

The matters are presently before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. The question at hand is whether, assuming all of the facts alleged to be true and provable, the complaints state claims for relief which can be granted through the unfair labor practice procedures of the Public Employment Collective Bargaining Act, Chapter 41.56 RCW.

There is no allegation made that the employer acted against the complainant in reprisal for her union activity. Instead, the claims against the employer all appear to involve complaints about her assignments, seniority status, call-out pay, break time and whether the employer had just cause for her termination. If the complainant is claiming these are violations of the collective bargaining agreement, she has no remedy through unfair labor practice proceedings before the Public Employment Relations Commission. The Commission lacks jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice procedures of Chapter 41.56 RCW. See: City of Walla Walla, Decision 104 (PECB, 1976). Such actions are remedied through the grievance and arbitration provisions of the contract itself, or through civil litigation in the courts. Similarly, there is no allegation that the employer was in collusion with the union in bargaining contract provisions which would be discriminatory against the complainant, or that the contract was applied in a discriminatory manner. Thus, there would appear to be no basis for concluding that the City of Seattle could be found guilty of an unfair labor practice in this case.

The allegations against the union appear to involve a charge of breach of the union's "duty of fair representation". The Public Employment Relations Commission has drawn a distinction between two types of fair representation issues, asserting jurisdiction over one type and declining jurisdiction over the other. In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), and in a number of more recent cases, jurisdiction has been declined with respect to breach of duty of fair representation claims arising exclusively from the processing of grievances arising under existing collective bargaining agreements. Such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer. By way of contrast, Elma School District (Elma Teachers Organization), Decision 1349 (PECB, 1982), involved allegations of discrimination against a grievant because of her previous support of another labor organization. A violation of the nature alleged in Elma would place in question the right of the organization involved to continue to enjoy the status and benefits conferred by the statute on an exclusive bargaining representative. This case appears to fall within the class governed by the Mukilteo case. There is no allegation that the complainant was discriminated against on any unlawful basis. The one reference to friendship is too vague to warrant action without more facts. The union had a duty to investigate

the complainant's grievance and to make a good faith determination on its merit. It need not blindly support a frivolous grievance. The union may or may not have breached its duty of fair representation with respect to its processing of the complainant's grievance. However, such issues are matters for the courts to decide.

The complainant offers in the complaint to provide more information. The Commission does not "investigate" complaints, and the preliminary ruling must be based on the written original or amended complaint(s) filed with it and served on the other parties. With the direction herein provided, complainant may be better able to amend the complaint to focus attention on claims within the Commission's jurisdiction.

NOW, THEREFORE, it is

ORDERED

The complainant will be allowed a period of fourteen (14) days following the date of this Order to amend the complaints. In the absence of an amendment, the complaints will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 22nd day of January, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director