

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF YAKIMA,)	
)	
Employer.)	
-----)	
TONY RAMOS,)	CASE 15188-U-00-3830
)	
Complainant,)	
)	
vs.)	DECISION 7147 - PECB
)	
YAKIMA POLICE PATROLMAN'S)	
ASSOCIATION,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
)	

A complaint charging unfair labor practices was filed by Tony Ramos against the Yakima Police Patrolman's Association with the Public Employment Relations Commission on May 11, 2000. The allegations of the complaint concern union interference with employee rights and inducement of the employer to commit an unfair labor practice in violation of RCW 41.56.150(1) and (2), all in regard to the union's handling of a grievance filed by Ramos.

On June 29, 2000, a deficiency notice was issued under WAC 391-45-110. The deficiency notice reviewed the complaint under RCW 34.05.419(2), which requires administrative agencies to:

Examine the application, notify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require ...

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 Commission. The deficiency notice informed the complainant that absent the filing and service of an amended complaint stating a cause of action within 21 days following the date of the deficiency notice, the complaint would be dismissed. Nothing further has been received from the complainant.

Allegations Against the Employer

The deficiency notice indicated that Ramos checked the box on the complaint form for "Employer Domination or Assistance of Union". However, a statement of facts attached to the complaint does not contain any factual allegation of employer misconduct under Chapter 41.56 RCW. Absent any such allegation, it is not possible to conclude that a cause of action exists at this time against the employer.

Allegations Against the Union

The complaint contains three allegations against the union. The first allegation concerns the union's refusal to pursue Ramos' grievance to arbitration. The Public Employment Relations Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any

underlying contract violation. It is not possible to conclude that a cause of action exists at this time for the first allegation against the union.

The second allegation concerns a change in the procedures for voting at a union meeting. Procedures for voting at union meetings are usually controlled by the organization's constitution and/or bylaws. The constitutions and bylaws of unions are the contracts among the members of the union for how the organization is to be operated. Such disputes about internal union affairs must be resolved through internal procedures of the union or the courts. Enumclaw School District, Decision 5979 (PECB, 1997). It is not possible to conclude that a cause of action exists at this time for the second allegation against the union.

The third allegation concerns racial discrimination in the union's decision-making process concerning the Ramos grievance. While the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances, the Commission polices its certifications, and asserts jurisdiction over alleged breaches of the duty of fair representation where the union is alleged to have aligned itself in interest against one or more bargaining unit employees on some improper or invidious basis. Because such conduct calls into question the right of the union to enjoy the benefits of its statutory status as "exclusive bargaining representative", the potential remedies are quite far-reaching. See, City of Vancouver, Decision 6933 (PECB, 2000). While this allegation is generally within the jurisdiction of the Commission, the complaint fails to allege any specific facts concerning racial discrimination involving the subject matter of the complaint. Commission rules require:

WAC 391-45-050 Contents of complaint charging unfair labor practices. Each complaint shall contain, in separate numbered paragraphs:

...
(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The complaint does not comply with the provisions of WAC 391-45-050(2).

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 10th day of August, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

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.