

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EUGENE MACKEY,)	
)	
Complainant,)	CASE 20510-U-06-5224
)	
vs.)	DECISION 9470 - PECB
)	
RENTON SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	
EUGENE MACKEY,)	
)	
Complainant,)	CASE 20516-U-06-5225
)	
vs.)	DECISION 9471 - PECB
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On July 7, 2006, Eugene Mackey (Mackey) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, concerning allegations against the Renton School District (employer) and the Washington Education Association (union). The Commission docketed the complaint as two case numbers. Case 20510-U-06-5224 concerns allegations of the complaint against the employer, while Case 20516-U-06-5225 involves allegations of the complaint against the union.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on September 26, 2006, indicated that it was

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.

not possible to conclude that a cause of action existed at that time. Mackey 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 Mackey. 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 20510-U-06-5224 concern employer domination or assistance of a union in violation of RCW 41.56.140(2) and discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by unspecified actions related to the resignation of Eugene Mackey.

The deficiency notice pointed out several defects with the complaint. One, in relation to the allegations 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." *City of Anacortes*, Decision 6863 (PECB, 1999).

Two, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Mackey has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Complaint against Union

The allegations of the complaint in Case 20516-U-06-5225 concern union inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2) and refusal to bargain in violation of RCW 41.56.150(4), by failing to represent Eugene Mackey in the processing of a grievance.

The deficiency notice pointed out several defects with the complaint. One, 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. While a union owes a duty of fair representation to bargaining unit employees, 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). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Two, as the complaint fails to state a cause of action against the employer under RCW 41.56.140, there are insufficient factual allegations to support a cause of action that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2).

Three, as the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative, individual employees do not have standing to process refusal to bargain allegations. *Grant County*, Decision 2703 (PECB, 1987); *Mukilteo School District*, Decision 3964-A (PECB, 1992); *Clark County PTBA (C-TRAN)*, Decision 8489-A (PECB, 2004).

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 30th day of October, 2006.

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.