

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GARY BULLERT,	)	
	)	
Complainant,	)	CASE 17220-U-03-4455
	)	
vs.	)	DECISION 8295 - CCOL
	)	
WASHINGTON EDUCATION ASSOCIATION,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
<hr/>	)	
GARY BULLERT,	)	
	)	
Complainant,	)	CASE 17244-U-03-4457
	)	
vs.	)	DECISION 8296 - CCOL
	)	
COMMUNITY COLLEGE DISTRICT 19 -	)	
COLUMBIA BASIN,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
<hr/>	)	

On February 20, 2003, Gary Bullert (Bullert) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Community College District 19 - Columbia Basin (employer) and Washington Education Association (union) as respondents. The Commission docketed the complaint as two case numbers. Case 17220-U-03-4455 concerns allegations of the complaint against the union, while Case 17244-U-03-4457 involves allegations of the complaint against the employer.

The complaints were reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on October 23, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Bullert 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 Bullert. 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 17220-U-03-4455 concern union interference with employee rights in violation of RCW 28B.52.073(2)(a), discrimination for filing an unfair labor practice charge in violation of RCW 28B.52.073(2)(c), and violation of RCW 41.56.080, by failing to represent Gary Bullert in the processing of several grievances, and refusing to provide a copy of the union's preliminary assessment of a grievance, in reprisal for union activities protected by Chapter 28B.52 RCW.

Several defects are noted with the complaint. One, in relation to the union's refusal to provide Bullert with a copy of the union's preliminary assessment of a grievance, the process used by a union

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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.

to decide whether or not to pursue a grievance for an employee is purely of a union's own creation. Such process is part of a union's internal affairs and is often controlled by a union's constitution and/or bylaws. The constitution and bylaws of a union are the contracts among the members of the union for how the organization is to be operated. Disputes concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts. *Enumclaw School District*, Decision 5979 (PECB, 1997).

Two, in relation to the allegations of failure to represent Bullert in the processing of grievances, 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.

Three, in relation to the alleged violation of RCW 41.56.080, that statute provides 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 is inapplicable to Bullert. Chapter 41.56 RCW covers collective bargaining relationships in cities, counties, political subdivisions, municipal corporations, school districts (classified employees only), and other public employers. The complaint indicates that Bullert is an academic employee within the meaning of RCW 28B.52.020(2). As such, Bullert is covered by the statutory provisions of Chapter 28B.52 RCW, but not the provisions of Chapter 41.56 RCW.

Chapter 28B.52 RCW does contain a section that is somewhat similar to RCW 41.56.080. The provisions of RCW 28B.52.050 read as follows:

RCW 28B.52.050 ACADEMIC EMPLOYEE MAY APPEAR IN OWN BEHALF. Nothing in this chapter shall prohibit any academic employee from appearing in his or her own behalf on matters relating to his or her employment relations with the college district.

The obligations of an exclusive bargaining representative under RCW 28B.52.050 may give rise to a "breach of duty of fair representation" claim by an employee.

Four, 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.

Five, the statement of facts attached to the complaint makes reference to sections 3.1.3.1 and 8.2 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).

Complaint against Employer

The allegations of the complaint in Case 17244-U-03-4457 concern unspecified statutory violations by the employer for denying Bullert the right of representation at October and November meetings of the Board of Trustees. The complaint fails to explain how the provisions of Chapter 28B.52 RCW have been 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 10th day of December, 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.

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

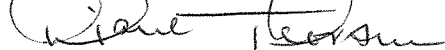
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SAM KINVILLE, COMMISSIONER  
JOSEPH W. DUFFY, COMMISSIONER  
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

**RECORD OF SERVICE - ISSUED 12/10/2003**

The attached document identified as: RECORD OF SERVICE has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION



BY: /s/ DIANE THOVSEN

CASE NUMBER: 17220-U-03-04455 FILED: 02/20/2003 FILED BY: PARTY 2  
DISPUTE: UN DISCRIMINATE  
DETAILS: -  
COMMENTS:

EMPLOYER: C COL DIST 19 - COLUMBIA BASIN  
ATTN: LEE R THORNTON  
COLUMBIA BASIN COLLEGE  
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PASCO, WA 99301-3379  
Ph1: 509-547-0511

REP BY: LEE THORNTON  
C COL DIST 19 - COLUMBIA BASIN  
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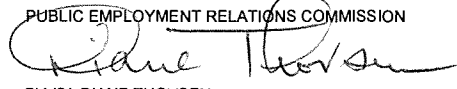
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BY: /S/ DIANE THOVSEN

CASE NUMBER: 17244-U-03-04457 FILED: 02/20/2003 FILED BY: PARTY 2  
DISPUTE: ER DISCRIMINATE  
DETAILS: -  
COMMENTS:

EMPLOYER: C COL DIST 19 - COLUMBIA BASIN  
ATTN: LEE R THORNTON  
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