



School District, Decision 1501-A (PECB, 1982). A direction of election was issued in the representation case on November 8, 1982. See: Renton School District, Decision 1535 (PECB, 1982). The complainant alleges that on November 29, 1982, PSE advanced her grievance to the final and binding arbitration step of the grievance procedure. On December 7, 1982, the Commission issued the final order in the representation case, certifying United Classified Workers Union as exclusive bargaining representative of the bargaining unit. See: Renton School District, Decision 1535-A (PECB, 1982). The complainant alleges that PSE thereafter declined to process her grievance.

Although the complaint makes reference to a request directed by the employer to the American Arbitration Association to terminate the arbitration proceedings, there are no allegations of misconduct by the employer. The remedies sought are against PSE, and are in the nature of re-activation of the grievance with representation by PSE, and underwriting of losses suffered by the complainant. The listing of the employer in the caption of the case is therefore exclusively to provide a frame of reference for the underlying employment relationship and for purposes of docketing and citation.

The Public Employment Relations Commission regulates the certification of exclusive bargaining representatives and the collective bargaining process. The Commission does not assert jurisdiction through the unfair labor practice provisions of RCW 41.56 to enforce collective bargaining agreements or the agreement to arbitrate grievances. See: City of Walla Walla, Decision 104 (PECB, 1976); Thurston County Communications Board, Decision 103 (PECB, 1976). In the absence of administrative procedures for enforcement of collective bargaining agreements and enforcement of agreements to arbitrate grievances, such matters remain within the purview of the superior courts of the State of Washington under their constitutional authority as courts of general jurisdiction. Accordingly, the Public Employment Relations Commission has differentiated between two types of "duty of fair representation" cases, asserting jurisdiction over one type and declining jurisdiction over the other. In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982) and in a number of subsequent cases based thereon, the Commission has declined to assert jurisdiction through the unfair labor practice provisions of the collective bargaining statutes with respect to breach of duty of fair representation claims arising exclusively from the processing of claims arising under existing collective bargaining agreements. Recognizing that the Commission does not have jurisdiction to reach, determine and remedy the underlying violation of contract claims in such cases, matters of that type are left entirely to the courts. By contrast, Elma School District (Elma Teachers Organization), Decision 1349 (EDUC, 1982) involved allegations of

discrimination against a grievant because of her previous support of another labor organization. Although no violation was found in that case, the Commission asserted jurisdiction in that matter under its authority to police its certifications. A violation of the nature alleged in Elma would place in question the right of the organization involved to continue to enjoy the status and the benefits conferred by the statute on an exclusive bargaining representative.

When the complications of the representation procedures, the unfair labor practice case and the change of exclusive bargaining representatives are stripped away, the case at hand clearly falls in the category governed by the Mukilteo case. The complainant has a grievance against the employer arising under a collective bargaining agreement, and the union named as respondent has failed or refused to process that grievance. Issues concerning the apportionment of responsibility for grievance processing between the two unions are matters for the courts to decide, if necessary, as an adjunct to resolution of the contract dispute. When the mentioned complications are taken into account, an additional reason becomes evident why the Commission should decline to assert its jurisdiction in the matter. There is no certification or exclusive bargaining representative status currently held by PSE which can be policed by the Commission through this case. The Commission has already terminated PSE's status by its certification of another organization as exclusive bargaining representative.

With the direction provided here, the complainant may be better able to amend the complaint so as to focus attention on any claims which are within the jurisdiction of the Commission

NOW, THEREFORE, it is

ORDERED

The complainant will be allowed a period of fourteen (14) days following the date of this Order to amend the complaint. In the absence of an amendment, the complaint will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 15th day of August, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director