

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 174,)	
)	
Complainant,)	CASE 14420-U-99-3572
)	
vs.)	DECISION 6772 - PECB
)	
KING COUNTY,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
)	
)	

The complaint charging unfair labor practices filed in the above-captioned matter on March 1, 1999, was the subject of a deficiency notice issued on May 27, 1999. Teamsters Union, Local 174 (union) was given a period of 14 days in which to file an amended complaint which stated a cause of action, and was notified that the complaint would be dismissed in the absence of such an amendment. An amended complaint filed on June 17, 1999, is now before the Executive Director for processing under WAC 391-45-110.¹

The union alleges that King County (employer) violated RCW 41.56.140(4), by refusing to require three of its officials to testify before a grievance panel convened under the terms of the parties' collective bargaining agreement. That grievance panel is the penultimate step in the parties' contractual dispute resolution procedure, which ends with final and binding arbitration. The

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.

amended complaint did not allege any new facts, and merely set forth various legal arguments posited in support of the complaint. The Executive Director concludes that the complaint still fails to state a claim for relief available through unfair labor practice proceedings under Chapter 391-45 WAC.

DISCUSSION

The union argues that the employer's refusal to make the witnesses available for the grievance process was due to the pendency of discrimination complaints being independently pursued by the grievant, and it reasons that the employer's refusal is tantamount to conditioning bargaining on a non-mandatory subject of bargaining. It follows, according to the union, that the employer's refusal undermines the status of the union because it takes enforcement of the labor agreement out of the hands of the union and places it in the control of the grievant. The union argues that it has a right to process grievances, and to have access to relevant data with respect thereto. It further maintains an employer must explain a failure to supply relevant data and make a good faith effort to resolve differences regarding information requests in a manner that will accommodate legitimate concerns of the parties. Additionally, it contends that the mere fact that parties are involved in litigation does not excuse a failure to furnish relevant data necessary to process a grievance. It is urged that the employer has given the right to determine whether to pursue a grievance to the individual grievant, in derogation of the union's status as the collective bargaining representative, and has in effect unlawfully conditioned bargaining over the grievance upon the grievant's relinquishment of a statutory right to file an action for discrimination. The union maintains that seeking a

waiver of statutory rights is a permissive subject of bargaining and that insistence on such a proposal to the point of impasse is unlawful and if acquiesced in by the union would subject the union to legal liability.

The union has correctly stated various legal principles. In this case, it is in the application of these concepts to the alleged facts that the union has erred:

- No precedent is cited or found for the proposition that an employer's refusal to supply its official(s) for interrogation by a union has a per se legal effect of conditioning processing of the grievance upon the grievant withdrawing his discrimination claim or causing the union to abdicate its control of the grievance process. The short answer to the union's arguments is that the union appears to retain the right to control the processing of the grievance and to make the determination as to whether to proceed based on the facts available to it.
- A demand to supply witnesses for interrogation by a union is so vastly different from the requests for information relative to the processing of a grievance as to indicate that routine National Labor Relations Board (NLRB) and Commission precedents on the duty to provide information are inapplicable. The union's basic premise with respect to the obligation of the employer to produce upon request potential witnesses during the processing of a grievance is flawed, or is at least unprecedented.

In effect, what the union is seeking in this case is to have the Commission impose a discovery process upon the parties in connec-

tion with their processing of issues under a contractual grievance and arbitration procedure. While no Commission precedent directly on point is found, the NLRB has considered the issue presented here, as well as a closely connected issue arising out of the denial of a request for witnesses' statements during the processing of a grievance. In both instances, the NLRB has dismissed the allegations under a rationale that enforcing discovery in the processing of grievances does not promote the purpose of the statute, and creates a potential for harassment or intimidation of witnesses. See, Anheuser - Busch, Inc. 237 NLRB 982 (1978); Whirlpool Corporation 281 NLRB 17 (1986). The NLRB's reasoning is persuasive in this matter.

Some state collective bargaining laws make violation of a collective bargaining agreement and/or refusal to arbitrate grievances an unfair labor practice,² but Chapter 41.56 RCW is not among them. It has long been established that the Public Employment Relations 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). A closely-related, and equally long-established principle is that the Commission does not assert jurisdiction to enforce the agreement to arbitrate, the procedures for arbitration, or the awards issued by arbitrators on grievance disputes. Thurston County Communications Board, Decision 103 (PECB, 1976). Parties need to take to court those matters which are subject to the jurisdiction of the courts. The allegations of this complaint fall within those precedents, and thus do not state a cause of action before the Commission.

² E.g., laws in at least Oregon and Wisconsin.

NOW THEREFORE, it is

ORDERED

The above-entitled matter is hereby DISMISSED and the proceedings are closed.

Issued at Olympia, Washington this 30th day of July, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", written in dark ink.

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.