

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AUBURN SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
HERSHEL F. GREER,)	CASE 14820-U-99-3730
)	
Complainant,)	DECISION 6939 - PECB
)	
vs.)	
)	ORDER OF DISMISSAL
PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON,)	
)	
Respondent.)	
-----)	
HERSHEL F. GREER,)	
)	
Complainant,)	CASE 14821-U-99-3731
)	
vs.)	DECISION 6940 - PECB
)	
AUBURN SCHOOL DISTRICT,)	
)	ORDER OF DISMISSAL
Respondent.)	
-----)	

On October 5, 1999, Hershel Greer (complainant) filed two unfair labor practice complaints with the Public Employment Relations Commission, under Chapter 391-45 WAC. In one complaint, docketed as Case 14820-U-99-3730, Greer alleged that Public School Employees of Washington (union) had interfered with his rights as a public employee; in the second complaint, docketed as Case 14821-U-99-3731, Greer alleged that the Auburn School District (employer) had interfered with his collective bargaining rights.

Both complaints were reviewed by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110. At

that stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether the complaint, as filed, states a cause of action for unfair labor practice proceedings before the Commission. A deficiency notice was issued on December 9, 1999, outlining a number of problems with the complaints, as filed. Mr. Greer was given a period of 14 days in which to file and serve amended complaints which stated a cause of action, or face dismissal of the cases.

Amended complaints filed on December 15, 1999, are presently before the Executive Director for processing under WAC 391-45-110. The complaints are dismissed because of several fundamental problems which continue to exist in them.

DISCUSSION

Allegations Against the Union

Some Allegations Untimely -

The complaint details a series of events beginning in July of 1997, when a letter was issued in which Mr. Greer was accused of leaving a school building during his work shift. The complaint goes on to detail incidents on February 26, 1998, November 5, 1998, December 4, 1998, December 18, 1998, January 8, 1999, January 27, 1999, and February 24, 1999.

As indicated in the deficiency notice, the Public Employment Relations Commission is responsible for hearing and ruling upon unfair labor practice complaints, but the Commission does not have unlimited authority to deal with such complaints. RCW 41.56.160 limits the Commission's power by stating:

[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. ...

This complaint filed on October 5, 1999, can only be considered timely for acts or events that occurred on or after April 5, 1999. The complaint against the union does not allege that any violations took place after April 5, 1999, so it appears that the Commission has no jurisdiction in the matter.

Allegations Insufficiently Detailed -

Even if the complaint against the union appeared to be timely filed, the deficiency notice identified other problems. WAC 391-45-050 requires a complainant to provide a clear and concise statement of facts detailing the claimed unfair labor practices.

In several instances, Mr. Greer makes references to people and events without explaining how the particular incident arose or how his rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, were violated. While it appears that the course of events involved discipline under terms of an existing collective bargaining agreement, Mr. Greer does not mention the filing or processing of any grievance. In addition, there is a reference to Mr. Greer's resignation from employment with the employer. Without more information about the nature of the complaints against the union, the Commission cannot process this complaint further.

Violation of Contract Claimed -

Mr. Greer appears to claim that the union failed to represent him in an appropriate manner when disciplinary action was taken against him by the employer. Job security rights for employees are an outcome of collective bargaining between employers and unions, which commonly results in an agreement that employees will only be

disciplined or discharged for "just cause" or some similar standard. Claimed violations of collective bargaining agreements must be pursued through the grievance and arbitration machinery established within a collective bargaining agreement, or through the courts. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. See, City of Walla Walla, Decision 104 (PECB, 1976). Accordingly, the Commission does not assert jurisdiction over a "duty of fair representation" complaint concerning a union's handling of grievances. See, Mukilteo School District, Decision 1381 (PECB, 1982).

The Charges Against the Employer

Inadequate Identification of Participants in Occurrences -

Three individuals are named in the space provided on the complaint for identification of the "Respondent". They are: Heath Merchen, Liz Knox, and Frank Nelson. The deficiency notice pointed out that, while Mr. Greer may believe those individuals violated his rights, the statute regulates the conduct of employers. Mr. Greer needed to explain what positions Merchen, Knox, and Nelson hold with the Auburn School District, and that they were acting as employer officials. That defect has not been cured.

Allegations Untimely -

The allegations are untimely under RCW 41.56.160, as described above. The deficiency notice pointed out that the first accusations against Mr. Greer that are mentioned in the complaint occurred more than 2 years before the filing of the complaint, and that the other incidents mentioned in the complaint all occurred more than six months prior to the filing of the complaint. The amended complaint has not altered that situation.

Allegations Fail to State Cause of Action -

Even if some or all of the allegations had been filed within six months after their occurrence, they do not state causes of action that the Commission can address.

Several of the allegations concern "violation of contract" claims:

- Mr. Greer explains his side of the story regarding a disciplinary notice issued to him on July 6, 1997, as if to suggest that the employer lacked just cause for that discipline.
- Mr. Greer complains that the employer continued to refer to that first incident in later discipline and in unemployment hearings, after stating that the incident wouldn't affect his employment.
- Mr. Greer alleges that the employer again promised to exclude an incident discussed at a meeting on February 26, 1998, from his employment record, but then violated that promise in subsequent disciplinary actions and at unemployment hearings.
- Mr. Greer refers to an inspection of his work location conducted by Nelson, to the work area not being kept clean enough, and to a directive that he clean a school kitchen, as if to suggest the employer's criticisms were unjustified.
- Mr. Nelson is accused of using a harsh tone on March 6, 1998, when asking Mr. Greer about a vacuum cleaner needing repair.
- The complaint describes an incident on March 17, 1998, when Nelson allegedly "chewed out" Mr. Greer for not keeping track of overtime being submitted by a subordinate.

- Nelson allegedly confronted Mr. Greer on April 22, 1998, about an absence and Mr. Greer's attempts to call in before his work shift was to begin.
- Mr. Greer seems to allege that he did not have a way to notify Mr. Noble about an absence in May of 1998, and he objects to having been questioned by Nelson about that matter.
- Mr. Greer states that he offered explanations when criticized in May of 1998, as if to question whether the employer had just cause for its criticism or any resulting discipline.
- On May 14, 1998, Mr. Greer received a copy of Mr. Nelson's inspection, and found that he was being criticized for improper carpet cleaning. Mr. Greer alleges that this concern was not on the inspection form that he signed, and it must have been added at a later time. The timeliness of the employer's criticism and any procedural irregularity present "violation of contract" issues.
- Mr. Greer describes his contacts with an attorney, as well as a conversation in which he advised Larry DeBruler of his difficulties with Nelson, rising to the level of a claim of harassment, but he does not mention a grievance under the collective bargaining agreement or any facts suggesting any causal connection between the alleged harassment and union activity protected by Chapter 41.56 RCW.
- Mr. Greer alleges that he found his assigned building had not been maintained properly when he returned from vacation on August 19, 1998, he refers to a "summer school" that operated in the school building, and he blames the lack of cleaning on

a short "turnaround" period from the time that the summer school classes let out to the start of the next school year.

- Mr. Greer offers an explanation for an incident on September 8, 1998, when the building principal asked Mr. Greer to empty garbage in the office and apparently believed that Mr. Greer made an inappropriate response to the request.
- Mr. Greer disputes the complaints of several teachers, relayed to him by Nelson on October 22, 1998, concerning the cleanliness of restrooms and the playground, and he seems to dispute that it was his responsibility, as head custodian, to see that things were kept properly.
- The existence of just cause for a suspension is disputed, where Mr. Greer left his pocket knife in a school library on November 5, 1998, and the school principal was concerned that a student could have found the knife. He acknowledges the school had a policy against having knives on school premises.
- Mr. Greer disputes the findings of employer officials who inspected his work area on December 4, 1998, and were unhappy with his efforts.
- Also disputed are concerns expressed by Nelson on December 8, 1998, following a visit to Mr. Greer's work location. The collective bargaining statute does not excuse employees from the consequences of their own errors or inefficiencies, so this appears to be another "just cause" matter.
- Mr. Greer's work schedule was allegedly changed on January 18, 1999.

- Mr. Greer participated in a "walkthrough" of his work area on January 27, 1999, with employer officials and Seidmeyer, and some problems were apparently found. Mr. Greer's claim that he had adequately performed his assigned tasks only raises another "just cause" issue.
- Mr. Greer alleges that Ms. Knox told him to start cleaning "lobby windows" in February of 1999, but later denied making such an assignment.
- On February 10, 1999, Mr. Greer had a disagreement with Knox about an order to de-ice certain areas around the school. Mr. Greer did not believe that Knox told him to clear the parking lot of ice, but she asserts that she did, and that Mr. Greer was becoming argumentative and difficult to deal with. Again, this merely suggests a controversy as to whether the employer had just cause to discipline Mr. Greer.
- On July 8, 1999, Knox brought up the "de-icing" incident. This also appears to be a "violation of contract" matter going to the question of whether the employer had just cause to discipline or discharge Mr. Greer.

All of these matters would be (or would have been) for an arbitrator to decide on the basis of a grievance, rather than for the Commission to decide in an unfair labor practice case. City of Walla Walla, supra.

Mr. Greer alleges that the employer officials discussed problems with his work, and that the union representative did not provide him any assistance, at a meeting held on December 18, 1998. The fact that a union official was present contradicts any claim of

denial of union representation under National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975), and the facts alleged are insufficient to suggest that the employer prevented the union official from acting on Mr. Greer's behalf.

Those present at another meeting held on January 8, 1999, are not listed, but it can be inferred that the participants included both employer officials and the same union official that participated in the December 18 meeting. Apparently a "plan of assistance" had been devised to put Mr. Greer on a corrective action program. Although Mr. Greer argues that the union representative didn't provide any real assistance, he acknowledges that she was able to get a probationary period reduced. This internal inconsistency prevents forming an opinion as to the existence of any violation.

At a meeting held on February 24, 1999, with the union official in attendance, employer officials told Mr. Greer of his demotion to the position of "floating second shift custodian". Mr. Greer did not believe the employer officials were interested in any information he brought forward, and he further believed that his union representative did not act in his best interests. At some time during the course of this meeting, Mr. Greer resigned his position with the school district. His resignation was handwritten and came after a short discussion with his union representative where Mr. Greer relates that the representative asked him, "Are you sure this is what you want to do?" Apart from the fact that the demotion would be a "violation of contract" matter, these alleged facts contradict any inference of an interference violation by the employer under Weingarten, supra. This also supports an inference that the union official sought to counsel Mr. Greer about his actions, which contradicts any suggestion of a "breach of duty of fair representation" by the union.

At an unemployment compensation hearing held on April 27, 1999, employer officials raised issues about Mr. Greer's absences, the knife incident, and his misuse of break time. Mr. Greer believed the employer should not have brought up those matters. While the complaints are timely as to these events, the relevance, materiality, and probative value of evidence in unemployment compensation hearings is entirely controlled by rulings of the agency and administrative tribunal administering the unemployment compensation law. Those rulings are not subject to review before the Public Employment Relations Commission.

On July 8, 1999, Mr. Greer asked to see his personnel file. His right to view that material would arise from the collective bargaining agreement or from statutes not administered by the Commission, so that the allegation does not state a cause of action. The fact that he received the personnel file on July 10, 1999, and the fact that it contained an unsigned resignation form, similarly suggest "violation of contract" issues exclusively.

In summary, none of the facts alleged support a conclusion that the employer has interfered with the exercise of, or discriminated against the exercise of, rights secured by RCW 41.56.040 (i.e., the right of public employees to organize for the purposes of collective bargaining). Taken together, all of the above allegations explain that Mr. Greer has had difficulty in his employment relationship, but none of the facts alleged in the amended complaint are within the Commission's jurisdiction to address. Accordingly, the complaints must be dismissed.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above-entitled matters are hereby DISMISSED.

ISSUED at Olympia, Washington, this 19th day of January, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over the printed name.

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

603 EVERGREEN PLAZA BUILDING
P. O. BOX 40919
OLYMPIA, WA 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
SAM KINVILLE, COMMISSIONER
JOSEPH W. DUFFY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 6939 - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, POSTAGE PREPAID, ADDRESSED TO THE PARTIES AND THEIR REPRESENTATIVES LISTED IN THE DOCKET RECORDS OF THE COMMISSION AS INDICATED BELOW:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ *Betty Passmore*
BETTY PASSMORE

CASE NUMBER: 14820-U-99-03730 FILED: 10/05/1999

ISSUED: 01/19/2000

FILED BY: PARTY 2 DISPUTE: UN GOOD FAITH

DETAILS: Er. discrimination,
interferrecne, domination of
union.

COMMENTS:

Employer: AUBURN S D
Attn: LINDA COWAN
915 FOURTH STREET NE

LARRY DEBAULER
AUBURN S D
915 4TH ST NE

Rep by: AUBURN, WA 98002
206-931-4900
HEATH MERCHEN
AUBURN S D
915 4TH ST NE
AUBURN, WA 98002
(253) 931-4903

AUBURN, WA 98002
(253) 931-4932

Party # 2
Attn: HERSHEL GREER JR
PO BOX 684

AUBURN, WA 98071-0684
253-735-7890

Rep by:

Party # 3
Attn: PSE OF WASHINGTON
ERIC T NORDLOF
PO BOX 798

GERARD FRIESZ
PSE OF WASHINGTON
PO BOX 798

Rep by: AUBURN, WA 98071-0798
253-833-1223
JUDY SEIDMEYER
PSE OF WASHINGTON
P O BOX 798
AUBURN, WA 98071
(253) 984-1486

AUBURN, WA 98071-0798
(800) 562-8448

(800) 562-8448