

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNIVERSITY OF WASHINGTON,)	
)	
Employer.)	
-----)	
ESSIE BROWN,)	
)	
Complainant,)	CASE 22354-U-09-5699
)	
vs.)	DECISION 10397 - PSRA
)	
SEIU HEALTHCARE, LOCAL 1199NW,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

On March 26, 2009, Essie Brown (Brown) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming SEIU Healthcare, Local 1199NW (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on April 2, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Brown was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case. Brown requested and was granted a two-week extension to file an amended complaint; Brown filed the amendment on May 4, 2009. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

¹ At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a), inducing the employer to commit an unfair labor practice in violation of RCW 41.80.110(2)(b), discrimination for filing charges in violation of RCW 41.80.110(2)(c), refusal to bargain in violation of RCW 41.80.110(2)(d), and "other unfair labor practices," by its actions involving Brown.

The deficiency notice pointed out the defects to the complaint. 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, but only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions.

The basis of Brown's complaint against the union is that on December 10, 2008, it withdrew the grievance concerning her termination. This claim is alleged in Brown's assertion that the union interfered with her employee rights by breaching its duty of fair representation in the grievance procedure. However, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. 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.

Regarding the claim of the union inducing the employer to commit a violation, none of the facts alleged in the complaint indicate that the union requested the employer to take unlawful action against Brown.

Regarding the claim of discrimination for filing charges, the complaint alleges no facts indicating that the union's actions were in reprisal for Brown filing an unfair labor practice complaint with the Commission or giving testimony before the Commission.

Regarding the claim of refusal to bargain, the duty to bargain under Chapter 41.80 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees (union). Individual employees such as Brown do not have standing to process refusal to bargain allegations.

Brown alleges "other unfair labor practices," claiming that the union misled her for seventeen months regarding taking her grievance to arbitration. This is directly related to Brown's claim of breach of the duty of fair representation, discussed above.

Amended Complaint

The amended complaint consists of argument, does not add additional facts, and does not cure the defects to the complaint. The amended complaint addresses the allegations concerning the union inducing the employer to commit a violation, discrimination for filing charges, and "other" unfair labor practices (the union not proceeding to arbitration). The amended complaint does not address the issue of union refusal to bargain. That allegation is considered withdrawn.

The amended complaint continues to focus on allegations concerning the union's promise to pursue grievance arbitration on Brown's behalf, but its failure to do so. The filing of a grievance and taking the case to arbitration is a matter of contract between a union member and the union. The Commission does not assert jurisdiction in matters involving the processing of grievances, including whether the union arbitrates the dispute. Unions have a duty of fair representation to their members, but Brown must seek a remedy through the union or the courts.

NOW, THEREFORE, it is

ORDERED

The amended complaint charging unfair labor practices in Case 22354-U-09-5699 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of May, 2009.

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.