

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SUSAN J. KERNS, Complainant, vs. VANCOUVER HOUSING AUTHORITY, Respondent.	}	CASE NO. 5634-U-85-1029
SUSAN J. KERNS, Complainant, vs. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 11, Respondent.	}	CASE NO. 5635-U-85-1030 DECISION NO. 2177 - PECB PRELIMINARY RULING

On January 10, 1985, Susan J. Kerns filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complaint listed the Vancouver Housing Authority as the respondent. The supporting statement of facts contained allegations of misconduct against both the employer and against Office and Professional Employees International Union, Local 11; hence, two separate cases were docketed. 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 the facts alleged to be true and provable, the complaints state claims for relief which can be granted through the unfair labor practice proceedings of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

The complaint alleges that Kerns was terminated by the employer in violation of the procedures outlined in the collective bargaining agreement existing between Local 11 and the Vancouver Housing Authority. After her termination, Kerns contacted Local 11 and understood the union's position to be that it could not represent her because she had been on probationary status. Thereafter, apparently an Administrative Assistant for the employer told her she could file a grievance if she felt she had been unfairly treated. By the

time she received this information the time period for filing a grievance had expired. Kerns alleged that neither her union representative or the supervisor who terminated her informed her of the right to file a grievance. Kerns concluded the charge of unfair labor practices by writing:

"Since proper procedure per the union contract was not followed, I feel I am justified in filing this complaint on this basis."

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of RCW 41.56. to enforce collective bargaining agreements, see: City of Walla Walla, Decision 104 (PECB, 1976). Nor does it enforce the agreement to arbitrate, see: Thurston County, Decision 103 (PECB, 1976). To the extent that the complainant claims a contractual right to arbitrate her grievance, that right is beyond the authority of the Commission to enforce.

One view of the allegations would be to take them as asserting that the union had breached its duty of fair representation in connection with its handling of the complainant's grievance. The Public Employment Relations Commission has declined to assert its unfair labor practice jurisdiction to determine "duty of fair representation" claims arising exclusively out of the processing of grievances. See: Mukilteo School District, Decision 1381 (PECB, 1982). The reason for that policy is that, although the Commission might have jurisdiction over the relationship between the employee and the exclusive bargaining representative, the Commission lacks jurisdiction over the employer for enforcement of the collective bargaining agreement. Such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer. The Commission will assert its jurisdiction with respect to breach of duty of fair representation claims where the allegations involve discrimination against the grievant because of her previous support of another labor organization. Elma School District (Elma Teachers Organization), Decision 1349 (PECB, 1982).

The allegations of this complaint appear to fall within the bounds of the Mukilteo case. There is no allegation that the complainant was discriminated against on any unlawful basis. For the reasons stated above, the complaints fail to state claims on which relief can be granted. With the direction provided here as to what is not available to the complainant through the unfair labor practice procedures of the Commission, she may be better able to focus attention on any claims which are within the jurisdiction of the Commission.

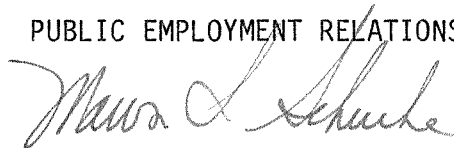
NOW, THEREFORE, it is

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 cause of action.

DATED at Olympia, Washington, this 28th day of February, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director