harris, the assistant executive director of the Seattle Education Association (SEA), as respondent. Webster alleged that the union interfered with employee rights, discriminated for filing charges, and refused to bargain, by failing or refusing to act on her behalf on incidents connected with her employment.

This dispute appears to date back to the 1991-1992 school year, when the employer first offered and then withdrew a contract for Webster for the 1992-1993 school year. Webster alleged that Harris did not act on her behalf in regard to an EEOC complaint, discriminated against her and violated her right to work based on race and the practice of "white out", violated time guidelines in the contract, failed to file an EEOC suit on her behalf, and neglected to refile an arbitration regarding a loss of contract. The complainant also sought reconsideration of an arbitrator's decision that the district's contract offer for the 1992-93 school year could be withdrawn. Webster asked to be awarded her executed contract for 1992-1993 and to be made whole for 1993-1994 with tenure and the right to take a sabbatical or educational leave and all other benefits that accrue with that contract. She cited Mr. Harris's deliberate failure to file a timely complaint as being directly responsible for her loss of opportunity to teach in 1992-1993 and 1993-1994.

The matter came before the Executive Director for processing pursuant to WAC 391-45-110.¹ On May 13, 1994, the Executive Director issued a preliminary ruling which noted that the complaint did not state a cause of action under Chapter 41.59 RCW, and allowed 14 days for the filing of an amended complaint. The Executive Director noted that the Commission is not the appropriate agency to process general allegations of racial discrimination.

After obtaining an extension of the deadline set by the Executive Director, the complainant filed an amended complaint on August 15, 1994. Additional documents filed on September 22, October 11, October 21, and October 25, 1994, were also taken as amendatory to

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 complaint. As so amended, the complaint then included allegations of failure to obtain assistance on an EEOC case and other claims regarding discrimination, a request that a lawsuit dating back to Webster's previous employment in Idaho be reopened, and a request for consolidation of proceedings with a case pending in federal court. The complaint also alleged that Harris and/or the SEA were contractually obligated to notify her of vacancies for which she might have qualified.

On November 21, 1994, the Executive Director dismissed the complaint for failure to state claims for relief available through unfair labor practice proceedings before the Commission. It was noted that the Commission's jurisdiction is limited to the administration of state collective bargaining statutes, that some of the allegations were not timely filed, and that others were deemed to be abandoned in the absence of an amended complaint.

Webster petitioned for review of the order of dismissal on November 29, 1994, bringing the matter before the Commission.

POSITIONS OF THE PARTIES

Norma Webster claims that a Seattle Education Association official violated time deadlines, caused inexcusable delay, and failed to follow the union's own guidelines; that this individual deliberately failed, refused, and neglected to file a timely grievance in the spring of 1992; that he violated both the letter and the spirit of the collective bargaining agreement, by failing to be available in summer of 1992; and that instead of being notified and allowed to interview for one of five positions, she was placed in a substitute position with a salary less than half of a contracted position. Webster alleges the SEA is responsible to place surplus, displaced teachers, under the Memorandum of Understanding incorporated into the 1991-93 bargaining contract. She asks

the Commission to review an arbitration decision handed down on August 24, 1993 (based on a hearing held May 12, 1993), which denied her "contract issuance/withdrawal" grievance more than a year after it was filed. Webster thus asserts that the unfair labor practices occurred long after the June of 1992 period when the dispute arose. She argues that a second grievance was handled poorly by the SEA, and that no decision has been issued on it under American Arbitration Association procedures. She asks that the scope of the Commission's jurisdiction be expanded to include appeals of arbitration proceedings or the lack of them, and alleges the unfair labor practices on the union's failure to represent her are timely. In her petition for review, she renews her request that a "due process" case in Idaho be reopened, and that this case be consolidated with the Idaho case.

Due to the dismissal of the complaint at the preliminary ruling stage, the SEA is not required to file an answer or otherwise defend in this proceeding. It has not taken a position on the petition for review.

Any Commission jurisdiction in this dispute arises out of Webster's employment by the Seattle School District, but the employer was not named as a party to this proceeding. It has not taken a position.

DISCUSSION

The complainant appeared pro se in this proceeding. As the Commission has said in other cases, with respect to the evaluation of the evidence, no greater consideration can be given to a pro se party than to a party represented by experienced counsel.²

² See, Port of Seattle, Decision 3064-A and 3065-A (PECB, 1989), Battle Ground School District, Decision 2997-B (EDUC, 1989).

As an administrative agency of the state of Washington, the Public Employment Relations Commission has no authority under the collective bargaining laws to reopen, consolidate or otherwise act upon a lawsuit in this state, Idaho, or in any other state.

The Commission does not 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 allegations that the union violated the contract by failing to file a grievance, that Webster was placed in a position of lesser salary, and that the union has a responsibility to place her do not state a cause of action.

A union owes a duty of fair representation to the employees it represents, including the investigation and prosecution of grievances in a manner that is not arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967). An employee who has been denied access to arbitration due to a union's breach of its duty of fair representation may have a cause of action in the courts, as a third-party beneficiary to the collective bargaining agreement. The courts are equipped to rule on "fair representation" and "exhaustion of contract remedies" issues as a condition precedent to determining and remedying any contract violation. Even more important, a court can obtain jurisdiction over the employer to determine and remedy any underlying contract violation. In comparison, the Commission does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances because it lacks jurisdiction to remedy any underlying contract violation. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

The Commission does assert jurisdiction in "fair representation" cases where a union is accused of aligning itself in interest against employees it represents, based on invidious discrimination.

We agree with the Executive Director, however, that the complainant's allegations are time barred. If the union official acted on the basis of race in the summer of 1992, it was that misconduct which gave rise to a cause of action before the Commission, not the issuance of an adverse arbitration award more than a year later.

The Commission takes no position on the complainant's request that the scope of its jurisdiction be expanded to include appeals of arbitration proceedings or lack of them. The Commission has long declined to become involved in enforcement of arbitration procedures. Thurston County Communication Board, Decision 103 (PECB, 1976). The Commission's jurisdiction is granted to it by the laws of the state of Washington. The complainant seeks redress of issues that are more properly raised in other forums, i.e., the EEOC or the courts.

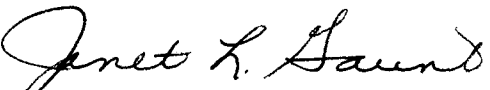
NOW, THEREFORE, it is

ORDERED


The order of dismissal issued by the Executive Director in the above-captioned matter is AFFIRMED.

Issued at Olympia, Washington, the 27th day of February, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


JANET L. GAUNT, Chairperson


DUSTIN C. McCREARY, Commissioner


SAM KINVILLE, Commissioner