STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAYTON SCHOOL DISTRICT, Employer.	
MARY STOERMER, Complainant, vs. DAYTON EDUCATION ASSOCIATION, Respondent.	CASE 16561-U-02-4305 DECISION 8042-A - EDUC DECISION OF COMMISSION

Mitchell A. Riese, Attorney at Law, for the complainant.

Michael J. Gawley, Attorney at Law, for the respondent.

This case comes before the Commission on a notice of appeal filed by Mary Stoermer, seeking to overturn an order of dismissal issued by Director of Administration Mark S. Downing.[1] We affirm the dismissal of the complaint for failure to state a cause of action.

BACKGROUND

Stoermer was employed by the Dayton School District (employer) as a teacher. The Dayton Education Association (union) is the

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[1] *Dayton S D (Dayton Education Assn.)*, Decision 6042 (EDUC, 2003). The "Unfair Labor Practice Manager" title is now used for the position held by Mr. Downing.

exclusive bargaining representative of the certificated employees at Dayton.

Stoermer was put on administrative leave in December 2001, pending review of allegations of unprofessional conduct. She eventually received a written reprimand, and enlisted the help of the union in connection with those transactions. A settlement agreement was signed thereafter, as a result of discussions between Stoermer, the union, and the employer. Stoermer agreed to tender her resignation to the employer, and the employer agreed to pay Stoermer for the remainder of her employment contract (through August 2002).

After resigning, Stoermer discovered that the employer was not making retirement contributions on her behalf. That prompted her to take action against the union, for allegedly inducing her to enter into the settlement agreement by misrepresenting the terms of the agreement. Stoermer claimed that retirement contributions were to be made by the employer as part of the full salary and benefits she was to receive. On July 15, 2002, Stoermer filed a complaint charging unfair labor practices with the Commission, alleging that the union had interfered with her rights as an employee (in violation of RCW 41.59.140(2)(a)) and committed other unspecified unfair labor practices. The employer was not named as a respondent in the complaint.

The complaint was reviewed for the purpose of making a preliminary ruling under WAC 391-45-110. At that stage of the process, all facts alleged in the complaint are assumed to be true and provable, and the question is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission. On January 9, 2003, a deficiency notice was issued indicating a cause of action did not exist. Stoermer was allowed 21 days in which to file and serve an amended complaint.

Stoermer filed a timely amended complaint on January 29, 2003. An order of dismissal was issued on May 2, 2003, based on a lack of jurisdiction and failure of the amended complaint to state a cause of action.

On May 22, 2003, Stoermer filed a notice of appeal, bringing the case before the Commission. Both Stoermer and the union submitted briefs.

POSITIONS OF THE PARTIES

Stoermer argues that her complaint states a cause of action, and that the order of dismissal should be reversed. Stoermer claims the union committed a "breach of the duty of fair representation" in violation of RCW 41.56.150(1),[2] by misrepresenting the terms of a settlement agreement on which she relied to her detriment. In addition, she contends that the Commission has jurisdiction over "breach of duty of fair representation" claims of this nature.

The union argues that the amended complaint was properly dismissed, and that the appeal should be denied. The union contends that Stoermer did not allege sufficient facts to show the union "aligned itself against her" on some unlawful basis, so as to constitute a breach of the duty of fair representation.

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[2] Stoermer's appeal brief consistently, but mistakenly, cites Chapter 41.56 RCW, instead of the statute which regulates collective bargaining for school district certificated educational employees, Chapter 41.59 RCW. The duty of fair representation is essentially the same in both statutes, each of which contains provisions patterned after Section 8(b)(1) of the National Labor Relations Act (NLRA). The Commission refers to the correct statute here, as we infer counsel committed a harmless error in citing the incorrect statute.

ANALYSIS

Applicable Legal Standards

The Duty of Fair Representation -
The duty of fair representation originated with decisions of the Supreme Court of the United States, holding that an exclusive bargaining representative has the duty to fairly represent all of those for whom it acts, without discrimination. *Steele v. Louisville and Nashville Railroad Co.*, 323 U.S. 192 (1944).[3] The duty of fair representation grows out of the rights, privileges, and obligations held by a union once it is certified or recognized as exclusive bargaining representative for a group of employees under a collective bargaining statute. RCW 41.59.090 states:

> The employee organization which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent all the employees within the unit without regard to membership in that bargaining unit. . . .

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Supreme Court of the State of Washington adopted three standards to measure whether a union has breached its duty:

> First, [the union] must treat all factions and segments of its membership without hostility or discrimination. Next, the broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty. Finally, the union must avoid arbitrary conduct. Each of these requirements represents a distinct and separate obligation, the breach of which may constitute the basis for civil reform.

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[3] For an in-depth discussion of the origins and administration of the duty of fair representation, see *C-TRAN*, Decision 7087-B (PECB, 2002).

Allen, 100 Wn.2d at 375. Thus, a union that discriminates against a bargaining unit employee subjects itself to a potential remedial order that could jeopardize its right to continue as the exclusive bargaining representative of that unit. *City of Seattle*, Decision 3199-B (PECB, 1991).

As with any unfair labor practice case, an employee claiming a breach of duty of fair representation has the burden to file a sufficient complaint and the burden of proof. WAC 391-45-270(1)(a). In this case, Stoermer needed to allege and prove that the union's actions were discriminatory or in bad faith.

Limits on Union Obligations -

While an exclusive bargaining representative has an obligation to provide fair representation, the courts have recognized a range of flexibility in the standard to allow for union discretion in settling disputes. *Allen,* 100 Wn.2d at 375. There is no statutory requirement that a union must accomplish the goals of each bargaining unit member, and complete satisfaction of all represented employees is not expected. A union can rarely provide all things desired by all employees it represents, and absolute equality of treatment is not the standard for measuring a union's compliance with the duty of fair representation. A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action, unless the member can prove the union violated rights guaranteed in Chapter 41.59 RCW.

Limits on Commission Jurisdiction -

It has long been established that remedies for violations of collective bargaining agreements must be sought through the grievance and arbitration machinery within the contract or through the courts, and that the Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice

provisions of the statutes it administers. *City of Walla Walla*, Decision 104 (PECB, 1976).

Consistent with the policy first enunciated in *Walla Walla*, two types of "breach of duty of fair representation" claims have been identified and treated separately:

First, the Commission does not assert jurisdiction over "fair representation" claims arising from contract disputes. The reasoning behind that policy is:

> What possible sense could there be in a procedure which would permit an administrative agency that has litigated the fault of the union and the terms of the contract to fashion a remedy only with respect to the union, leaving the injured employee to go to a second tribunal (i.e., the Courts) to repair employer fault for the single injury?

Mukilteo S D (Public School Employees of Washington), Decision 1381 (PECB, 1982).

Second, the Commission does police its certifications, and will assert jurisdiction in cases where a union is accused of aligning itself against one or more bargaining unit employees on some improper or invidious basis.[4]

Application of Standards

This case hinges on whether the underlying dispute involves a contract violation. If it does involve a contract violation, the Commission lacks jurisdiction to resolve this matter through unfair labor practice proceedings; if the dispute stems from a contract violation, the Commission would exercise jurisdiction only if the complaint (as amended) contains factual allegations that the union

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[4] *C-TRAN,* Decision 7087-B.

aligned itself against Stoermer on the basis of union membership (or lack thereof), or that the union discriminated against her on some invidious basis such as race, creed, sex or national origin.

Stoermer maintains that the union breached its duty of fair representation by misrepresenting the terms of the settlement agreement she signed in January 2002. Thus, Stroemer's unfair labor practice complaint against the union arose out of the collective bargaining agreement between the union and the employer. As part of the process of settling the claims arising out of Stoermer's suspension and reprimand, an agreement was reached whereby Stroemer would be compensated in return for her resignation. That settlement agreement was, in effect, an extension of the collective bargaining agreement.

There is no allegation of arbitrary, discriminatory or bad faith conduct on the part of the union in negotiating the settlement agreement. Stoermer apparently did not realize that retirement contributions were not to be made (and, impliedly, that she would not receive pension service credit) for the period that the employer "bought out" her individual employment contract. The dispute involving retirement contributions thus remains a contractual issue.

Assuming all of the facts alleged to be true and provable, it is the conclusion of the Commission that it does not have jurisdiction to remedy the alleged breach of duty of fair representation arising from this inherently contractual claim.

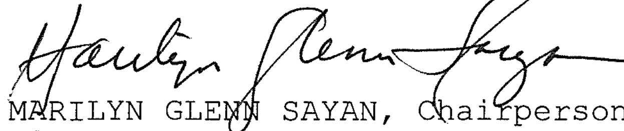
NOW, THEREFORE, it is

ORDERED

The order dismissing the complaint charging unfair labor practices in the above-captioned matter is AFFIRMED.

Issued at Olympia, Washington, the 11th day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson

JOSEPH W. DUFFY, Commissioner