

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - CORRECTIONS,)	
)	
Employer.)	
-----)	
PAULINE WESEN,)	CASE 16478-U-02-4246
)	
Complainant,)	
)	DECISION 8581 - PSRA
vs.)	
)	
TEAMSTERS UNION, LOCAL 313,)	DECISION OF COMMISSION
)	
Respondent.)	
)	
_____)	

This case comes before the Commission on an appeal filed by Pauline Wesen, seeking to overturn an order dismissing an unfair labor practice complaint she filed against Teamsters Union, Local 313 (union), related to her employment with the Washington State Department of Corrections (employer). The Commission affirms the order of dismissal.

BACKGROUND

As of June 12, 2001, Wesen was a classified employee of the employer, covered by the State Civil Service Law, Chapter 41.06 RCW. On that day, she initiated an unfair labor practice proceeding with the Washington State Department of Personnel, which then administered RCW 41.06.340. The case was docketed by the Department of Personnel as its case ULP-503, and was investigated under the procedures then used by the Department of Personnel. On February 11, 2002, Director of Personnel Eugene C. Matt issued an

order in which he declined to issue a complaint. On March 8, 2002, Wesen appealed the director's decision to the Washington State Personnel Resources Board (WPRB), as its case 02 ULP-01.

The Personnel System Reform Act of 2002 was signed into law with various effective dates. The authority to hear and determine unfair labor practice complaints involving state civil service employees was transferred to the Public Employment Relations Commission, effective June 13, 2002. RCW 41.06.340(2). The case was redocketed by the Commission as its case 16478-U-02-4246.

ANALYSIS

Procedural Differences

The Commission processes unfair labor practice complaints under Chapter 391-45 WAC and the state Administrative Procedure Act, Chapter 34.05 RCW. The Commission staff makes an initial review of unfair labor practice complaints under WAC 391-45-110, applying an assumption that all of the facts alleged in the complaint are true and provable.¹ The purposes of that preliminary ruling process is to, "[D]etermine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute." Thereafter:

- If a complaint is found to be insufficient to state a cause of action (either as to some procedural deficiency or as a matter

¹ The Commission's procedures for initial processing of unfair labor practice claims differ substantially from those used by the Department of Personnel. The Department of Personnel staff would "investigate" the factual allegations made by a complainant, and assess whether there was sufficient evidence to support them.

of law), a deficiency notice letter is issued under RCW 34.05.419(2), and the party that filed the complaint is given a period of time in which to either correct the deficiency or face dismissal of the case.

- If a complaint is found to state a cause of action, a preliminary ruling letter is issued and the party that has been accused of wrongdoing is directed to file and serve its answer to the complaint. The case is then assigned to an examiner for an evidentiary hearing. The party that filed the complaint must present its own case, and has the burden of proof as to the factual allegations of its complaint. See WAC 391-45-270(1)(a). The examiner then issues a decision based on the merits of the evidence and testimony presented.

Parties have a right of appeal to the Commission under Chapter 391-45 WAC, either from a dismissal issued under WAC 391-45-110,² or from a decision issued by an examiner on the merits of a case.³

Because this case was already on appeal to the WPRB on June 13, 2002, it was transferred directly to the Commission.

Allegations Insufficient as a Matter of Law

The complaint in this case alleges union interference with employee rights (in violation of RCW 41.56.150(1)) and discrimination for filing an unfair labor practice charge (in violation of RCW

² The procedure used by the Department of Personnel was similar, to the extent that orders issued by the Director of Personnel to dismiss an unfair labor practice claim after investigation could be appealed to the WPRB.

³ The WPRB itself held hearings on unfair labor practice cases, and would issue the decision on the merits, so there was no comparable appeal procedure under its rules.

41.56.150(3)). Wesen alleges the union failed to represent her on a grievance concerning a letter of reprimand. The merits of the underlying grievance are not before the Commission.

The "assuming all of the facts alleged to be true and provable" standard used under WAC 391-45-110 has been applied in this case, and multiple defects are noted with the complaint:

First, Wesen alleges that her grievance had merit, and that the union violated the applicable collective bargaining agreement, but such matters are outside the jurisdiction of the Commission. It has long been established that 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). The Commission interprets and administers the state collective bargaining statutes under which collective bargaining agreements are negotiated, and can even supply members of its staff as arbitrators under some statutes, but does not directly act in the role of arbitrator to interpret or enforce collective bargaining agreements. See *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Second, Wesen alleges that the union violated its duty of fair representation by failing to process her grievance, but such matters are outside the jurisdiction of the Commission. It has long been established 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). 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.⁴

Third, Wesen alleges sex discrimination by the union. This Commission does not have jurisdiction over sex discrimination allegations. Enforcement of the state law against discrimination, Chapter 49.60 RCW, lies with the Washington State Human Rights Commission. *City of Seattle*, Decision 205 (PECB, 1977).

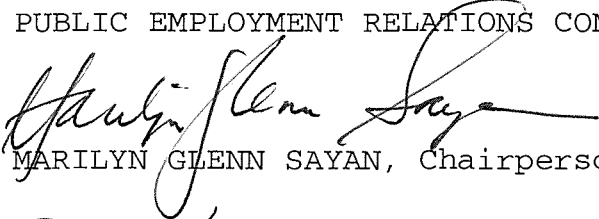
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of June, 2004.


PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



JOSEPH W. DUFFY, Commissioner



PAMELA G. BRADBURN, Commissioner

⁴ This includes obligations to investigate allegations made by bargaining unit employees, and to make good faith determinations as to whether the collective bargaining agreement has been violated. A union that determines a grievance lacks merit has no obligation to file (or continue the pursuit of) a grievance. *See State - Labor and Industries*, Decision 8261 (PSRA, 2003).

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION



BY: /S/ LORALEE PERKINS

CASE NUMBER: 16478-U-02-04246 FILED: 06/13/2002 FILED BY: PARTY 2
DISPUTE: UN FAIR REP
BAR UNIT: JAILERS
DETAILS: -Appealed as 02-ULP-01 & filed with DOP as ULP-502
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