

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAYTON SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
MARY STOERMER,	)	CASE 16561-U-02-4305
	)	
Complainant,	)	
	)	DECISION 8042 - EDUC
vs.	)	
	)	
WASHINGTON EDUCATION ASSOCIATION,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
_____	)	

On July 15, 2002, Mary Stoermer (Stoermer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association (union) as respondent. Stoermer is employed by the Dayton School District (employer). The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on January 9, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Stoermer was given a

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<sup>1</sup> 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.

period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On January 29, 2003, Stoermer filed an amended complaint. After review of the amended complaint, the Director of Administration dismisses the complaint for failure to state a cause of action.

#### DISCUSSION

The complaint alleged that the union interfered with employee rights in violation of RCW 41.59.140(2)(a) and committed other unspecified unfair labor practices, by misrepresenting the terms of a settlement agreement. The deficiency notice stated that the Public Employment Relations Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). The deficiency notice pointed out that while a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation. The deficiency notice indicated that the complaint failed to explain and specify what "other" statute had been violated by the union's actions.

The amended complaint added certain information to the statement of facts attached to the complaint. One, a sentence was added indicating that no grievance was filed before the settlement agreement was signed. Two, the following paragraph was added by Stoermer concerning the union's duty of fair representation:

Respondent breached its duty of fair representation by having misrepresented the terms of a settlement agreement. Complainant's complaint does not arise out of the processing of a contractual grievance, as there was no grievance that was filed in this case. Respondent has a duty to fairly represent the Complainant. *Allen v. Seattle Police Officer's Guild*, 100 Wn.2d 361 (1983). The breach of duty of fair representation is an unfair labor practice. *Id.*, *Miranda Fuel Company v. Local 553 International Brotherhood of Teamsters*, 140 N.L.R.B. 181 (1962). Respondent's duty of fair representation arises from RCW 41.59.140. PERC has jurisdiction over breaches of duty of fair representation where a union is alleged to have aligned itself in interest against one or more bargaining unit employee on some improper or invidious basis. *Castle Rock School District*, Decision 4722-B [Educ. 1995]. The Complainant herein alleges that the union misrepresented the terms of the settlement agreement so as to induce the Complainant to enter into the agreement. Under these circumstances, the Commission has jurisdiction over the Complainant's allegation that the union aligned itself in interest against the Complainant for the improper purpose of inducing the Complainant to enter into the settlement agreement by misrepresenting the terms of the agreement.

A union owes a duty of fair representation to bargaining unit employees with respect to the processing of grievances. This duty applies to discussions between an employee and union as to whether a grievance should be filed in response to actions taken by an employer. In this case, the statement of facts alleges that Stoermer and the union "discussed whether or not Ms. Stoermer would pursue a grievance over . . ."

The amended complaint cites *Castle Rock School District*, Decision 4722-B (EDUC, 1995), for the principle that the Commission has jurisdiction where a union is alleged to have aligned itself in interest against a bargaining unit employee on some improper or invidious basis. In *City of Port Townsend*, Decision 6433-A (PECB, 1999), an examiner cited *Castle Rock School District* in stating

that the Commission does police its certifications and asserts jurisdiction over alleged breaches of the duty of fair representation where a union is alleged to have aligned itself in interest against one or more bargaining unit employees on the basis of union membership, or some improper or invidious basis. *City of Port Townsend* concerned unfair labor practice complaints filed by an employee against her employer and union. The complaint against the union related to the employee being denied union representation in regard to the termination of her employment by the employer.

The examiner in *City of Port Townsend* summarized Commission rulings on a union's duty of fair representation as follows:

The union correctly notes that the Commission has declined to assert jurisdiction over "duty of fair representation" claims arising exclusively from the processing of contractual grievances.<sup>(10)</sup> A separate line of precedent holds, however, that the Commission will police its certifications, and will assert jurisdiction over "duty of fair representation" claims which call a union's status as exclusive bargaining representative into question. See, *Tacoma School District (Tacoma Education Association)*, Decision 5465-E (EDUC, 1997); *Pe Ell School District*, Decision 3801-A (EDUC, 1992); *Pateros School District (Pateros Education Association)*, Decisions 3744 and 3745 (EDUC, 1991); *King County*, Decision 5889 (PECB, 1997).

Footnote 10: See, *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982) and decisions citing that case. That line of precedent is closely related to the long-established principle that 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) and decisions citing that case.

The amended complaint does not contain factual allegations concerning the union aligning itself against Stoermer on the basis of union membership, or allegations that the union is discriminating on the basis of race or some other improper or invidious basis.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 2<sup>nd</sup> day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

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.