

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - SOCIAL AND)	
HEALTH SERVICES,)	
)	
Employer.)	
-----)	
JOHN M. SMITH,)	
)	
Complainant,)	CASE 20028-U-05-5084
)	
vs.)	DECISION 9548 - PSRA
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On December 20, 2005, John M. Smith (Smith) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Federation of State Employees (union) as respondent. Smith is employed by the Washington State Department of Social and Health Services (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on February 1, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Smith was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

On February 23, 2006, Smith filed an amended complaint. The Unfair Labor Practice Manager dismisses the complaint and amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a), by failing to provide John M. Smith with a copy of the collective bargaining agreement, failing to provide adequate notice to Smith concerning a contract ratification vote, failing to represent Smith in the processing of two grievances, and by maintaining a bargaining unit that contains both supervisors and nonsupervisory employees.

The deficiency notice pointed out several defects with the complaint. One, the Commission is bound by the following provisions of Chapter 41.80 RCW:

RCW 41.80.120 UNFAIR LABOR PRACTICE PROCEDURES--
POWERS AND DUTIES OF COMMISSION. (1) The commission is
empowered and directed to prevent any unfair labor
practice and to issue appropriate remedial orders:
PROVIDED, That 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.

The statement of facts attached to the complaint did not indicate the dates of any alleged union misconduct. The complaint failed to meet the requirements of RCW 41.80.120. In order for the complaint to be timely under RCW 41.80.120, the complaint must contain allegations of union misconduct occurring on or after June 20, 2005.

Two, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The complaint failed to include "times, dates, places and participants in occurrences" concerning the alleged unfair labor practices. The complaint did not conform to the requirements of WAC 391-45-050.

Three, the statement of facts indicated that "copies of two grievance filings and management's response . . . accompany this filing." However, a copy of those papers were not included with the complaint filed with the Commission.

Four, the statement of facts made reference to alleged violations of the parties' collective bargaining agreement. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

Five, the allegations of the complaint contained several references to "[union] members" and "employees." Commission rules provide as follows:

WAC 391-45-010 COMPLAINT CHARGING UNFAIR LABOR PRACTICES--WHO MAY FILE. A complaint charging that a person has engaged in or is engaging in an unfair labor practice may be filed by any employee, employee organization, employer, or their agents.

Class action complaints are not permitted under Commission rules. Individual employees must file their own unfair labor practice complaint. The complaint is limited to allegations concerning Smith.

Six, the complaint contained general allegations that the union was maintaining a bargaining unit containing both supervisors and nonsupervisory employees. In *University of Washington*, Decision 8216 (PSRA, 2003), the Commission's Executive Director stated as follows:

Commission precedents under RCW 41.56.140 through .160 recognize the right of individual employees to file unfair labor practice charges against both their employer and a union, where the employee claims that the position held or claimed has been improperly included in or excluded from an existing bargaining unit by agreement of that employer and union. *Castle Rock School District*, Decision 4722-B (EDUC, 1995); *Richland School District*, Decision 2208, 2208-A (PECB, 1985). Several other well-established principles explain the context for those precedents:

- Individual employees do not have standing to file or pursue unit clarification petitions under Chapter 391-35 WAC; [footnote: "See WAC 391-35-010."] and
- The Commission has exclusive jurisdiction to police bargaining relationships and determine appropriate bargaining units under RCW 41.06.340 [and RCW 41.56.060], which could

include imposing sanctions upon an "exclusive bargaining representative" which is found guilty of a breach of the duty of fair representation by aligning itself in interest against bargaining unit employees on unlawful grounds; [footnote: "Elma School District (*Elma Teachers Organization*), Decision 1349 (EDUC, 1982)."] and

- The Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contract grievances, [footnote: "*Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982)."] because the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. [footnote: "*City of Walla Walla*, Decision 104 (PECB, 1976)."]

The complaint did not contain allegations that the position held by Smith had been improperly included in or excluded from an existing bargaining unit by agreement of the employer and union.

Amended Complaint

The amended complaint provided sufficient facts to cure defects one, two and three. In relation to defect four, the amended complaint refers to alleged violations of the parties' agreement. Those allegations continue to be defective. In relation to defect five, the amended complaint cured this defect and only refers to alleged violations concerning Smith. The amended complaint did not provide any further allegations concerning defect six.

The amended complaint includes allegations concerning two grievances that the union failed to process for Smith. If bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such

concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes a duty of fair representation to bargaining unit employees, the 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). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

NOW, THEREFORE, it is .

ORDERED

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

ISSUED at Olympia, Washington, this 12th day of January, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.