City of Lynnwood (Washington State Council of County and City Employees), Decision 9120 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF LYNNWOOD, Employer.	)	
JARED BOND, Complainant,	)	CASE 19721-U-05-4991
vs.	)	DECISION 9120 - PECB
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	)	PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On August 15, 2005, Jared Bond (Bond) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Council of County and City Employees (union) as respondent. Bond is employed by the City of Lynnwood (employer), but is not a member of the union. The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on September 2, 2005, indicated that it was not possible to conclude that a cause of action existed at that time for some of the allegations of the complaint.

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[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Bond was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the defective allegations of the complaint. On September 23, 2005, Bond filed an amended complaint.

The Unfair Labor Practice Manager dismisses defective allegations of the amended complaint for failure to state a cause of action, and finds a cause of action for interference allegations of the amended complaint. The union must file and serve its answer to the interference allegations within 21 days following the date of this decision.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1), by failing to provide Jared Bond with union publications germane to the administration of the collective bargaining agreement, including a copy of the agreement, and by refusing to allow Bond to attend union meetings.

Commission rules provide as follows:

> WAC 391-95-010 NOTICE OF UNION SECURITY OBLIGATION. (1) Whenever a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW contains a union security provision, the exclusive bargaining representative shall provide each affected employee with a copy of the collective bargaining agreement . . .

The deficiency notice indicated that the allegations of the complaint concerning interference with employee rights by failing to provide Bond with a copy of the collective bargaining agreement, stated a cause of action under WAC 391-45-110(2) for further unfair labor practice proceedings before the Commission.

The deficiency notice pointed out two defects with the complaint. One, the Commission does not have jurisdiction over challenges to a labor organization's use of dues and/or agency fees based on non-religious grounds. *Local 2916, IAFF v. PERC*, 128 Wn.2d 375 (1995). Claims concerning an employee's constitutional rights under *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and/or *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) must be pursued before a court.

Two, the process used by a union to decide criteria for attendance at union meetings, 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 a 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).

The Commission discussed the subject of union voting rights for non-member employees in rejecting rulemaking petitions filed under RCW 34.05.330. *See, In re: WAC 391-95-010*, Decision 9079 (2004). The Commission stated as follows:

> Throughout the history of the NLRA [National Labor Relations Act], the NLRB [National Labor Relations Board] has declined to regulate the internal relationship between a union and its members. The Supreme Court of the United States agreed when public employee collective bargaining was in its infancy, ruling in *NLRB v. Allis Chalmers Manufacturing Co.*, 388 U.S. 175 (1967) that a union is entitled to limit its internal political processes to its members. The Supreme Court revisited the subject area in *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986), where it observed that, "[T]he Act allows union members to control the shape and direction of their organization and 'non-union employees have no voice in the affairs of the union.'" *Financial*

> *Institution*, 475 U.S. at 205 (quoting *NLRB v. Allis Chalmers Manufacturing Co.*). The *Financial Institution* decision specifically cited the right to 'ratify a collective bargaining agreement' as an example of a internal union matter which non-union employees may be excluded from voting.
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> Even under the Labor Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act), which imposes some limited requirements to assure internal union democracy, nothing gives non-member employees within a bargaining unit any voting rights within the union.

(footnote omitted)

A union has the right to exclude non-members from participation in union business, including meetings in which bargaining strategy or proposed collective bargaining agreements are discussed. *Pe Ell School District (Pe Ell Education Association)*, Decision 3801 (EDUC, 1991); *Lewis County*, Decision 464-A (PECB, 1978).

Allegations of Amended Complaint

The amended complaint alleges that the union failed to equitably administer the terms of a collective bargaining agreement for non-members of the union. Bond cites a July 14, 2005, memo from the union president to union members concerning job classifications to be considered for a reclassification review under section 15.6 of the agreement. Bond claims that the union discriminated against non-members by only sending the memo to union members.

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.

The Commission explained its policy on complaints alleging duty of fair representation violations, in *Dayton School District (Dayton Education Assn.)*, Decision 8042-A (EDUC, 2004), as follows:

> It has long been established that remedies for violations of collective bargaining agreements must be sought through the grievance and arbitration machinery within the contract or through the courts, and that the Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statutes it administers. *City of Walla Walla*, Decision 104 (PECB, 1976).
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> Consistent with the policy first enunciated in *Walla Walla*, two types of "breach of duty of fair representation" claims have been identified and treated separately:
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> First, the Commission does not assert jurisdiction over "fair representation" claims arising from contract disputes. The reasoning behind that policy is:
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> > What possible sense could there be in a procedure which would permit an administrative agency that has litigated the fault of the union and the terms of the contract to fashion a remedy only with respect to the union, leaving the injured employee to go to a second tribunal (i.e., the Courts) to repair employer fault for the single injury?
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> *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982).
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> Second, the Commission does police its certifications, and will assert jurisdiction in cases where a union is accused of aligning itself against one or more bargaining unit employees on some improper or invidious basis. [footnote to *C-TRAN*, Decision 7087-B (PECB, 2002)]

The Commission concluded in *Dayton School District* as follows:

> [I]f the dispute stems from a contract violation, the Commission would exercise jurisdiction only if the complaint (as amended) contains factual allegations that the union aligned itself against Stoermer on the basis of union membership (or lack thereof), or that the union discriminated against her on some invidious basis such as race, creed, sex or national origin.

The amended complaint alleges that the union aligned itself against Bond on the basis of lack of union membership. The amended complaint concerns duty of fair representation claims that come within the Commission's jurisdiction.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the interference allegations of the amended complaint state a cause of action, summarized as follows:

> Union interference with employee rights in violation of RCW 41.56.150(1), by failing to equitably administer the terms of a collective bargaining agreement due to the non-member status of Jared Bond, and by failing to provide Bond with a copy of the agreement.

The interference allegations of the amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. Washington State Council of County and City Employees shall:

> File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny or explain each fact alleged in the amended complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and

b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegations of the amended complaint concerning interference by the union for refusing to allow Bond to attend union meetings, are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28th day of September, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Unfair Labor Practice Manager

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.