

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF TACOMA,)	
)	
Employer.)	
-----)	
ROBERT A. SEALEY,)	
)	
Complainant,)	CASE 20115-U-06-5116
)	
vs.)	DECISION 9306 - PECB
)	
IBEW, LOCAL 483,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	
ROBERT A. SEALEY,)	
)	
Complainant,)	CASE 20116-U-06-5117
)	
vs.)	DECISION 9307 - PECB
)	
IBEW, LOCAL 483,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	
ROBERT A. SEALEY,)	
)	
Complainant,)	CASE 20117-U-06-5118
)	
vs.)	DECISION 9308 - PECB
)	
IBEW, LOCAL 483,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	

On January 24, 2006, Robert A. Sealey (Sealey) filed three complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the International Brotherhood of Electrical Workers (IBEW), Local

483 (union) as respondent. Sealey is a former employee of the City of Tacoma (employer). The complaints contain similar allegations involving different union officials. The Commission docketed the complaint involving Alice Phillips as Case 20115-U-06-5116, the complaint involving Gayleen Wederquist as Case 20116-U-06-5117, and the complaint involving Caudill Gordon as Case 20117-U-06-5118. On February 8, 2006, Sealey filed additional papers with the Commission. Those papers were considered to be amended complaints within the provisions of WAC 391-45-070(2)(a).

The complaints as amended were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on March 24, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Sealey 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 Sealey. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint against Union Official Phillips

The allegations of the complaint in Case 20115-U-06-5116 concern union interference with employee rights in violation of RCW 41.56.150(1), and discrimination for filing an unfair labor

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.

practice charge in violation of RCW 41.56.150(3), by failing to adequately represent Robert A. Sealey in the processing of a possible grievance and civil service board appeal concerning Sealey's termination from employment.

The complaint has several defects. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before July 24, 2005, will be considered merely as background information. The complaint is limited to allegations of union misconduct occurring on or after July 24, 2005.

Two, 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.

Three, in relation to the allegations of violation of RCW 41.56.150(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Sealey has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Four, the complaint refers to allegations of racial discrimination. The Commission does not have jurisdiction over allegations of race discrimination.

Complaint against Union Official Wederquist

The allegations of the complaint in Case 20116-U-06-5117 concern 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 41.56.150(3), by failing to adequately represent Robert A. Sealey in the processing of a possible grievance and civil service board appeal concerning Sealey's termination from employment.

The complaint has several defects. One, as for the complaint against union official Phillips, the complaint is limited to allegations of union misconduct occurring on or after July 24, 2005.

Two, as for the complaint against union official Phillips, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.

Three, as for the complaint against union official Phillips, the complaint does not contain any allegations that Sealey has previously filed an unfair labor practice complaint with the Commission.

Four, as for the complaint against union official Phillips, the Commission does not have jurisdiction over allegations of race discrimination.

Complaint against Union Official Gordon

The allegations of the complaint in Case 20117-U-06-5118 concern 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 41.56.150(3), by failing to adequately represent Robert A. Sealey in the processing of a possible grievance and civil service board appeal concerning Sealey's termination from employment.

The complaint has several defects. One, as for the complaint against union official Phillips, the complaint is limited to allegations of union misconduct occurring on or after July 24, 2005.

Two, as for the complaint against union official Phillips, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.

Three, as for the complaint against union official Phillips, the complaint does not contain any allegations that Sealey has

previously filed an unfair labor practice complaint with the Commission.

Four, as for the complaint against union official Phillips, the Commission does not have jurisdiction over allegations of race discrimination.

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 1st day of May, 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.