Bremerton School District, Decision 6223-A (PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ARTHUR R. PETTIT, Complainant,	)	CASE 13585-U-97-3321
vs.	)	DECISION 6223-A - PECB
BREMERTON SCHOOL DISTRICT, Respondent.	)	DECISION OF COMMISSION

Timothy M. Greene, Attorney at Law, appeared on behalf of the complainant.

The Bremerton School District made no appearance.

This case comes before the Commission on a petition for review filed by Arthur R. Pettit, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke.[1]

BACKGROUND

Arthur Pettit (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission on December 5, 1997, and amended his complaint on January 26, 1998. As amended, the complaint alleges that the Bremerton School District (employer) engaged in unfair labor practices by threatening Pettit for providing union representation to a fellow union member at a meeting on May 23, 1996, and thereby interfered with, restrained, and coerced Pettit in violation of RCW 41.56.140(1). The allegations are paraphrased as follows:

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[1] Bremerton School District, Decision 6223 (PECB, 1998).

- As the shop steward for the bargaining unit, Pettit was requested by a fellow custodian to be present at an informal grievance meeting on May 23, 1997, with the employees' immediate supervisor, Director of Facilities Management Ron Carpenter.

- Pettit objected to the presence of an additional supervisor, Walt Draper, at the meeting, and Draper agreed to leave. Carpenter was upset by Pettit's demand, stated that Pettit could not communicate with the employee, and stated that Carpenter needed a witness at the meeting.

- As Pettit's supervisor, Carpenter sent Pettit a letter on June 5, 1997, stating in the third paragraph as follows:

> Reporting to Mountain View Middle School on May 23, 1997, during work hours away from your work area without notifying your supervisors causes me concern. District policy and procedures and the union contract are very clear in this regard. Your role as a union representative does not relieve you of your District employee responsibilities.

- The June 5th letter is alleged to have been a "reprisal against Pettit for his acting as union representative on behalf of Mr. Bennett", because the letter stated that Pettit was not following district policies and procedures and thus mischaracterized the facts.

- Carpenter knew or should have known that Pettit had cleared his attendance at the May 23rd meeting. Pettit had notified his building supervisor of the meeting and gained permission to leave the building and attend the informal grievance meeting. Pettit notified the secretary of the school that he was going to go out of the building for a meeting. Pettit had

advised Carpenter that the head custodian/building supervisor had given him permission to attend.

- Carpenter's claim that Pettit did not have permission to represent the employee at the May 23rd meeting threatened Pettit with continued negative evaluations of his job performance, and hence jeopardizes further promotions or job prospects, in the context of an evaluation of Pettit dated May 20, 1997, in which Carpenter included the comments "Communication with supervisors is negative and at times borders on disrespect".

- Letters from persons making statements about the actions of Carpenter at the May 23rd meeting show that the "real issue" is Carpenter's threat to cancel the May 23rd meeting because this was "not a union matter."

On February 25, 1998, Executive Director Marvin L. Schurke dismissed the complaint for failure to state a cause of action, based on the following: (1) The collective bargaining agreement appeared to give employees a right to have a union representative present during an informal meeting between the grievant and his/her immediate supervisor, but the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, so the implied contract violation does not state a cause of action. (2) Since Carpenter's June 5th letter to the complainant merely indicated that he was required to follow "District policy and procedures and the union contract", and that employees are responsible for following their employer's policies and procedures and the collective bargaining agreement between the parties, the complaint failed to allege facts sufficient to show the employer interfered with employee rights. (3) The complaint filed on December 5, 1997, is timely only as to employer actions on or after

June 5, 1997, so the May events cannot be remedied and thus do not state a cause of action for an unfair labor practice.

The complainant filed a petition for review, thus bringing the matter before the Commission.

POSITIONS OF THE PARTIES

The complainant argues that the allegations do not involve implied contract claims, and that the June 5, 1997, letter was a part of a continual pattern of threats by the supervisor against the complainant for union activity. As to the statute of limitations, the complainant contends that the May 23, 1997, meeting cannot be characterized as an event separate from the June 5, 1997, letter.

The employer has not yet been called upon to answer the complaint and did not file a brief in response to the complainant's petition for review.

DISCUSSION

Statute of Limitations

RCW 41.56.160(1) requires that an unfair labor practice complaint be filed within six months of the occurrence giving rise to the unfair labor practice complaint. The complainant alleges that the employer threatened him for providing union representation to a fellow union member at the May 23, 1996, meeting. In addition, the complainant alleges that the real issue between him and Carpenter is Carpenter's threat to cancel the May 23rd meeting. As the complaint was filed on December 5, 1997, the complaint is timely only as to employer actions occurring on or after June 5, 1997. The May events may be considered as background information, but the

only matter that can be the basis for an unfair labor practice violation and be remedied is the June 5, 1997, letter.

The Interference Allegations

An interference violation occurs under RCW 41.56.140(1) when an employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with their union activity. See, Mansfield School District, Decision 5238-A (EDUC, 1996); Kennewick School District, Decision 5632-A (PECB, 1996); and cases cited in those decisions. A showing that the employer acted with intent or motivation to interfere is not required. Nor is it necessary to show that the employees concerned were actually interfered with or coerced. Actual perception may even be deemed to be unreasonable. See, Seattle School District, Decision 5237-B (EDUC, 1996).

The Commission has long been sensitive to whether a dismissal prior to hearing is appropriate, and tries to assure parties of the opportunity to provide sufficient factual detail to support their case. Facts as alleged in a complaint, however, may be so insufficient as to indicate that no hearing is warranted. See, e.g., City of Bellevue, Decision 3343-A (PECB, 1990). King County, Decision 4893-A (PECB, 1995) is particularly relevant to the allegations in the case at hand. In that case, complaint allegations that a police officer's driving privileges were restricted were found to not state a cause of action because the complained-of action was limited to restrictions on the way an individual employee performed his job duties, those restrictions having been designed to ensure that the employee drove his police vehicle in a safe and lawful manner.

As alleged, the crux of the complaint in this case is the June 5, 1997, letter from Carpenter to Pettit, specifically the third paragraph. The allegation that Pettit had permission from his

building supervisor to leave the building and had also notified the building secretary, does not cure the fundamental problem -- that Pettit did not notify his immediate supervisor (Carpenter) prior to leaving his work area, and that Carpenter's letter only articulated his responsibilities to do that. In this case, it would not be reasonable for an employee to interpret Carpenter's letter as a threat of reprisal or force or promise of benefit associated with union activity, because the letter only expressed concern about a work-related responsibility -- a responsibility identified for necessary reasons in any work environment.

Contract Violation Matter

The complaint allegations included an allegation that Carpenter threatened Pettit for providing union representation to a fellow union member at the May 23, 1996, meeting, and included a statement that Carpenter was "attempting to interfere with, restrain, and coerce Complainant from his representation of fellow employees at informal grievances in accordance with the collective bargaining agreement ...". A reasonable interpretation of the allegation in the context of the whole complaint is that it implies the employer violated Article XIV, Section B.2., "Grievance Procedure and Arbitration" by its actions in regard to the May 23, 1997, meeting. As the Executive Director pointed out, however, any contract violation would need to be pursued through the grievance and arbitration machinery of the contract itself. 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). In addition, as we stated above, any occurrence on May 23, 1997, would have been untimely.

In view of our consideration of the allegations as an unfair labor practice, as urged by the complainant, and our finding that the timely allegations do not state a cause of action for an unfair

labor practice, the implied contract issue is not material to the dismissal of the complaint.

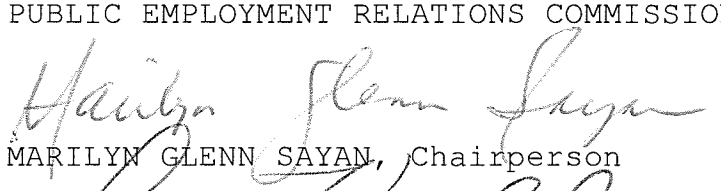
NOW, THEREFORE, it is

ORDERED

The order of dismissal issued in the above-captioned matter by Executive Director Marvin L. Schurke on February 25, 1998, is AFFIRMED and adopted as the order of the Commission.

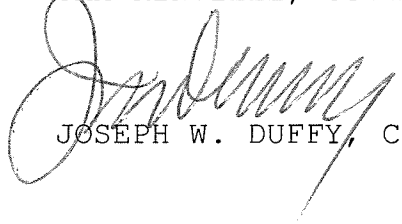
Issued at Olympia, Washington, on the 6th day of July, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner