

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORMA BRITT,)	
)	
Complainant,)	CASE 20951-U-07-5345
)	
vs.)	DECISION 9744 - PECB
)	
KELSO SCHOOL DISTRICT,)	
)	
Respondent.)	ORDER OF DISMISSAL
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NORMA BRITT,)	
)	
Complainant,)	CASE 20952-U-07-5346
)	
vs.)	DECISION 9745 - PECB
)	
PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON,)	
)	
Respondent.)	ORDER OF DISMISSAL
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On March 2, 2007, Norma Britt (Britt) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Kelso School District (employer) and the Public School Employees of Washington (union) as respondents. The complaint against the employer was docketed as Case 20951-U-07-5345, and the complaint against the union was docketed as Case 20952-U-07-5346. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on April 30, 2007, indicated that it was not possible to conclude that causes of action existed at that time. Britt was given a period of

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 claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

21 days in which to file and serve amended complaints, or face dismissal of the cases.

Britt filed amended complaints on May 24, 2007. The Unfair Labor Practice Manager dismisses the amended complaints for failure to state causes of action.

DISCUSSION

The complaints concern allegations against the employer and union regarding failure to promote Britt to the position of Assistant Dispatch/Driver Trainer.

It is not possible to conclude that a cause of action exists at this time for allegations of the complaint against either the employer or union. As the deficiency notice pointed out, the complaints contain identical allegations and have common, multiple defects.

One, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT

Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

(a) The name, address and telephone number of the employer, and the name, address, telephone number, fax number, and e-mail address of its principal representative;

(b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

(c) The name, address, telephone number, fax number, and e-mail address of the party filing the complaint

(complainant), and the name, address, telephone number, fax number, and e-mail address of its principal representative.

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(3) A statement of the remedy sought by the complainant.

(4) The name, signature and, if any, title of the person filing the complaint, and the date of the signature.

(5) Information concerning the parties' relationships, including:

(a) The employer's principal business;

(b) Identification of the employer department or division in which the dispute arises;

(c) The parties' contractual relationship, indicating that:

(i) The parties have never had a contract; or

(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

(d) The status of related grievance proceedings between the parties, indicating that:

(i) no grievance has been filed on the dispute involved; or

(ii) A grievance on the dispute is being processed under the parties' collective bargaining agreement; or

(iii) An arbitration award has been issued on a related grievance;

(e) A description of the bargaining unit involved, specifying inclusions and exclusions; and

(f) The number of employees in the bargaining unit.

(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

Britt did not complete the complaint form. Although she lists the school district as employer, she lists herself as the employer's attorney. She did not fill out the sections for respondent or complainant. Britt indicates in her statement of facts that she has filed grievances, but did not indicate so on the form. She did

not check any of the boxes indicating her alleged violations. She did not sign and date the form. Other than providing a copy of the collective bargaining agreement, Britt did not comply with WAC 391-45-050.

Two, Commission rules require service of complaints on all parties:

WAC 391-45-030 COMPLAINT IN WRITING--NUMBER OF COPIES--FILING--SERVICE. Each complaint charging unfair labor practices shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4).

Britt stated in the materials attached to the complaint form that she did not serve either the employer or the union with the complaint.

Three, 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.

Britt's statement of facts details events beginning in 1995 and continuing through November 27, 2006. Her allegations are restricted to those events occurring on or after September 2, 2006.

Four, the statement of facts makes reference to an alleged violation of the collective bargaining agreement between the employer and union. The Commission does not assert jurisdiction to

remedy violations of collective bargaining agreements through unfair labor practice proceedings. *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); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Five, Britt apparently alleges employment discrimination and hostile work environment, but does not allege those claims are in violation of her collective bargaining rights under any applicable statute. The Commission has no jurisdiction to adjudicate employment discrimination and hostile work environment claims unrelated to collective bargaining.

Amended Complaints

Britt filed an amended complaint relative to both the employer and the union, attaching one set of facts. Britt checked the box on the complaint form for "union interference," but did not check the box for "employer interference." Britt also checked the box for "other unfair labor practice." The Commission copied the complaint and docketed one set of the amended complaint as pertaining to the employer and one set as pertaining to the union.

Britt's amended complaint cured defects 1-3 as detailed in the deficiency notice.

Complaint against the Employer

Britt continues to allege that the employer violated the collective bargaining agreement by failing to hire her for the Assistant Dispatch/Driver Trainer position. As the deficiency notice pointed out, the Commission does not assert jurisdiction to remedy

alleged violations of collective bargaining agreements. Britt also suggests that the employer's actions were unfair. As stated in the deficiency notice, the Commission does not have jurisdiction to adjudicate employment discrimination claims, including failure to hire or promote. Britt must pursue her contract and employment claims through an arbitrator or the courts.

If Britt intends to allege that the employer committed "other" violations, the amended complaint fails to explain the nature of the violations or specify the statute(s) allegedly violated.

The amended complaint fails to allege facts sufficient to conclude that the employer committed any violations under Chapter 41.56 RCW.

Complaint against the Union

Britt alleges union interference with employee rights. It is an unfair labor practice for a union to interfere with employee rights in violation of RCW 41.56.150(1). Britt does not allege any facts sufficient to conclude that the union made a threat of reprisal or force or promise of benefit as a result of Britt's activities protected under Chapter 41.56 RCW.

Britt alleges that the union committed an "other" violation when it failed in its duty to fairly represent her involving a grievance she filed with the employer over the Assistant Dispatch/Driver Trainer position. 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.

To the extent that Britt alleges that the union violated the collective bargaining agreement or discriminated against her in employment, as with the allegations against the employer, the Commission does not have jurisdiction in those matters.

The amended complaint fails to allege facts sufficient to conclude that the union committed any violations under Chapter 41.56 RCW.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in Case 20951-U-07-5345 and Case 20952-U-07-5346 are DISMISSED for failure to state causes of action.

ISSUED at Olympia, Washington, this 19th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/19/2007

The attached document identified as: **DECISION 9744 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE HUFFIELD

CASE NUMBER: 20951-U-07-05345 FILED: 03/02/2007 FILED BY: PARTY 2
DISPUTE: ER MULTIPLE ULP
BAR UNIT: SCHOOL BUS
DETAILS: Against the Employer
COMMENTS:

EMPLOYER: KELSO S D
ATTN: GLENYS H HILL
601 CRAWFORD ST
KELSO, WA 98626-4398
Ph1: 360-501-1927 Ph2: 360-501-1900

REP BY: CLIFFORD D FOSTER JR
DIONNE AND RORICK
900 TWO UNION SQUARE
601 UNION ST
SEATTLE, WA 98101-2341
Ph1: 206-622-0203

REP BY: PATRICE PAGE
KELSO S D
164 W BEACON HILL DR
LONGVIEW, WA 98632
Ph1: 360-501-1900 Ph2: 360-636-2993

REP BY: JIM BIWER
KELSO S D
601 CRAWFORD ST
KELSO, WA 98626
Ph1: 360-501-1900 Ph2: 360-636-2576

REP BY: JO MAHAFFEY-OREM
KELSO S D
612 ASH ST
PO BOX 1277
KELSO, WA 98625-1277
Ph1: 360-501-1350 Ph2: 360-673-2511

PARTY 2: NORMA BRITT
ATTN:
156 WILLIAMS AVE
KELSO, WA 98626
Ph1: 360-423-4549

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 06/19/2007

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 20952-U-07-05346 FILED: 03/02/2007 FILED BY: PARTY 2
DISPUTE: UN MULTIPLE ULP
BAR UNIT: SCHOOL BUS
DETAILS: Against the Union
COMMENTS:

EMPLOYER: KELSO S D
ATTN: GLENYS H HILL
601 CRAWFORD ST
KELSO, WA 98626-4398
Ph1: 360-501-1927 Ph2: 360-501-1900

REP BY: CLIFFORD D FOSTER JR
DIONNE AND RORICK
900 TWO UNION SQUARE
601 UNION ST
SEATTLE, WA 98101-2341
Ph1: 206-622-0203

REP BY: PATRICE PAGE
KELSO S D
164 W BEACON HILL DR
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Ph1: 360-501-1900 Ph2: 360-636-2993

REP BY: JIM BIWER
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601 CRAWFORD ST
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Ph1: 360-501-1900 Ph2: 360-636-2576

REP BY: JO MAHAFFEY-OREM
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PO BOX 1277
KELSO, WA 98625-1277
Ph1: 360-501-1350 Ph2: 360-673-2511

PARTY 2: NORMA BRITT
ATTN: 156 WILLIAMS AVE

KELSO, WA 98626

Ph1: 360-423-4549

PARTY 3:

PSE OF WASHINGTON

ATTN:

ERIC T NORDLOF

602 W MAIN ST

PO BOX 798

AUBURN, WA 98071-0798

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