

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SAMUEL D. HANSEN,)	
)	
Complainant,)	CASE 16513-U-02-4268
)	
vs.)	DECISION 7828 - PECB
)	
PORT OF PASCO,)	
)	
Respondent.)	ORDER OF DISMISSAL
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SAMUEL D. HANSEN,)	
)	
Complainant,)	CASE 16514-U-02-4269
)	
vs.)	DECISION 7829 - PECB
)	
PORT OF PASCO POLICE ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
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A complaint charging unfair labor practices in the above-referenced matters was filed with the Public Employment Relations Commission by Samuel D. Hansen (Hansen) on June 28, 2002. The complaint contained allegations against both the Port of Pasco (employer) and the Port of Pasco Police Association (union). As allegations against an employer and union cannot be processed in the same proceeding or case, the Commission docketed two separate case numbers for the complaint: 1) Case 16513-U-02-4268 involves allegations against the employer; and 2) Case 16514-U-02-4269 concerns allegations against the union.

Complaint Involving Employer

The complaint in Case 16513-U-02-4268 alleged that the employer interfered with employee rights and discriminated against Hansen in

violation of RCW 41.56.140(1), and discriminated against Hansen for filing unfair labor practice charges in violation of RCW 41.56.140(3), by negotiating new provisions in the parties' collective bargaining agreement concerning accrual of sick leave, in reprisal for his union activities protected by Chapter 41.56 RCW.

The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice was issued on July 17, 2002, indicating that it was not possible to conclude that a cause of action existed at that time. The deficiency notice stated that the statement of facts attached to the complaint indicated that the parties' current collective bargaining agreement was dated in June 2001. The Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. . . .

The deficiency notice indicated that it appeared from the statement of facts that negotiations for the agreement were completed by June 2001, thus the complaint was untimely under RCW 41.56.160.

¹ 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 Public Employment Relations Commission.

The deficiency notice stated that the complaint referred to an incident in March and April of 2002 concerning the accrual of sick leave under the new provisions of the 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 indicated that in relation to the allegations of discrimination for filing an unfair labor practice charge, the statement of facts attached to the complaint did not contain any factual allegation indicating that Hansen had previously filed an unfair labor practice complaint with the Commission under Chapter 41.56 RCW.

Complaint involving Union

The complaint in Case 16514-U-02-4269 alleged that the union interfered with employee rights in violation of RCW 41.56.150(1), discriminated against Hansen for filing unfair labor practice charges in violation of RCW 41.56.150(3), refused to bargain in good faith in violation of RCW 41.56.150(4), and committed an "other unfair labor practice" in violation of RCW 41.56.080, by negotiating new provisions in the parties' collective bargaining agreement concerning accrual of sick leave, in reprisal for his union activities protected by Chapter 41.56 RCW.

The complaint was reviewed under WAC 391-45-110. A deficiency notice was issued on July 17, 2002, indicating that it was not possible to conclude that a cause of action existed at that time. The deficiency notice stated that the deficiencies noted for the allegations against the employer in Case 16513-U-02-4268 applied equally to the allegations in Case 16514-U-02-4269 against the union.

The deficiency notice indicated that the complaint alleged that the union changed its bylaws, disposed of union funds, and hired an attorney and an accountant. The constitutions and bylaws of unions are the contracts among the members of the union for how the organization is to be operated. Disputes about changes in bylaws or other decisions of the union are internal union affairs and must be resolved through internal procedures of the union or the courts. *Enumclaw School District*, Decision 5979 (PECB, 1997).

The deficiency notice stated that while the complaint alleged a violation of RCW 41.56.080, the statement of facts did not contain any factual allegations supporting such claim. 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.

The deficiency notice indicated that the allegations concerning refusal to bargain in good faith in violation of RCW 41.56.150(4) were related to negotiations for the agreement completed by June 2001, and those allegations appeared to be untimely under RCW 41.56.160.

Documents Filed by Employer and Union

On July 12, 2002, the employer filed a letter dated July 9, 2002, with the Commission in Cases 16513-U-02-4268 and 16514-U-02-4269. On July 19, 2002, the union filed a letter dated July 15, 2002,

with the Commission in Case 16514-U-02-4269. Under WAC 391-45-110, the preliminary ruling and deficiency notice process is limited to a review of the complaint. The letters filed by the employer and union were not considered in preparing the deficiency notice or these orders of dismissal.

Filing of Amended Complaints

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

On August 5, 2002, Hansen filed an amended complaint in Case 16513-U-02-4268 concerning the allegations against the employer. The amended complaint alleged that when Hansen was sick on March 31 and April 1, 2002, the employer charged those days to vacation as opposed to sick leave, contrary to the parties' agreement. Hansen claims that the employer's action violated its duty to bargain in good faith. Hansen alleges in the amended complaint that he has filed previous unfair labor practice complaints with the Commission.

The amended complaint has been reviewed under WAC 391-45-110. The defects noted in the deficiency notice have not been cured by the amended complaint. The refusal to bargain provisions of Chapter 41.56 RCW can only be enforced by an employee organization or an employer, and individual employees do not have standing to process such allegations.

The defect concerning the timeliness of the complaint in Case 16513-U-02-4268 under RCW 41.56.160 is fatal to the processing of the complaint. Negotiations for the new provisions in the parties' agreement concerning accrual of sick leave that form the basis of the allegations in the complaint, were completed by June 2001. However, the complaint was filed on June 28, 2002, over a year after the complained-of negotiations.

No amended complaint was filed by Hansen in relation to Case 16514-U-02-4269 concerning the allegations against the union.

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 27th day of September, 2002.

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.