

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF EVERETT,	)	
	)	
Employer.	)	
-----	)	
MARLISS OLSON,	)	CASE 15287-U-00-3857
	)	
Complainant,	)	
	)	DECISION 7339 - PECB
vs.	)	
	)	
WSCCCE, LOCAL 113,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
_____	)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by Marliiss Olson (Olson) on July 5, 2000. The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.150(3), refusal to bargain in violation of RCW 41.56.150(4), and other unfair labor practices (breach of duty of fair representation) in violation of unspecified statutes, by failure to resolve skimming of office specialist work issues with the employer. Olson is employed by the City of Everett (employer).

The complaint was reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on October 3, 2000, indicating that it was not

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<sup>1</sup> At this stage of the proceedings, all facts alleged in a complaint are assumed to be true and provable. The inquiry is whether the complaint states a cause of action for unfair labor practice proceedings.

possible to conclude that a cause of action existed. The deficiency notice indicated that in relation to the interference charge, a statement of facts attached to the complaint did not contain any factual allegation concerning denial by the union of the complainant's statutory rights under Chapter 41.56 RCW. Absent such allegations, an interference violation cannot be sustained. A violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The statement of facts did not contain any such factual allegations.

As regards the refusal to bargain charge, the complaint alleges that the union failed to resolve skimming of office specialist work issues with the employer. Skimming allegations are controlled by the refusal to bargain provisions of Chapter 41.56 RCW. Those provisions can only be enforced by an exclusive bargaining representative, and individual employees do not have standing to process such allegations.

In relation to the duty of fair representation charge, 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 does police its certifications and asserts jurisdiction over alleged breaches of the duty of fair representation where a union is alleged to have aligned itself in interest against one or more bargaining unit employees on the basis of union membership, or some improper or invidious basis. See, *City of Port Townsend*, Decision 6433-A (PECB, 1999), citing *Castle Rock School District*, Decision 4722-B (EDUC, 1995). The complaint fails to contain factual allegations concerning duty of fair representation claims that come within the Commission's jurisdiction.

The deficiency notice advised Olson that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Olson that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed.

On October 27, 2000, Olson filed a letter in response to the deficiency notice. The letter complained of the union's lack of action in pursuing skimming charges against the employer. The letter failed to cure any of the defects noted in the deficiency notice.

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 27th day of March, 2001.

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.