

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN NELSON,)	
)	
Complainant,)	CASE 18343-U-04-4678
)	
vs.)	DECISION 8662 - PECB
)	
PIERCE HOUSING AUTHORITY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
<hr/> PIERCE HOUSING AUTHORITY,)	
)	
Employer.)	
<hr/>)	
MARILYN NELSON,)	
)	
Complainant,)	CASE 18346-U-04-4679
)	
vs.)	DECISION 8663 - PECB
)	
OFFICE AND PROFESSIONAL EMPLOYEES)	
INTERNATIONAL UNION, LOCAL 23,)	
)	
Respondent.)	ORDER OF DISMISSAL
<hr/>)	

On March 19, 2004, Marilyn Nelson (Nelson) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Pierce Housing Authority (employer) and Office and Professional Employees International Union, Local 23 (union) as respondents. The Commission docketed the complaint as two case numbers. Case 18343-U-04-4678 concerns allegations of the complaint against the employer, while Case 18346-U-04-4679 involves allegations of the complaint against the union. Additional filings by Nelson with the Commission on April 7, 8, 12, 13, 15, 2004, were considered as amendments to the complaint.

On April 7, 2004, the employer filed an eight-page letter with 58 exhibits in response to the complaints. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice, issued on April 23, 2004, indicated that it was not possible to conclude that a cause of action existed at that time. The deficiency notice gave Nelson a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

Nelson made additional filings with the Commission on April 30, May 4, 17, 21, 24, and June 9, 2004. Those filings were considered as amendments to the complaint. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint against Employer

The allegations of the complaint in Case 18343-U-04-4678 concern employer discrimination in violation of RCW 41.56.140(1) (and if so, derivative "interference" in violation of RCW 41.56.140(1)) and other unspecified unfair labor practices, by its termination of Marilyn Nelson in reprisal for union activities protected by Chapter 41.56 RCW.

The complaint contains several defects. One, unfair labor practice complaints are processed by the Commission under Chapter 391-45

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.

WAC. Unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in an unfair labor practice complaint to determine if any collective bargaining statute has been violated. The Commission reviews unfair labor practice complaints in a preliminary ruling process under WAC 391-45-110 to "determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute." The standard of review for the preliminary ruling process is assuming that all of the facts alleged in the complaint are true and provable, does it appear that an unfair labor practice violation could be found. If a complaint meets this standard, a preliminary ruling is issued and the complaint is assigned to an examiner for a hearing. A complainant has the burden of proof at a hearing to present evidence supporting the factual allegations of the complaint. See WAC 391-45-270(1)(a).

Two, the complaint refers to the filing of a charge of age, disability or race discrimination with the federal Equal Employment Opportunity Commission. The Public Employment Relations Commission does not have jurisdiction over allegations of age, disability or race discrimination.

Three, in reference to the allegations of discrimination under RCW 41.56.140(1), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW.

Four, the deficiency notice indicated that it did not appear that Nelson complied with the provisions of WAC 391-08-120 concerning the filing of papers by fax and the service of papers on other parties. Under WAC 391-08-120(2)(b), a party filing papers by fax must mail the original papers to the Commission on the same day

that the fax is transmitted. Under WAC 391-08-120(3), a party filing papers with the Commission shall serve a copy of those papers upon all other parties to the case. The deficiency notice stated that if the provisions of WAC 391-08-120 had not been followed, Nelson must promptly comply with this rule and advise the Commission of her compliance.

Five, in relation to the allegations of other unfair labor practices, the complaint fails to explain and specify what "other" statute has been violated by the employer's actions.

Complaint against Union

The allegations of the complaint in Case 18346-U-04-4679 concern union refusal to bargain in violation of RCW 41.56.150(4) (and if so, derivative "interference" in violation of RCW 41.56.150(1)) and other unspecified unfair labor practices, by failing to represent Marilyn Nelson in the processing of a grievance concerning her termination.

The complaint contains several defects. One, 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.

Two, the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining

representative of its employees. The refusal to bargain provisions of RCW 41.56.150(4) can only be enforced by an employer. Individual employees do not have standing to process refusal to bargain allegations.

Three, like the complaint against the employer, the complaint fails to explain and specify what "other" statute has been violated by the union's actions. Four, like the complaint against the employer, the deficiency notice indicated that it appeared that the same defect existed concerning the filing of papers by fax and the service of papers on other parties.

Amendments Filed in Response to Deficiency Notice

Nelson filed amendments to the complaints on April 30, May 4, 17, 21, 24, and June 9, 2004. Those filings fail to cure the defects indicated in the deficiency notice. An amendment filed on April 30 stated that Nelson served all of the papers filed with the Commission on the employer. Other amendments reiterated Nelson's belief that the union failed to assist Nelson in relation to her termination. The amendments alleged that a union shop steward was "acting more and for management," and that an "incident policy" was not brought before union members for a vote. The process used by a union to decide the selection of union shop stewards or what proposals to accept in negotiations 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).

Other amendments responded to the employer's letter filed on April 7, 2004, arguing that Nelson was treated differently than a co-worker in the same position. However, as indicated in the deficiency notice, the preliminary ruling process is limited under WAC 391-45-110 to a review of "the facts alleged in the complaint . . ." The employer's letter was not considered in preparing the deficiency notice or this order.

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 23rd day of July, 2004.

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.