STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BETHEL SCHOOL DISTRICT, Employer.	)	
TAMMY LYN PARSONS, Complainant, vs. PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Respondent.	)	CASE 14565-U-99-3638 DECISION 6847 - PECB ORDER OF DISMISSAL

On May 7, 1999, Tammy Lyn Parsons filed a complaint charging unfair labor practices with the Public Employment Relations Commission, under Chapter 391-45 WAC, marking boxes on the complaint form to claim that both her former employer and her former exclusive bargaining representative violated her rights under state law. Consistent with established practice, a separate case was docketed for each party being charged with misconduct: Case 14565-U-99-3638 covers the allegations against Public School Employees of Washington (union); Case 14566-U-99-3639 covers the allegations against the Bethel School District (employer).

The cases were combined for purposes of review under WAC 391-45-110,[1] and for purposes of a combined deficiency notice issued on

[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 the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

August 17, 1999. Parsons was given 14 days in which to file and serve amended complaints which stated a cause of action, or face dismissal of the cases. Parsons filed a timely response to the deficiency notice. The above-captioned case is again before the Executive Director for processing under WAC 391-45-110.[2]

The Executive Director concludes that the previously-noted deficiencies have not been corrected, and that this case must be dismissed for failure to state a cause of action.[3]

BACKGROUND

Parsons was employed as a school bus driver within a bargaining unit represented by the union.

Parsons says she "resigned" because of employer harassment after she filed grievances, but extensive materials accompanying the complaint indicate the resignation occurred the day she was notified of a recommendation that she be discharged based on her handling of students and her unprofessional interactions with parents.[4] Parsons states the union induced the employer to commit a violation, and committed unspecified unfair labor practices.

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[2] The union filed a response to the complaint, without waiting for direction to file an answer under WAC 391-45-190. Such volunteered materials cannot be considered in the processing of a case under WAC 391-45-110.

[3] An order dismissing the companion case is being issued simultaneously.

[4] Parsons filed more than 120 pages of documents, using the "Complaint Charging Unfair Labor Practices" form as the cover sheet on the package. The assumption that alleged facts are true and provable does not compel the Executive Director to ignore conflicts within such documents.

DISCUSSION

Allegations of Union Misconduct Insufficiently Detailed

The deficiency notice pointed out that the original complaint did not identify the union actions (or inactions) which were claimed to have violated Parsons' rights under Chapter 41.56 RCW. Parsons' response to the deficiency notice asserts that the union "was fully aware of everything", that a union representative should have accompanied her to pick up "the last letter from Bethel", and that the union failed to supply representation to her on that occasion, but problems continue to exist.

Parsons has not met the requirement of WAC 391-45-050, which calls upon complainants to file "clear and concise" factual allegations. The Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic within a large volume of unstructured materials. In this case, review of the 120 pages submitted supports an inference that the "last letter" referred to was the notice that the superintendent was recommending Parsons' discharge. In turn, that casts doubt on both the right of the employee to request, and the obligation of the union to provide, representation on that occasion.

Bargaining unit members have a right to union representation at an investigatory interview when discipline might result:

> In [National Labor Relations Board v.] Weingarten, Inc., 420 U.S. 251 (1975), the Supreme Court of the United States held that union-represented employees have a right to the presence and assistance of a union representative when confronting the employer in an investigatory interview where the employee

> reasonably perceives that discipline could result. That precedent has been embraced by the Public Employment Relations Commission in numerous cases.

City of Seattle, Decision 6357 (PECB, 1998).

However, the right to union representation does not apply where the purpose of the meeting is merely to give an employee notice of an action being proposed (e.g., notice of an interview or hearing to be held) or a decision already made (e.g., discipline imposed). In a case where an employee was called to meetings but conceded their purpose was to either counsel him or to inform him of previously-determined discipline, the analysis was as follows:

> Those meetings were therefore not "investigatory" in nature, and no Weingarten rights attached to Keys' participation in them.

Whatcom Transportation Authority, Decision 5276 (PECB, 1995).

In the absence of facts sufficient to conclude that Parsons had a right to request union representation, there is no basis to conclude that the union had any obligation to represent her. The complaint, as amended, thus fails to state a cause of action against the union.

Duty of Fair Representation

The deficiency notice also pointed out long-standing precedent under which the Commission does not assert jurisdiction to determine "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. See, Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). To the extent Parsons has complained

(or would complain) about the union's processing of her grievances, such matters must be pursued in a court which can assert jurisdiction over the underlying contractual claim.

Parsons has not alleged facts sufficient to form a conclusion that any union action (or inaction) regarding her employment was caused by unlawful discrimination (such as on the basis of race, color, creed, sex, national origin), which would call into question the union's right to enjoy the benefits of statutory status as exclusive bargaining representative. Neither has Parsons alleged facts suggesting that the union acted in reprisal for Parsons' exercise of rights protected by Chapter 41.56 RCW.

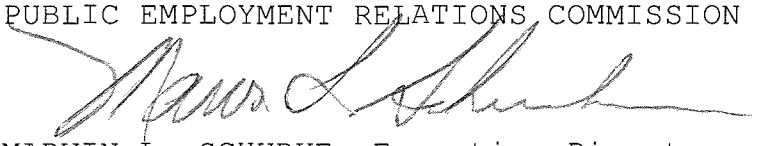
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED for failure to state a claim for relief available through proceedings before the Commission.

Issued at Olympia, Washington, this 12th day of October, 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.