

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARY FRANK,)	
)	
Complainant,)	CASE 19889-U-05-5050
)	
vs.)	DECISION 9364 - EDUC
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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MARY FRANK,)	
)	
Complainant,)	CASE 19890-U-05-5051
)	
vs.)	DECISION 9365 - EDUC
)	
SEATTLE SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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On October 27, 2005, Mary Frank (Frank) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, concerning allegations against the Seattle School District (employer) and the Washington Education Association (union). The Commission docketed the complaint as two case numbers. Case 19889-U-05-5050 concerns allegations of the complaint against the union, while Case 19890-U-05-5051 involves allegations of the complaint against the employer.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 30, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. Frank was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

Frank requested a continuance for the filing of amended complaints. The employer and union agreed with the request, and the continuance was granted. On February 14, 2006, Frank filed amended complaints. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state a cause of action.

DISCUSSION

Complaint Against Union - Case 19889-U-05-5050

Original Complaint

The allegations of the complaint filed by Frank on October 27, 2005, concern union interference with employee rights in violation of RCW 41.59.140(2)(a) and an unspecified "other unfair labor practice", by failing to represent Frank in the processing of a grievance concerning her termination.

Deficiency Notice

The deficiency notice pointed out several defects with the complaint. One, if bargaining unit employees bring issues or

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.

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, in relation to the allegations of an "other unfair labor practice," the complaint fails to explain and specify what "other" rule or statute has been violated by the union's actions.

Amended Complaint

In relation to defect one, the amended complaint alleges a union interference violation through breach of the union's duty of fair representation. The Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. The interference allegations do not state a cause of action.

In relation to defect two concerning alleged "other unfair labor practice" violations, the amended complaint adds allegations concerning union inducement of employer to commit an unfair labor

practice in violation of RCW 41.59.140(2)(b). As the amended complaint fails to state a cause of action against the employer under RCW 41.59.140(1), 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 41.59.140(2)(b).

The amended complaint adds allegations concerning an "other unfair labor practice" by the union through a violation of Chapter 180-79A WAC related to certification of principals. As the Commission does not have jurisdiction over Chapter 180-79A WAC, the allegations do not state a cause of action.

The amended complaint adds allegations entitled "Union Discrimination for Filing Charges and Violation of American with Disabilities Act," stating that "the Union discriminated against me . . . for filing charges . . . regarding discrimination against me on the basis of my disability." As the Commission has no jurisdiction concerning allegations of discrimination based on disability, the allegations do not state a cause of action.

The amended complaint adds allegations described as "Violation of Contract Rules regarding Certificated and Classified Employees." The 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 acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

The amended complaint adds allegations entitled "Refusal of Union to Bargain and Violation of Laws regarding Collusion." The duty to bargain under Chapter 41.59 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.59.140(2)(c) can only be enforced by an employer. Individual employees do not have standing to process refusal to bargain allegations. The refusal to bargain allegations do not state a cause of action.

Complaint Against Employer - Case 19890-U-05-5051

Original Complaint

The allegations of the complaint filed by Frank on October 27, 2005, concern employer interference with employee rights in violation of RCW 41.59.140(1)(a), discrimination in violation of RCW 41.59.140(1)(c) and an unspecified "other unfair labor practice," by its termination of Frank in reprisal for union activities protected by Chapter 41.59 RCW.

Deficiency Notice

The deficiency notice pointed out several defects with the complaint. One, RCW 41.59.140(1)(a) prohibits employer interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by employer officials, are unlawful. However, the alleged facts are insufficient to conclude that the employer made any threats of reprisal or force or promises of benefit, in violation of RCW 41.59.140(1)(a).

Two, in relation to the allegations of discrimination under RCW 41.59.140(1)(c), the complaint fails to allege facts indicating

that the employer's actions were taken in reprisal for union activities protected under Chapter 41.59 RCW.

Three, as for the complaint against the union, the complaint fails to explain and specify what "other" rule or statute has been violated by the employer's actions.

Amended Complaint

In relation to defect one concerning alleged interference violations, the amended complaint claims that the employer assisted the union in breaching the union's duty of fair representation, and that the employer denied Frank's contractual rights. As indicated for the complaint against the union, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, and does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.

In relation to defect two concerning discrimination allegations, the amended complaint fails to allege sufficient facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.59 RCW.

In relation to defect three concerning alleged "other unfair labor practice" violations, the amended complaint adds allegations concerning employer domination or assistance of a union in violation of RCW 41.59.140(1)(b). However, none of the facts alleged in the amended 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).

The domination or assistance of a union allegations do not state a cause of action.

The amended complaint adds allegations entitled "Employer Discrimination for Filing Charges," stating that the employer "discriminated against me on the basis of my physical disability." As indicated for the complaint against the union, the Commission has no jurisdiction concerning allegations of discrimination based on disability.

The amended complaint adds allegations described as "Employer Refusal to Bargain." As indicated for the complaint against the union, individual employees do not have standing to process refusal to bargain allegations.

NOW, THEREFORE, it is

ORDERED

The amended 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 21st day of June, 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.