

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNY MCCORMICK,)	
)	
Complainant,)	CASE 16760-U-02-4373
)	
vs.)	DECISION 8185 - PECB
)	
AMALGAMATED TRANSIT UNION)	
LOCAL 587,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
<hr/> KENNY MCCORMICK,)	
)	
Complainant,)	CASE 16761-U-02-4374
)	
vs.)	DECISION 8186 - PECB
)	
KING COUNTY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	

On October 2, 2002, Kenny McCormick (McCormick) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming King County (employer) and Amalgamated Transit Union, Local 587 (union) as respondents. The Commission docketed the complaint as two case numbers. Case 16760-U-02-4373 concerns the allegations of the complaint against the union, while Case 16761-U-02-4374 involves the allegations of the complaint against the employer.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 8, 2003, indicated that it was not

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.

possible to conclude that a cause of action existed at that time. McCormick was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

No further information has been filed by McCormick. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint Against Union

The allegations of the complaint in Case 16760-U-02-4373 concern union interference with employee rights in violation of RCW 41.56.150(1), discrimination against McCormick for filing an unfair labor practice charge in violation of RCW 41.56.150(3), and other unspecified unfair labor practices, by misrepresenting McCormick in the processing of a grievance.

The deficiency notice pointed out several defects with the complaint against the union. First, the complaint failed to explain and specify what "other" statute had been violated by the union's actions. Second, in relation to the charges concerning RCW 41.56.150(3), the complaint did not contain any factual allegations indicating that McCormick had previously filed an unfair labor practice complaint with the Commission. Third, 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.

Complaint Against Employer

The allegations of the complaint in Case 16761-U-02-4374 concern employer interference with employee rights in violation of RCW 41.56.140(1), and other unspecified unfair labor practices, by its conduct involving a grievance filed by McCormick.

The deficiency notice indicated several defects with the complaint against the employer. First, the complaint failed to explain and specify what "other" statute had been violated by the employer's actions. Second, unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for the presentation of its case. See WAC 391-45-270. The Commission staff is not at liberty to take on advocacy responsibilities such as assembling a coherent presentation, filling in gaps, or making leaps of logic. McCormick failed to explain how the provisions of RCW 41.56.140(1) were violated by the employer's conduct.

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 8th day of September, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.