

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 15665-U-01-3970
)	
vs.)	DECISION 7429 - EDUC
)	
TACOMA SCHOOL DISTRICT,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
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LOIS MEHLHAFF,)	
)	
Complainant,)	CASE 15666-U-01-3971
)	
vs.)	DECISION 7430 - EDUC
)	
TACOMA EDUCATION ASSOCIATION,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
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On February 20, 2001, Lois Mehlhaff (Mehlhaff) filed two complaints charging unfair labor practices with the Public Employment Relations Commission. Mehlhaff is employed by the Tacoma School District (employer), and is represented for the purposes of collective bargaining by Tacoma Education Association (union). One complaint, docketed as Case 15665-U-01-3970, alleged that the employer interfered with employee rights in violation of RCW 41.59.140(1)(a), dominated or assisted the union in violation of RCW 41.59.140(1)(b), and discriminated in violation of RCW 41.59.140(1)(c), by colluding with the union in failing to enforce section 12 of the parties' collective bargaining agreement concerning representation fees from substitute employees. The complaint requested as a remedy that the employer be ordered to require the deduction of representation fees.

The second complaint, docketed as Case 15666-U-01-3971, alleged that the union interfered with employee rights in violation of RCW 41.59.140(2)(a), and induced the employer to discriminate in violation of RCW 41.59.140(2)(b), by colluding with the employer in failing to enforce section 12 of the parties' collective bargaining agreement concerning representation fees from substitute employees. The complaint requested as a remedy that the union be ordered to require the deduction of representation fees.

The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice was issued on May 10, 2001, indicating that it was not possible to conclude that a cause of action existed at that time. The complaints indicate that Mehlhaff is a substitute employee who is not a member of the union. On May 17, 1995, Mehlhaff filed unfair labor practice complaints against the employer and union with the Commission. In *Tacoma School District (Tacoma Education Association)*, Decisions 5465-C and 5466-B (EDUC, 1996), an Examiner concluded that there was no collusion between the employer and union concerning the union's waiver of its right to agency fees for substitute employees. The Examiner's ruling was affirmed by the Commission in *Tacoma School District (Tacoma Education Association)*, Decisions 5465-E and 5466-D (EDUC, 1997). The Commission stated:

Mehlhaff argues . . . that the agency shop provisions were not uniformly enforced at any time during the applicable time period. The complainant's arguments are without merit for multiple reasons, as indicated below:

¹ 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.

- Mehlhaff lacks legal standing to assert rights on behalf of the union. The right to negotiate and enforce union security obligations applicable to some or all bargaining unit employees lies entirely with the union, and Mehlhaff has no claim against the union for waiving its right to require dues or fees from substitute teachers.

The deficiency notice indicated that the Commission in Decisions 5465-E and 5466-D concluded that the union acted alone when it waived the collection of agency fees from substitute employees.

The principle of *res judicata* precludes re-litigation of issues. In *City of Seattle*, Decision 5852-C (PECB, 1998), the Commission stated:

The Supreme Court of the State of Washington defined *res judicata* in *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759 (1995), as referring:

[T]o 'the preclusive effect of judgments, including the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action.' . . . It is designed to 'prevent relitigation of already determined causes and curtail multiplicity of actions and harassment in the courts.' . . . For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.

The Commission held that *res judicata* principles apply where issues have been fully litigated. Mehlhaff's complaints were fully litigated in Decisions 5465-E and 5466-D. *Res judicata* principles preclude re-litigation of those same issues.

The deficiency notice explained that the complaints also allege violations of 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).

The deficiency notice advised Mehlhaff that amended complaints could be filed and served within 21 days following such notice, and that any materials filed as amended complaints would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Mehlhaff that in the absence of a timely amendment stating a cause of action, the complaints would be dismissed. Nothing further has been received from Mehlhaff.

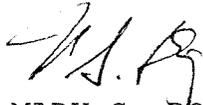
NOW THEREFORE, it is

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 6th day of June, 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.