

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DALE PETTIT,)	
)	
Complainant,)	CASE 17300-U-03-4470
)	DECISION 8261 - PSRA
vs.)	
)	CASE 17606-U-03-4556
STATE - LABOR AND INDUSTRIES,)	DECISION 8262 - PSRA
)	
Respondent.)	
)	
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DALE PETTIT,)	
)	
Complainant,)	CASE 17607-U-03-4557
)	DECISION 8263 - PSRA
vs.)	
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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Dale Pettit (Pettit) has filed three complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Labor and Industries (employer) and the Washington Federation of State Employees (union) as respondents. The first complaint, filed by Pettit on March 10, 2003, against the employer, was docketed by the Commission as Case 17300-U-03-4470. The second and third complaints were filed by Pettit on June 16, 2003. The second complaint involves allegations against the employer and was docketed as Case 17606-U-03-4556. The third complaint involves allegations against the union and was docketed as Case 17607-U-03-4557. An amended complaint in Case 17606-U-03-4556 was filed by Pettit on July 24, 2003.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on October 1, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Pettit 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 Pettit. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

First Complaint

The allegations of the complaint in Case 17300-U-03-4470 concern employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2), by informing union shop steward Dale Pettit of an email from the union indicating that the union would not be representing two employees on an appeal before the Washington State Personnel Appeals Board.

Several defects are noted with the complaint. One, 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 suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

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.

Two, the complaint alleges that an email from the union violated RCW 41.56.080, which reads as follows:

RCW 41.56.080 CERTIFICATION OF BARGAINING REPRESENTATIVE -- SCOPE OF REPRESENTATION. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

RCW 41.56.080 grants rights to employees in relation to their exclusive bargaining representative. However, the complaint was filed against the employer instead of the union. The complaint fails to contain factual allegations indicating how the employer violated RCW 41.56.080.

The obligations of an exclusive bargaining representative under RCW 41.56.080 may give rise to a "breach of duty of fair representation" claim by an employee. While Pettit may assert his own rights as an employee under RCW 41.56.080, he does not have standing to assert the rights of other employees under that statute.

Second Complaint

The allegations of the amended complaint in Case 17606-U-03-4556 concern employer interference with employee rights in violation of RCW 41.56.140(1) and discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by refusing to grant Dale Pettit release time during working hours to research,

plan and prepare for a previously-filed unfair labor practice complaint, and by comments in a July 22, 2003, letter referencing Pettit's wage calculation performance.

Several defects are noted with the amended complaint. One, employees do not have a statutory right to use a public employer's facilities for private purposes. A public employer is not required to provide employees with use of public property, including release time during working hours, for protected union activities. See *City of Seattle*, Decision 1355 (PECB, 1982); *King County*, Decision 6734 (PECB, 1999), *aff'd*, Decision 6734-A (PECB, 2000); *King County*, Decision 7506-A (PECB, 2003).

Two, the amended complaint alleges that a letter informed Pettit of "possible disciplinary action, up to and including dismissal." The amended complaint fails to allege any specific facts indicating that the employer actually took disciplinary action against Pettit in reprisal for protected union activities.

Third Complaint

The allegations of the complaint in Case 17607-U-03-4557 concern union violation of RCW 41.56.080, by failing to represent Dale Pettit in the processing of a grievance. The complaint alleges that the union sent a letter to Pettit indicating that it would not support his grievance "based on the merits of the case . . ." The complaint is defective. If bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union

determines that the concerns lack merit, the union has no obligation to file a grievance.

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.

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 31st day of October, 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.