

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VALERIE FISHER,)	
)	
Complainant,)	CASE 21319-U-07-5444
)	
vs.)	DECISION 9927 - PECB
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
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VALERIE FISHER,)	
)	
Complainant,)	CASE 21318-U-07-5443
)	
vs.)	DECISION 9928 - PECB
)	
SEATTLE EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
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On October 24, 2007, Valerie Fisher (Fisher) filed complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association (WEA) and the Seattle Education Association (SEA)(unions) as respondents. The complaint against the WEA was docketed as Case 21319-U-07-5444; the complaint against the SEA was docketed as Case 21318-U-07-5443. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 14, 2007, indicated that it was not possible to conclude that causes of action existed at that time. Fisher was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

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.

Fisher has not filed amended complaints. The Unfair Labor Practice Manager dismisses the complaints for failure to state causes of action.

DISCUSSION

Complaint Against WEA, Case 21319-U-07-5444

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.150(1), and other violations. The deficiency notice pointed out the defects in the complaint.

One, the following statute applies to the filing of unfair labor practice complaints.

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 was filed on October 24, 2007. The allegations of the complaint are timely only for events occurring on or after April 24, 2007.

Two, Chapter 391-45 WAC governs the filing of unfair labor practice complaints and appeals. Complaints must conform to WAC 391-45-050.

WAC 391-45-050 CONTENTS OF COMPLAINT

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

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

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

The heading to the statement of facts alleges union retaliation, interference, and discrimination. Fisher is a classified employee of the Seattle School District (employer). Commission jurisdiction in this case is limited to the provisions of Chapter 41.56 RCW. It is a violation of RCW 41.56.150(1) for a bargaining representative to interfere with employee rights by threats of reprisal or force or promise of benefit in the exercise of their rights under Chapter 41.56 RCW. It is a violation of RCW 41.56.150(1) for a bargaining representative to discriminate against employees by depriving them of ascertainable rights, benefits, or status in reprisal for the exercise of their rights under Chapter 41.56 RCW.

Interference and Discrimination

The complaint does not state facts sufficient to conclude that the union interfered with Fisher's collective bargaining rights or discriminated against her in violation of RCW 41.56.150(1). The timely allegations of the complaint make reference to a union leadership academy, events surrounding Fisher's attendance at the academy, and the union removing her from a union congressional contact team. The Commission has no authority to intervene in internal union affairs. The union's administration of its leadership academy and committees is of the union's own creation. Matters related to a union's constitution or by-laws are contracts between the union and its members. Disputes concerning alleged violations of such contracts are beyond the jurisdiction of the Commission and must be resolved through internal union procedures or the courts. *Seattle School District*, Decision 9359-A (EDUC, 2007).

Other Violations

The Commission's jurisdiction is limited to matters related to collective bargaining. The Commission has no jurisdiction over discrimination related to other protected classes under state or federal law. Allegations of the complaint related to statutes other than Chapter 41.56 RCW fail to state a cause of action for further proceedings before the Commission.

Complaint Against SEA, Case 21318-U-07-5443

The allegations of the complaint concern union interference with employee rights and discrimination in violation of RCW 41.56.150(1), including breach of the duty of fair representation; union inducing an employer to commit a violation in violation of RCW 41.56.150(2); union discrimination for filing charges in violation of RCW 41.56.150(3); union refusal to bargain in violation of RCW 41.56.150(4); and other violations. The deficiency notice pointed out the defects in the complaint.

Chapter 391-45 WAC governs the filing of unfair labor practice complaints and appeals. Complaints must conform to WAC 391-45-050.

WAC 391-45-050 CONTENTS OF COMPLAINT

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

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

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

Duty of Fair Representation

As with Case 21319-U-07-5444, the Commission's jurisdiction in this case falls under Chapter 41.56 RCW. Fisher alleges that the union violated its duty of fair representation by failing to file a grievance on her behalf regarding a performance evaluation. 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.

Interference and Discrimination

The remainder of the information set forth in the statement of facts concerns internal union affairs and does not allege facts sufficient to conclude that the union interfered with Fisher's collective bargaining rights or discriminated against her in violation of RCW 41.56.150(1).

Union Inducing the Employer to Commit a Violation

Fisher alleges that the union induced the employer to commit an unfair labor practice violation. Fisher has not alleged an employer violation of Chapter 41.56 RCW and has not alleged any facts sufficient to conclude that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2).

Discrimination for Filing Charges

Fisher alleges that the union discriminated against her for filing charges in violation of RCW 41.56.150(3). An allegation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that Fisher has previously filed an unfair labor practice complaint with the Commission. Fisher has not alleged that she filed charges with the Commission prior to her complaints filed on October 24, 2007.

Refusal to Bargain

Fisher alleges union refusal to bargain in violation of RCW 41.56.150(4). The duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. Only an employer can enforce the refusal to bargain provisions of RCW 41.56.150(4). Individual employees such as Fisher do not have standing to process refusal to bargain allegations.

Other Violations

As in Case 21319-U-07-5444, the Commission's jurisdiction is limited to matters related to collective bargaining. The Commission has no jurisdiction over allegations of discrimination related

to other protected classes under state or federal law, including allegations of harassment and disparate treatment. Allegations of the complaint related to statutes other than Chapter 41.56 RCW fail to state a cause of action for further proceedings before the Commission.

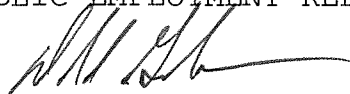
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in Case 21319-U-07-5444 and Case 21318-U-07-5443 are DISMISSED for failures to state causes of action.

ISSUED at Olympia, Washington, this 12th day of December, 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.