

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY,)	
)	
Employer,)	
-----)	
EVA FRESE,)	
)	
Complainant,)	CASE 22097-U-08-5631
)	
vs.)	DECISION 10255 - PECB
)	
SNOHOMISH COUNTY CORRECTIONS GUILD,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On November 8, 2008, Eva Frese (Frese) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Snohomish County Corrections Guild (union) as respondent. The complaint was docketed by the Commission as Case 22097-U-08-5631. The allegations of the complaint concern union interference with employee rights in violation of RCW 41.56.140(1), and unspecified other unfair labor practices concerning Frese.

The complaint was reviewed under WAC 391-45-110, and a deficiency notice issued on November 20, 2008, indicated that it was not possible to conclude that a cause of action existed at that time. Frese was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the complaint. On December 2, 2008, Frese filed an amended complaint. Frese again checked the box on the amended complaint form for "other" unfair labor practices, but did not check the box for "union interference with employee rights." However, the amended statement of facts alleges union interference with employee rights by breach of the union's

duty of fair representation. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The deficiency notice pointed out the defects to the complaint. Chapter 391-45 WAC governs the filing and processing of unfair labor practice complaints. 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.

The complaint does not fully conform to WAC 391-45-050(2). Frese provides times, dates, places, and participants, but her legal claims are unclear. The complaint apparently concerns Frese's allegations that the union failed in its duty to fairly represent her in a grievance and her disability termination, as well as its failure to include her in the settlement of a grievance over extra pay ("ten-minute grievance"). Frese also alleges "other" unfair labor practices, but does not identify the "other" unfair labor practices allegedly committed by the union.

Based upon these apparent allegations, the Commission lacks jurisdiction regarding this complaint. The Commission's jurisdiction is limited to questions concerning employees' bargaining rights, in this case under Chapter 41.56 RCW. The Commission does not assert jurisdiction over claims involving a union's duty of fair representation for matters arising solely out of the processing of grievances. The Commission also does not have jurisdiction in matters related to disability terminations. Further, the

Commission does not have jurisdiction over internal union affairs. The union's decision to limit the scope of the "ten-minute" grievance is a matter entirely within the union's control. Frese must pursue claims against the union through internal union procedures or the courts.

The Amended Complaint

In the amended complaint, Frese did sufficiently set forth her legal claims. Although Frese did not supply any new information regarding "other" violations, she did reiterate a claim for union interference with employee rights through a breach of its duty of fair representation. The amended complaint implies that the union's alleged breach of duty was based upon Frese's gender and race.

The Commission does not assert jurisdiction over duty of fair representation claims involving grievances because they concern contractual disputes arising from collective bargaining agreements. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW. The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements.

However, the Commission may assert jurisdiction where an employee shows that a union's breach of its duty of fair representation is based upon "invidious discrimination," including gender and race. *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983). Thus, if Frese had stated a cause of action based upon gender and race bias, the Commission could assert jurisdiction over her claims regarding grievances, because they would be not be exclusively contractual disputes, but allegations involving invidious discrimination.

Invidious discrimination claims are rarely made; in fact, there are no controlling Commission precedents involving findings of invidious discrimination related to a union's duty of fair representation. Frese states that the union officers are all Caucasian males and implies that the union discriminated against her because of her status as an Asian female. An accusation of invidious discrimination alone, without sufficient supporting facts, does not state a cause of action for union interference through a breach of its duty of fair representation. The Commission will not infer a connection between invidious discrimination and a union's actions toward an employee based only upon an employee's assertion or implication that the connection exists. Although Frese cites an unnamed former union officer as telling her of personal, but otherwise unidentified bias against her by union officers, this information is tenuous and not specific enough under WAC 391-45-050(2) to support a cause of action based on invidious discrimination.

Frese also reasserts her requested remedies, including \$7,000 in non-economic damages, as well as economic damages for time and expenses. The Commission has no authority to award these types of damages. Extensive portions of Frese's remedy requests are thus outside the Commission's power to grant.

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment and only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions. Frese's claims against the union fundamentally involve contractual disputes related to grievances. Frese has access to claims-processing and remedies through union by-laws and the judiciary.

Frese must pursue her claims and requested remedies through internal union procedures or the courts.

ORDERED

The amended complaint charging unfair labor practices in Case 22097-U-08-5631 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 18th day of December, 2008.

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.