

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

This matter comes before the Commission on a notice of appeal filed by Hershel F. Greer, seeking a reversal of a dismissal order issued by Executive Director Marvin L. Schurke on January 19, 2000.¹ The Executive Director held that the complaints failed to state a cause of action. We affirm.

¹ Auburn School District, Decision 6939 (PECB, 1999).

BACKGROUND

On October 5, 1999, Hershel Greer filed two unfair labor practice complaints with the Public Employment Relations Commission, under Chapter 391-45 WAC. Greer identifies himself as an employee of the Auburn School District (employer), working in a bargaining unit represented by the Public School Employees of Washington (union). Because other details are omitted from the complaints, it is not possible to provide a comprehensive background statement. However, an overview is provided here and relevant specifics will be provided in the discussion section below.

In one complaint, Greer alleges that the union interfered with his rights as a public employee; in the other, Greer alleges that the employer interfered with his collective bargaining rights. The disputes at issue cover a period of time from July 6, 1997 through July 10, 1999. In the complaints, Greer details numerous incidents involving both the employer and the union. The controversies apparently began when the employer issued a disciplinary notice accusing Greer of leaving school grounds during his work shift, and culminated in Greer's resignation on February 24, 1999.

In the complaints, Greer explains that he did not leave school grounds during his work shift and that he was with his night custodian. He asserts that although his employer told him that the disciplinary notice would be removed from his employment records, it was not. Numerous employees' criticisms about Greer's performance are detailed. However, Greer seems to assert that none of these criticisms were justified and that all were handled improperly by the employer. Greer alleges that he talked to union officials about problems he was having at work and that the union did not provide him with appropriate assistance. On November 5,

1998, Greer left his pocket knife in the school library and was suspended. Greer acknowledges the school had a policy against having knives on school grounds. Finally, Greer asserts that his rights were violated during his unemployment compensation hearing.

The Executive Director reviewed both complaints for the purpose of making a preliminary ruling under WAC 391-45-110,² and issued a deficiency notice on December 9, 1999. It was noted that the complaints failed to state a cause of action under Chapter 41.56 RCW. Specifically, the complaints were not timely with regard to some allegations, failed to sufficiently detail allegations, and raised allegations not within the Commission's jurisdiction. Greer was allowed 14 days to file amended complaints or face dismissal of the actions.

On December 15, 1999, Greer filed amended complaints that were reviewed for processing under WAC 391-45-110. The Executive Director dismissed the complaints on January 19, 2000, for failure to state claims for relief available under the statutes that the Commission administers. The grounds for dismissal were the same basic matters raised in the deficiency notice.

On January 31, 2000, Greer filed a notice of appeal, bringing the matter before the Commission. Greer did not file a brief, but he did resubmit a photocopy of a document already contained in the original complaint against the union and a photocopy of information filed in response to the deficiency notice. Thus, the information

² At that stage of the proceeding, all of the facts alleged in a complaint are assumed to be true and provable. The inquiry is whether the complaint, as filed, states a cause of action for unfair labor practice proceedings before the Commission.

filed for consideration on appeal had already been considered by the Executive Director before issuing the order of dismissal.

POSITION OF THE PARTIES

Greer asserts that the employer interfered with his collective bargaining rights and that the union violated his rights as a public employee. Greer believes he was unfairly disciplined by his employer several times under various circumstances, and he argues that the union did not properly represent his interests. Ultimately, Greer believes he had to resign because his employer demoted him and was going to take his job away from him no matter what he did.

Because the complaints were dismissed at the preliminary ruling stage, the union and employer were not required to file answers or otherwise defend in these proceedings. Thus, the respondents have not taken positions on the notice of appeal.

DISCUSSION

Appellate Procedure

The notice of appeal in these cases is insufficiently detailed. WAC 391-45-350(3) states in relevant part that a notice of appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error. The body of Greer's notice of appeal reads in full:

I called your office February 26, 1999
two days after I resigned from the Auburn

School District, you would not help me, I also called in March you still would not help me. I called again in September, you finally sent me some forms, I filled them out, nobody told me their was a time limit of 6 months.

The Union did not inform me of a Grievance. I did not know I could Grievance with the Union Rep being in on the meetings.

The District would not look at my extra work as work but as excuses of not doing assigned work, but it was work that had to be done. [sic]

Because Greer did not file an appeal brief, the issues on appeal are unclear. The Commission has, however, reviewed the whole record.

Allegations Untimely

The allegations appear to be untimely. Under RCW 41.56.160, a complaint cannot be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the Commission.

These complaints, filed on October 5, 1999, cover incidents that occurred from July 6, 1997, through July 10, 1999. Only those allegations that occurred on or after April 5, 1999, can be considered timely. Because Greer does not allege any violations within the Commission's jurisdiction which occurred on or after April 5, 1999, it appears that the Commission has no jurisdiction over the complaints.

In his notice of appeal, Greer asserts that he called the Commission's office twice, and was not informed by agency staff of the six month statute of limitations. Even if Greer had filed his complaints on February 26, 1999, when he first contacted the

agency, it would only have been timely for events on and after August, 26, 1998. Thus, the allegations dating back to 1997 would still have been dismissed as untimely.

The issue of timeliness can also be disregarded without changing the ultimate result. The Commission would still dismiss the complaints because they fail to state a cause of action, are insufficiently detailed, and participants in occurrences are not adequately identified.

Allegations Insufficiently Detailed

Even if the allegations contained in the complaints were timely, they are insufficiently detailed. WAC 391-45-050(2) states in relevant part that each complaint shall contain, in separate numbered paragraphs, a clear and concise statement of the facts constituting the alleged unfair labor practices, including times, dates, places, and participants in occurrences. A skeletal "charge" will not suffice, and will not be fleshed out by agency personnel. Jefferson Transit Authority, Decision 5928 (PECB, 1997). With respect to the evaluation of the evidence, no greater consideration can be given to a pro se party than to a party represented by experienced counsel. See, Port of Seattle, Decision 3064-A (PECB, 1989).

In several instances, Greer makes references to people and events without explaining the circumstances surrounding the particular incident or how his rights were violated under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Although Greer does not allege a grievance was filed, he appears to dispute a disciplinary action. He then resigned from his position with the employer. Both of those actions involve job security rights

commonly regulated by an applicable collective bargaining agreement. However, the Commission cannot process the complaints without more information about their nature. After providing amended complaints in response to the deficiency notice, it must be presumed that Greer has provided all of the details at his disposal.

Greer identifies three individuals as the "respondent" on the complaint against the employer. The individuals are Heath Merchen, Liz Knox, and Frank Nelson. However, Chapter 41.56 RCW regulates the activities of unions and employers, not individuals. As was stated in the deficiency notice, if Greer believes these individuals are acting as agents of the employer, he needs to identify clearly what positions the three individuals hold and that they were acting as employer officials.

Allegations Against the Employer

No Jurisdiction to Remedy Violation of Contract Claims -

Even if the allegations were timely and sufficiently detailed, it has long been established that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW. City of Walla Walla, Decision 104 (PECB, 1976). Violations of collective bargaining agreements must be pursued through grievance arbitration established within the applicable collective bargaining agreement or through the courts.

The Executive Director's deficiency notice and order of dismissal lists numerous allegations outside the Commission's jurisdiction. Those allegations are:

1. Greer explains his side of the story regarding a disciplinary notice issued to him on July 6, 1997. He seems to suggest that the employer lacked just cause for the discipline. Greer complains that the employer continued to refer to this incident in later discipline and unemployment hearings although Greer was told the incident would not affect his employment.
2. Greer alleges that on February 26, 1998, the employer, with a union representative present, again promised to exclude the disciplinary notice from his employment records and again violated this promise.
3. Greer refers to an inspection which led to a statement that his work area was not being kept clean enough and, to a directive that he clean a school kitchen. Greer seems to suggest that the employer's criticisms were unjustified.
4. A "Mr. Nelson" is accused of using a harsh tone on March 6, 1998, when asking Greer about a vacuum cleaner that needed repair.
5. Mr. Nelson is accused of having "chewed-out" Greer on March 17, 1998, for not keeping track of overtime submitted by a subordinate.
6. Mr. Nelson is accused of confronting Greer on April 22, 1998, about an absence and Greer's attempts to call in before his work shift began.
7. 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 Mr. Nelson questioning him about the absence.
8. Greer states that, in May of 1998, he offered explanations for his work performance. Greer seems to question whether the

employer had just cause for its criticism or any resulting discipline.

9. Greer received a copy of Mr. Nelson's inspection on May 14, 1998, and found that he was being criticized for improper carpet cleaning. Greer alleges that this criticism was not on the original inspection form that he signed and that it must have been added at a later time.
10. Greer describes a conversation in which he advised Mr. Larry DeBruler that he had seen an attorney and of his difficulties with Mr. Nelson providing a basis for a claim for harassment.³
11. Greer alleges that he found his assigned building improperly maintained when he returned from vacation on August 19, 1998. Greer blames the lack of cleaning on the short "turnaround" period from the time that the summer school classes let out to the start of the next school year.
12. Greer offers an explanation for an incident on September 8, 1998, when the building principal asked Greer to empty garbage in the office and apparently believed that Greer made an inappropriate response to the request.
13. Greer disputes the complaints of several teachers, relayed to him by Mr. Nelson on October 22, 1998, concerning the cleanliness of restrooms and the playground. Greer seems to dispute that it was his responsibility, as head custodian, to see that the school grounds were maintained.
14. Greer disputes the existence of just cause for being placed on administrative leave for three days. Greer had left his

³ Greer does not mention a grievance under the collective bargaining agreement or any facts suggesting a casual connection between the alleged harassment and union activity protected by Chapter 41.56 RCW.

pocket knife in the school library on November 5, 1998. He states that the principal was concerned a student could have found the knife and acknowledges that the school had a policy against having knives on school grounds.

15. Greer's work schedule was allegedly changed on January 18, 1999.
16. Greer participated in a "walkthrough" of his work area on January 27, 1999, with employer officials and Ms. Seidmeyer, a union official. Some problems were apparently found.
17. Greer alleges that Ms. Knox told him to start cleaning "lobby windows" in February of 1999, but later denied making such an assignment.
18. Greer had a disagreement with Ms. Knox on February 10, 1999, about her order to de-ice school grounds. Greer did not believe Ms. Knox had told him to de-ice the parking lot and when questioned Ms. Knox believed that Greer became argumentative.
19. Greer was informed he was being demoted on February 24, 1999, in a meeting where employee and union officials were present.
20. Greer asked to see his personnel file on July 8, 1999, and viewed his file on July 10, 1999. Greer found an unsigned resignation form in the file.⁴

These alleged violations of the parties' collective bargaining agreement would have to have been pursued through contractual grievance and arbitration procedures, or in the courts.

⁴ Greer's right to view the material contained in his personnel file would arise from the collective bargaining agreement or from statutes not administered by the Commission.

No Jurisdiction Over Unemployment Compensation Hearings -

The Commission does not assert jurisdiction over unemployment compensation hearings. Rather, such proceedings are controlled by rulings of the agency and administrative tribunal administering the unemployment compensation law. On April 27, 1999, and possibly July 8, 1999, an unemployment compensation hearing was held on Mr. Greer's behalf. Employer officials raised the issues about Mr. Greer's absences, the knife incident, and his use of break time. Greer did not believe that the employer should have brought these matters up. While the employer's comments may or may not have been appropriate, those issues are not for the Commission to decide.

No Interference Violation -

Even if the allegations were timely and sufficiently detailed, the employer does not appear to have interfered with Greer's collective bargaining rights or his right to have a bargaining representative act on his behalf. Under RCW 41.56.140(1) and (2), it is an unfair labor practice for a public employer to interfere with public employees in the exercise of their rights guaranteed in Chapter 41.56 RCW or to interfere with a bargaining official.

Bargaining unit members do 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, 88 LRRM 2689 (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 Seattle, Decision 6357 (PECB, 1998).

The facts alleged by Greer contradict any possibility of an interference violation by the employer, however.

On December 4, 1998, and December 8, 1998, Greer's employer inspected Greer's work area. Ms. Seidmeyer, a union official, later told Greer that employer officials were unhappy with his work and a meeting would be set. Thereafter, on December 18, 1998, a meeting was held with employer officials, union officials, and Greer to discuss Greer's work. Greer alleges that the union official did not provide him with assistance at the meeting. However, he does not allege that the employer did anything to prevent the union official from acting on his behalf. A union official's presence eliminates any claim of denial of union representation. Weingarten, 88 LRRM at 2691 (1975).

On January 8, 1999, Greer met with employer and union officials to devise a "plan of assistance" to improve Greer's work performance. On the one hand, Greer argues that the union official did not assist him at the meeting. On the other hand, he states that the union official was able to get his probationary period reduced. Because Greer has made contradictory allegations, with regard to this meeting, the Commission cannot determine if there was a violation.

On February 24, 1999, with a union official present, the employer informed Greer that he was being demoted to "floating second shift custodian." Again, Greer did not believe that the union official acted in his best interest. Greer also did not feel that he could bring forward information explaining his position. During the meeting, Greer decided to resign and states that the union official asked him: "Are you sure you want to do this?" Thus, the evidence contradicts any suggestion of a breach of duty of fair representa-

tion by the union. On the contrary, the allegations show that the union official counseled Greer on his decision to resign.

Allegations Against the Union

No Jurisdiction to Remedy Violation of Contract Claims -

Even if the allegations were timely, the Commission does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances because it lacks jurisdiction to remedy any underlying contract violation. Mukilteo School District, Decision 1381 (PECB, 1982). As a practical consideration, an arbitrator or court would need to decide whether there has been a breach of the duty of fair representation in the context of any breach of contract action. Mukilteo, supra. Thus, it would make little sense for the Commission to rule on a fair representation claim when it cannot rule on the underlying breach of contract issue. Mukilteo, supra.

Job security rights are often a component of a collective bargaining agreement which states that employees may be disciplined or discharged only for "just cause". Thus, the Commission is not the proper forum because the Commission does not have authority to remedy violations of a collective bargaining agreement, and likewise, does not have jurisdiction to remedy a union's handling of grievances.

In the present dispute, Greer appears to allege that the union did not properly represent his interests when the employer took disciplinary action against him. The duty of fair representation is characterized as union action which is arbitrary, discriminatory, or in bad faith. Mukilteo, supra. As indicated above, it

appears the union was present at relevant meetings, and Greer's allegations about the union's assistance are self-contradictory.

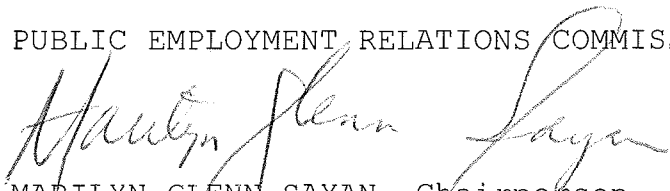
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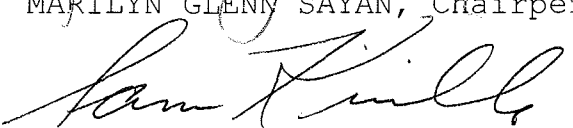
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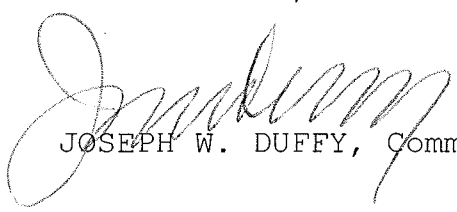
The complaints charging unfair labor practices in the above-entitled matters are hereby DISMISSED.

Issued at Olympia, Washington, this 10th day of May, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


SAM KINVILLE, Commissioner


JOSEPH W. DUFFY, Commissioner

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-A 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/ REBECCA AMES

CASE NUMBER: 14820-U-99-03730 FILED: 10/05/1999 ISSUED: 05/10/2000

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 DEBRULER
AUBURN SCHOOL DISTRICT
915 FOURTH STREET NORTHEAST

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
(206) 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

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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ REBECCA AMES

CASE NUMBER: 14821-U-99-03731 FILED: 10/05/1999 ISSUED: 05/10/2000
FILED BY: PARTY 2 DISPUTE: ER MISC ULP DETAILS: Er. domination of union.

COMMENTS:

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

LARRY DEBRULER
AUBURN SCHOOL DISTRICT
915 FOURTH STREET NORTHEAST

AUBURN, WA 98002
206-931-4900

AUBURN, WA 98002
(206) 931-4932

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

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

AUBURN, WA 98071-0798
253-833-1223

Rep by: