

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WILLIAM GLOVER,	)	
	)	
Complainant,	)	CASE 15654-U-01-3968
	)	
vs.	)	DECISION 7405 - PECB
	)	
PORT OF SEATTLE,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
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WILLIAM GLOVER,	)	
	)	
Complainant,	)	CASE 15655-U-01-3969
	)	
vs.	)	DECISION 7406 - PECB
	)	
IBEW, LOCAL 46,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
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On February 20, 2001, William Glover (Glover) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. Glover is employed by the Port of Seattle (employer). He is represented for the purposes of collective bargaining by IBEW, Local 46 (union). The complaint alleged statutory violations both by the employer and the union. The complaint against the employer was docketed as Case 15654-U-01-3968. A separate case was docketed for the charges against the union as Case 15655-U-01-3969. Additional documents were filed by Glover in both cases on March 28, 2001.

The complaint in Case 15654-U-01-3968 alleged that the employer interfered with employee rights and discriminated against Glover in violation of RCW 41.56.140(1), dominated or assisted the union in

violation of RCW 41.56.140(2), and discriminated against Glover for filing unfair labor practice charges in violation of RCW 41.56.140(3), by its disparate treatment, harassment, and retaliation against Glover for a job related injury. The complaint in Case 15655-U-01-3969 alleged that the union interfered with employee rights in violation of RCW 41.56.150(1), induced the employer to commit an unfair labor practice violation in violation of RCW 41.56.150(2), discriminated against Glover for filing unfair labor practice charges in violation of RCW 41.56.150(3), refused to bargain in violation of RCW 41.56.150(4), and committed other unfair labor practices in retaliation for a past lawsuit, by failing to pursue grievances filed by Glover.

The complaints were reviewed under WAC 391-45-110.<sup>1</sup> A deficiency notice was issued on April 18, 2001, indicating that it was not possible to conclude that a cause of action existed at that time. In regards to the interference allegations against the employer in Case 15654-U-01-3968, the deficiency notice explained that a statement of facts attached to the complaint did not contain any factual allegation concerning denial by the employer 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.

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

The deficiency notice stated that it was not possible to conclude that a cause of action existed at that time for the allegations of employer discrimination in violation of RCW 41.56.140(1). The complaint failed to allege facts supporting any allegation that employer actions were taken in reprisal for union activities protected under Chapter 41.56 RCW. In relation to the domination allegations, none of the facts alleged in the complaint suggested that the employer had involved itself in the internal affairs or finances of the union, or that the employer had attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

The deficiency notice indicated that the complaint referred to Glover's right to a union representative under the parties' collective bargaining agreement. The Public Employment Relations 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).

In regards to the allegations against the union in Case 15655-U-01-3969, the deficiency notice indicated that the 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.

The deficiency notice stated that in relation to the interference charge against the union, a statement of facts attached to the complaint did not contain any factual allegation concerning denial

by the union of Glover'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 Glover has previously filed an unfair labor practice complaint with the Commission. The statement of facts did not contain any such factual allegations.

The deficiency notice indicated that in regards to the refusal to bargain allegations against the union, those statutory 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 inducement to commit unfair labor practice allegations, the complaint did not contain any sustainable factual allegations concerning commission of unfair labor practices by the employer. Absent such allegations, a violation of RCW 41.56.150(2) cannot be found. In relation to the "other unfair labor practice" allegations, the complaint failed to specify what other statute under the Commission's jurisdiction had been violated.

The deficiency notice advised Glover 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 Glover that in the absence of a timely amendment stating a cause of action, the complaints would be dismissed.

On May 9, 2001, Glover filed an amended complaint for both cases. The amended complaint refers to claimed rights that Glover was denied at a Loudermill hearing held by the employer on March 29, 2001. The Commission does not enforce the constitutional "due process" requirements as interpreted by the Supreme Court of the

United States in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) through the unfair labor practice provisions of the collective bargaining statutes that it administers. *Clover Park School District*, Decision 7073 (EDUC, 2000); *City of Winlock*, Decision 4784-A (PECB, 1995); and *City of Bellevue*, Decision 4324-A (PECB, 1994).

The amended complaint also contains allegations concerning a grievance that Glover attempted to file with the union on April 10, 2001. Those allegations are similar to the "breach of duty of fair representation" claims referenced in the original complaint. As indicated in the deficiency notice, the Commission does not assert jurisdiction over such claims. *Mukilteo School District (Public School Employees of Washington)*, *supra*.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 16<sup>th</sup> day of May, 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.