

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT MCENTEE,	)	
	)	
Complainant,	)	CASE 16571-U-02-4311
	)	
vs.	)	DECISION 8092 - PECB
	)	
WASHINGTON STATE COUNCIL OF	)	
COUNTY AND CITY EMPLOYEES,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
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ROBERT MCENTEE,	)	
	)	
Complainant,	)	CASE 16572-U-02-4312
	)	
vs.	)	DECISION 8093 - PECB
	)	
KITSAP COUNTY,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
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On July 18, 2002, Robert McEntee (McEntee) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The complaint named the Washington State Council of County and City Employees (union) and Kitsap County (employer) as respondents. As the complaint alleged statutory violations by two parties, the Commission docketed two case numbers for the complaint. Case 16571-U-02-4311 concerns allegations against the union, while Case 16572-U-02-4312 involves allegations against the employer. The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on

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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.

January 30, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. McEntee was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases. Nothing further has been received from McEntee.

The Director of Administration dismisses the complaints for failure to state a cause of action.

### DISCUSSION

#### Complaint filed against Union

The complaint in Case 16571-U-02-4311 alleged that the union interfered with employee rights in violation of RCW 41.56.150(1), by its failure to represent McEntee in the timely processing of a grievance, and by providing him with bad advice and false information. The deficiency notice stated 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). The deficiency notice indicated that 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.

#### Complaint filed against Employer

The complaint in Case 16572-U-02-4312 alleged that the employer interfered with employee rights and discriminated in violation of

RCW 41.56.140(1), and dominated or assisted a union in violation of RCW 41.56.140(2), by allowing employees Heil and Nogle to maintain a hostile work environment in retaliation for McEntee's testimony at an arbitration hearing. The deficiency notice stated that in relation to the allegation of employer domination or assistance of a union in violation of RCW 41.56.140(2), 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).

In relation to the allegations of employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), the deficiency notice pointed out that the complaint appeared to be deficient under the provisions of RCW 41.56.160 and WAC 391-45-050(2). The deficiency notice stated that 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 in order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of misconduct occurring on or after January 18, 2002.

The deficiency notice indicated that the complaint did not provide sufficient factual information as required by WAC 391-45-050(2):

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices 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 deficiency notice stated that the complaint did not contain factual allegations concerning employer actions taken in retaliation for union activities occurring on or after January 18, 2002.

NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 4<sup>th</sup> day of June, 2003.

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.