

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA HOUSING AUTHORITY,)	
)	
Employer.)	
-----)	
SAUL PADILLA,)	CASE 14252-U-97-3534
)	
Complainant,)	DECISION 6817 - PECB
)	
vs.)	ORDER OF DISMISSAL
)	
PIERCE COUNTY, WASHINGTON)	
BUILDING AND CONSTRUCTION)	
TRADES COUNCIL,)	
)	
Respondent.)	
-----)	
SAUL PADILLA,)	
)	CASE 14087-U-98-3487
Complainant,)	
)	DECISION 6816 - PECB
vs.)	
)	
TACOMA HOUSING AUTHORITY,)	ORDER OF DISMISSAL
)	
Respondent.)	
-----)	

On August 17, 1998, Saul Padilla filed a complaint charging unfair labor practices with the Public Employment Relations under Chapter 391-45 WAC. Allegations that the Tacoma Housing Authority (employer) discriminated against Padilla by requiring his presence at a "mandatory EAP referral" meeting without permitting him to have union representation were docketed as Case 14087-U-98-3487. Allegations that the Pierce County, Washington, Building and Construction Trades Council (union) has breached its duty of fair

representation, by agreeing with the employer that union representation was unnecessary, were docketed as Case 14252-U-98-3534. The cases were combined for processing.

A Deficiency Notice was issued on August 3, 1999, under WAC 391-45-110,¹ pointing out several problems with the complaints, as filed. The complainant was given a period of 14 days to file and serve an amended complaint that stated a cause for action or face dismissal of the complaint.

Nothing further has been heard from the complainant. The complaints are thus dismissed.

DISCUSSION

WAC 391-45-050 requires the filing of a complaint containing sufficient details to put the agency and other parties on notice of the alleged unlawful conduct. The Commission maintains an impartial posture in the processing of unfair labor practice cases, and its staff does not "investigate" complaints in a manner that would be familiar to those who practice before the National Labor Relations Board. The complaint did not contain the required details about the disputed meeting, and did not name the participants at the meeting.

¹ At this stage of the proceedings, all of the facts alleged in a 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.

Although a right to union representation at investigatory interviews is recognized under National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975) and Commission precedents adopting the principles set forth in that federal court ruling, the right to union representation only applies where the employee makes a request for union representation, and it does not apply to all meetings between employers and employees. The complaints in these cases fall short of suggesting that Padilla had a reasonable expectation that discipline could result from questions to be asked of him at the meeting held in June of 1998.

A request for union representation for a meeting held in July of 1998 appeared to be premature, because the employer had not informed Padilla of the nature of the meeting.

The propriety of the "mandatory EAP referral" appeared to fall into the category of a violation of contract claim under the collective bargaining agreement. 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). Such claims must be pursued through the grievance and arbitration machinery of the contract, or through the courts.

The propriety of the union's refusal to file a grievance appeared to fall into the category of "breach of duty of fair representation" claims over which the Commission does not assert jurisdiction. See, Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). Such claims must be pursued in a court which can assert jurisdiction to determine and remedy (if appropriate) any underlying contract violation.

NOW, THEREFORE, it is

ORDERED

1. Case 14252-U-97-3534; DECISION 6817 - PECB: The complaint filed in this matter is DISMISSED.

2. Case 14087-U-98-3487; DECISION 6816 - PECB: The complaint filed in this matter is DISMISSED.

DATED at Olympia, Washington, this 3rd day of September, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order 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

603 EVERGREEN PLAZA BUILDING
P. O. BOX 40919
OLYMPIA, WA 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
SAM KINVILLE, COMMISSIONER
JOSEPH W. DUFFY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 6816 - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, 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/ BETTY PASSMORE

CASE NUMBER: 14087-U-98-03487 FILED: 08/17/98

ISSUED: 09/03/99

FILED BY: PARTY 2 DISPUTE: ER INTERFERENCE

DETAILS: Mandatory attendance at EAP meeting.

COMMENTS:

Employer: TACOMA HOUSING AUTHORITY
Attn: LONELL PHILLIP
901 SOUTH L STREET

WARREN E MARTIN
GORDON, THOMAS, ET AL
1201 PACIFIC AVE, STE 2200
PO BOX 1157
TACOMA, WA 98401-1157
(253) 620-6479

Rep by: TACOMA, WA 98405
253-207-4400
NANCY KLICH
TACOMA HOUSING AUTHORITY
901 SOUTH L STREET STE 2A
TACOMA, WA 98405
(253) 274-5582

Party # 2 SAUL PADILLA
Attn: 3981 EVERETT AVE E

TACOMA, WA 98404
253-472-2838
Rep by:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

603 EVERGREEN PLAZA BUILDING
P. O. BOX 40919
OLYMPIA, WA 98504-0919

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ BETTY PASSMORE

CASE NUMBER: 14252-U-98-03534 FILED: 11/18/98 ISSUED: 09/03/99
FILED BY: PARTY 2 DISPUTE: UN INTERFERENCE DETAILS: RE: 14087-U

COMMENTS:

Employer: TACOMA HOUSING AUTHORITY
Attn: LONELL PHILLIP
901 SOUTH L STREET

WARREN E MARTIN
GORDON, THOMAS, ET AL
1201 PACIFIC AVE, STE 2200
PO BOX 1157
TACOMA, WA 98401-1157
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(253) 274-5582

Party # 2 SAUL PADILLA
Attn: 3981 EVERETT AVE E

TACOMA, WA 98404
253-472-2838

Rep by:

Party # 3 PIERCE CO BLDG & TRADES CNCL
Attn: JOHN H MEIER
3049 S 36TH STREET, RM 206

TACOMA, WA 98409
253-475-7441

Rep by: