

King County, Decision 6767 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	)	
	)	
Employer.	)	
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RALPH CARR, JR.,	)	
	)	CASE 14314-U-98-3552
Complainant,	)	
	)	
vs.	)	DECISION 6768 - PECB
	)	
WASHINGTON STATE COUNCIL OF	)	ORDER OF DISMISSAL
COUNTY & CITY EMPLOYEES,	)	
	)	
Respondent.	)	
-----	)	
RALPH CARR, JR.,	)	
	)	CASE 14313-U-98-3551
Complainant,	)	
	)	
vs.	)	DECISION 6767 - PECB
	)	
KING COUNTY,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
-----	)	

Ralph Carr, Jr. filed two unfair labor practice complaints with the Public Employment Relations Commission on December 30, 1998, under Chapter 391-45 WAC. Carr is identified as an employee of King County (employer) working as a "detention worker" assigned intake counselor duties in the King County Department of Youth Services, within a bargaining unit represented by the Washington State Council of County and City Employees (union). Two separate cases were docketed, consistent with long-standing Commission procedure: Case 14313-U-98-3551 covers the charges against the employer; Case 14314-U-98-3552 covers the charges against the union.

Carr filed supplemental materials on January 12, 1999, an amended statement of facts on March 25, 1999, and an amended complaint on April 19, 1999.

The case was reviewed by the Executive Director under WAC 391-08-110. At that stage of the proceedings, all of the facts alleged by a complainant are assumed to be true and provable; the question at hand is whether the allegations state claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission. In the context of a case filed by an individual employee, it is important to note that the Commission and its staff ***maintain an impartial posture in all proceedings*** before the agency. The agency does not "investigate" or "prosecute" complaints in a manner familiar to those who practice before the National Labor Relations Board. In making preliminary rulings, the Executive Director must act on the basis of what is contained within the four corners of the complainant's documents, and is not at liberty to fill in gaps or make leaps of logic.

A deficiency notice was issued on May 18, 1999. The purpose of that letter was to comply with the state Administrative Procedure Act (APA) at RCW 34.05.419(2), which requires agencies to:

[N]otify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require ...

Carr was informed that the materials then on file failed to state a cause of action, and he was given a period of 14 days in which to file and serve an amendment which stated a cause of action or face dismissal of the cases. Carr did not respond within the time period specified in the deficiency notice.

Carr filed amendatory materials on June 9, 1999, under cover of a letter which asserted there had been a delay in his receipt of the deficiency notice, and explained that he assumed the 14-day period was to be calculated from the date he received the deficiency notice.<sup>1</sup> On June 21, 1999, Carr filed additional materials detailing his claims of financial losses.

The cases are again before the Executive Director for processing under WAC 391-45-110. Each and every document presently on file with the Commission has been reviewed, but Carr still has not alleged facts that could be a basis for finding an unfair labor practice violation. The cases must be dismissed.

## DISCUSSION

### The Jurisdiction of the Commission

The name "Public Employment Relations Commission" is sometimes interpreted as implying broader authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to collective bargaining disputes between employers, employees and unions. The statute applicable to employees of Washington counties is the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The agency does not have authority to resolve each and every dispute that might arise in public employment. In particular:

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<sup>1</sup> These dismissals are not based on this delay, and it is not necessary to address Carr's claims about the advice and/or information he has received from the agency. Carr has placed numerous telephone calls to the Commission's office and has spoken with several staff members on the telephone and in person.

- 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). Such matters must be pursued through the grievance and arbitration procedures established within the contract, or through the courts.
- 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 matters must be pursued in a court which can assert jurisdiction to determine and remedy any underlying contract violation.
- The Commission has no authority to determine and remedy claims under state laws administered by other state agencies, such as: The state law against discrimination, Chapter 49.60 RCW, is administered by the Washington State Human Rights Commission; the state wage and hour law, Chapter 49.52 RCW, is administered by the Department of Labor and Industries; and the state whistleblower law, Chapter 42.41 RCW, is administered by the State Auditor and local authorities.
- The Commission has no authority to determine and remedy claims under federal laws, including Title VII of the Civil Rights Act, laws against discrimination, the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and federal whistleblower protections.

The documents on file in these cases suggest that separate claims have been filed with federal agencies and/or other state agencies.

### The Fact Situation

Carr indicates that he is afflicted with narcolepsy, a disorder which causes him to involuntarily fall asleep. He was placed on paid leave after he fell asleep on the job in early 1998, and he was placed on unpaid leave as of November 20, 1998. The unpaid leave appears to be at the center of a controversy involving Carr's rights under the FMLA and/or his rights under the ADA. Carr alleges that payment of accumulated vacation benefits was denied or at least delayed, and that his reinstatement from leave has been denied or delayed. Carr alleges, generally, that there has been a history of unlawful practices (and a lack of accountability) by the employer and union, and that those parties have engaged in a partnership of collusion against him since he became a King County employee in 1996. He sets forth numerous financial and personal hardships that he and his children have suffered.

### Carr's Union Activity

There is no doubt that Ralph Carr has adequately alleged that he engaged in activities protected by Chapter 41.56 RCW. Apart from having been employed in a bargaining unit represented by the union, Carr's facts include: That he was a union activist, that he served as secretary of his local union in 1996-1997, that he was elected vice-president of the local union in November of 1998, and that he has filed numerous grievances under the collective bargaining agreement between the employer and union.

### Some Allegations Untimely

RCW 41.56.160 imposes a six-month limitation on the filing of unfair labor practice complaints. Accordingly: The original

complaints can only be considered timely as to matters alleged to have occurred on or after June 30, 1998; each subsequent amendment can only be considered timely as to any new matters first alleged therein which occurred within the six months preceding the filing of that amendment. These complaints are clearly untimely as to many of the events described, including at least:

- [3/25/1999 @ 15] - On **unspecified date**, union officials acted without authority in connection with negotiation of letter of understanding.
- [4/19/1999 @ 3] - In **July, 1996**, employer interfered with employee rights in connection with memorandum of agreement on vacation and sick leave.
- [3/25/1999 @ 15 (date unspecified), 4/19/1999 @ 4 (specifying **1996-1997** timeframe), 4/19/1999 @ 12 (specifying **July, 1998** timeframe), 4/19/1999 (date unspecified)] - Employer interference with internal union affairs, by influencing election of union bargainer, when employer and that individual knew he was being promoted to a management position;
- [4/19/1999 @ 5] - In **1997**, employer failed to post a temporary job position, and assigned a union officer to that position.
- [3/25/1999 @ 3, 4/19/1999 @ 6] - In **February, 1997** Carr filed grievance about posting and filling positions after a reduction-in-force (RIF).
- [6/9/1999 @ I.] - In **December, 1997**, Carr was removed from his position under an illegal RIF.

- [3/25/1999 @ 7] - **During 1998**, the employer knew Carr was a "troublemaker" and hoped he would not surface on the negotiation team.
- [6/9/1999 @ II.] - In **January, 1998**, Carr requested reclassification and the employer did not respond within prescribed time period.
- [3/25/1999 @ 4 and 5, 4/19/1999 @ 7 and 8, 6/9/1999 @ III.] - In **January, 1998** Carr fell asleep on the job, after which he was suspended and/or put on paid leave pending investigation.
- [3/25/1999 @ 4, 4/19/1999 @ 7] - In **April of 1998**, supervisor wrote misleading or fabricated disciplinary letter concerning Carr falling asleep while at work;
- [3/25/1999 @ 4, 4/19/1999 @ 9] - In **April of 1998**, Carr was placed on paid administrative leave but was denied overtime he would otherwise have earned.
- [6/9/1999 @ III.] - In **May, 1998**, union refused to provide Carr representation.
- [6/9/1999 @ IV.] - In **May, 1998**, union offered to provide Carr representation.
- [4/19/1999 @ 11 (timeframe unspecified), 6/9/1999 @ VIII. and X. (specifying **May, 1998**)] - Employer official prevented Carr from applying for what appears to have been a promotional position (and may have been outside of the bargaining unit represented by the union);

- [4/19/1999 @ 13, 6/9/1999 @ X.] - In *May or June, 1998*, King County Office of Civil Rights denied Carr the right to file charges, and refused to investigate his claims.
- [6/9/1999 @ X.] On *unspecified date*, supervisors were instructed not to let Carr work overtime. In view of allegations that Carr fell asleep on the job because he was required to work overtime, this appears to be an ADA matter.

Those matters cannot be the basis for any proceedings before the Commission.

#### Race and Disability Discrimination Claims

Carr has made numerous references to race discrimination and/or discrimination on the basis of disability, including at least:

- [12/30/1998 complaint] - Refers to "Title VII of the Civil Rights Act of 1964 ... Harassment, Retaliation, and Discrimination ... when I and other "King County employees of color" sought resolution of ... charges".
- [1/12/1999] - Carr alleges he was placed on unpaid leave in violation of the FMLA.
- [3/25/1999 @ 4, 6/9/1999 @ III.] - Employer is aware of Carr's narcolepsy affliction. A claim of failure to accommodate a disability would arise under the ADA.
- [3/25/1999 @ 5, 4/19/1999 @ 9, 6/9/1999 @ \_\_\_] - Placing Carr on administrative leave for 5 months was excessive. A claim of failure to accommodate a disability would be an ADA matter.



- [3/25/1999 @ 6, April 19, 1999, June 9, 1999] - Placing Carr on a further 15-shift unpaid leave (suspension) in October of 1998 was unnecessary or excessive, when his disability status was already clear. A claim of failure to accommodate a disability would be an ADA matter.
- [4/19/1999 @ 15] - Placing Carr on unpaid leave as of November 20, 1998 violated the FMLA.
- [3/25/1999 @ 11, 4/19/1999 @ 17, 6/9/1999 @ XIII.] - Employer denied Carr reinstatement in January of 1999, after he was released by his physician to return to work, even though it had positions available. This appears to be an FMLA matter or a failure to accommodate a disability which is an ADA matter.
- [6/9/1999 @ X.] On unspecified date, supervisors were instructed not to let Carr work overtime. In view of allegations that Carr fell asleep on the job because he was required to work overtime, this appears to be an ADA matter.

None of those matters are properly before the Public Employment Relations Commission.

#### Other Claims Outside Commission's Jurisdiction

Carr alleges numerous violations of the collective bargaining agreement or various laws, including at least:

- [12/30/98 remedy request] - Under an "objectionable conduct in union elections" heading, Carr requested an order to stop all contract negotiations and voting on issues. The Commission does not regulate internal union elections or affairs.

- [12/30/1998 remedy request] - Under a "use of payroll in disciplinary actions" heading, Carr requested an order to stop all payroll practices developed by the employer. This is a violation of contract claim.
- [12/30/1998 motion] - Carr alleges he was denied benefits and pay. This appears to be a violation of contract claim.
- [12/30/1998 motion] - Carr alleges he was denied Workers' Compensation benefits. That would be a matter to be taken up with the Department of Labor and Industries and/or the Board of Industrial Insurance Appeals.
- [12/30/1998 motion] - Carr alleges he was denied public assistance benefits. That would be a matter to be taken up with the Department of Social and Health Services.
- [12/30/1998 motion, 1/12/1999] - Carr alleges he was denied medical and dental benefits because of being placed on leave without pay status. This is a violation of contract claim.
- [1/12/1999, 4/19/1999 @ 17, 6/9/1999 @ XII.] - Carr alleges the employer delayed paying him for accumulated leave balances after he was placed on unpaid leave in November of 1998. This is a contract violation claim and/or a wage claim to be taken up with the Department of Labor and Industries;
- [3/25/1999 @ 7] - Union invalidated election in which Carr won a union office. This is an internal affairs matter which would have to be taken up under the union's constitution and bylaws, or in a court.

- [3/25/1999 @ 9, 4/19/1999 @ 10] - Employer placed Carr in an undesirable assignment upon reinstatement from 15-shift suspension. This appears to be a violation of contract claim.
- [3/25/1999 @ 9, 4/19/1999 @ 6] - Union refused to advance Carr's grievances. Alleged breaches of the duty of fair representation would have to be pursued in a court.
- [3/25/1999 @ 9 and 12] - Whether or not there has been a conspiracy, the employer and union have not fulfilled their obligations under unspecified relevant laws and contracts, and were derelict in the extreme. Such allegations would have to be taken up under the statute or contract.
- [3/25/1999 @ 11, 4/19/1999 @ 17] - Carr was not paid in January, 1999 for overtime he would have had during his unpaid leave. This appears to be a violation of contract claim.
- [3/25/1999 @ 14, 4/19/1999 @ 19] - Chapter 49.52 RCW is cited. Claims under that wage claims statute would have to be taken up with the Department of Labor and Industries.
- [4/19/1999 @ 15 and 19] - A general violation of contract is alleged.
- [4/19/1999 @ 10] - Union stated that it had investigated Carr's grievance and found it was without merit. Alleged breaches of the duty of fair representation would have to be pursued in a court.
- [4/19/1999 @ 17, 6/9/1999 @ X.] - King County Office of Civil Rights denied Carr the right to file charges, and refused to

investigate. The Commission does not have authority to consider appeals from that agency.

- [4/19/1999, 6/9/1999 @ X.] - Employer and union violated contractual time limits on grievance processing.
- [6/9/1999 @ 5] - Previous out-of-court settlements of issues by employer and union have been a gross waste of public funds. The State Auditor investigates frauds; other issues may be of a political or public interest nature.
- [6/9/1999 @ IX.] Carr filed charges with the federal Equal Employment Opportunities Commission. Charges of discrimination in reprisal for filing with that agency would have to be taken up with that agency.
- [6/9/1999] Extensive quotations are provided from Title 42, Section 2000e-2 of the U.S. Code, concerning discrimination on the basis of race, color, religion, sex, or national origin.
- [6/9/1999] Extensive quotations are provided from Title 42, Section 1985 of the U.S. Code, concerning conspiracy to interfere with civil rights.
- [6/9/1999] Extensive quotations are provided from Title 42, Section 12111 of the U.S. Code, concerning disabilities.
- [6/9/1999] Materials are set forth concerning the federal Fair Labor Standards Act, and its administration.
- [6/9/1999] Extensive quotations are provided from the state Whistleblower law, Chapter 42.40 RCW.

- [6/9/1999] A summary of the federal Equal Employment Opportunity Act of 1991 is set forth.
- [June 22, 1999] - Carr alleges that less senior employees have been awarded day shift jobs ahead of him, and/or that there have been irregularities in the job bidding process. These appear to be violation of contract claims.

None of those matters are properly before the Public Employment Relations Commission.

#### Insufficiently Detailed Allegations

A few allegations simply lack the factual details required by WAC 391-45-050, including dates, times, places, and participants in occurrences. Those include at least:

- [3/25/1999 @ 7] - The employer knew Carr was a "troublemaker" and hoped he would not surface on the negotiation team.
- [3/25/1999 @ 14, 4/19/1999 @ 19] - RCW 41.56.140(3) is cited without any facts linking to actions after the December 30, 1998 filing of the unfair labor practice complaint.
- [3/25/1999 @ 14, 4/19/1999 @ 19] - RCW 41.56.159 is cited, but no such section exists in the statute.
- [4/19/1999 @ 10] - Carr's request for a different assignment was refused when he returned to work (impliedly in late 1998), but a "due to conflict not being resolved" explanation appears to be Carr's basis for the request rather than employer's basis for denial.

- [4/19/1999 @ 14] - Detention Manager allegedly made an example of Carr to other employees, but no details are provided.
- [4/19/1999 @ 17] - Carr alleges the employer had positions available that it was paying employees overtime to back-fill, but insufficient details are provided to conclude that a violation could be found or that the employer would be put on notice of what is claimed to have been unlawful.
- [6/9/1999] - Carr alleges the employer is exploiting the situation in various ways when addressing employee issues.

After multiple amendments and a deficiency notice, it must be presumed that Carr would have provided the required details if he had them available.

#### Absence of Facts Showing Causal Connection

Proof that an employee has pursued rights under Chapter 41.56 RCW, or has communicated an intent to do so, is certainly a necessary ingredient in finding a "discrimination" unfair labor practice under RCW 41.56.140(1) or 41.56.150(1) or (2), the pursuit of protected union activity does not immunize an employee from non-discriminatory realities of the workplace. Before an unfair labor practice violation can be found, a complainant must also allege and prove a causal connection between protected union activity and the employer or union actions alleged to have been unlawful. Several conclusionary allegations of retaliation lack factual linkages to Carr's protected union activities, including at least:

- [12/30/98 motion] - The term "retaliatory actions" is used, but this is not factually linked to Carr's union activities.

- [1/12/1999] - Leave without pay status is contested, but without any factual linkage to Carr's union activities.
- [3/25/1999 @ 9, 6/9/1999] - Multiple allegations that the union and employer agreed to retaliate against Carr by invalidating his grievances are conclusionary, without any supporting facts.
- [6/9/1999] - Carr alleges he believes he has encountered problems because the workforce is covered by a collective bargaining agreement, but there are no factual details linking his belief to any specific union activity or any specific evidence of animus on the part of the respondents.
- [6/9/1999] - Carr makes conclusionary allegation that employer's improper governmental actions are a warning to other employees, but no detailed factual linkage is provided.
- [6/9/1999 @ IX.] - Carr alleges a "meets expectations" rating on a performance review was different than submitted by his supervisor, but there are no factual details linking the actions of the senior officials to Carr's union activities.

In his letter covering transmittal of the June 9 amendment, Carr stated he set forth matters outside of the Commission's jurisdiction to show "the magnitude of these alleged violations". It is evident that Carr has studied materials published by the Commission, and has attempted to invoke the terms of art used in the Commission's decisions. Without comment on the merit of any claims he has or may have under other laws, the problem remains that there are **no alleged facts** showing union animus on the part of the employer or animus on the part of the union toward its own officer.

Beyond Carr's statements as to his own beliefs and interpretations, there is **no linkage** between Carr's union activities and the limited matters that are subject to the Commission's jurisdiction.

Motion for Temporary Relief

Carr filed a motion for temporary relief, asking the Commission to put a stop to what he perceives as retaliatory actions and/or provide him some immediate income. The motion is premature under the procedure set forth in WAC 391-45-430, which allows such a motion only after a complaint is found to state a cause of action under WAC 391-45-110. Because these complaints are being dismissed, the employer and union need not file affidavits in response to the motion for temporary relief, and the case will not be placed before the Commission for separate action under WAC 391-45-430.

NOW, THEREFORE, it is

ORDERED

The complaints filed in the above-captioned matters are DISMISSED for failure to state a cause of action.

Issued at Olympia, Washington, on the 23<sup>rd</sup> day of July, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

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.