

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MUNICIPALITY OF METROPOLITAN
SEATTLE (METRO), Employer
* * * * *
EDITH REDMOND,
Complainant
vs.
AMALGAMATED TRANSIT UNION, LOCAL 587
Respondent.

CASE NO. 4723-U-83-787
DECISION NO. 1695 - PECB
PRELIMINARY RULING

The complaint charging unfair labor practices was filed in the above-entitled matter on July 22, 1983. A supplemental filing on July 28, 1983 included a number of documents relating to the complainant's employment.

The complainant was employed by the Municipality of Metropolitan Seattle (METRO) as a bus driver. It can be inferred from the documents on file that the complainant was so employed as early as 1974. The documents make reference to a number of traffic accidents involving the complainant. The material allegations of the complaint filed on July 22, 1983 are:

Local 587 of the Amalgamated Transit Union failed to represent me in a grievance I filed with them on February 18, 1981. At that time, Metro management was denying the right for employees to have re-reads (letter dated 9/8/81). By September 18, 1981, a judgement was made regarding re-reads. All employees with grievances against management for denial of re-reads were to have them read in October of 1982. My grievance was not read at that time because it was lost by the Union and not found until April 21, 1983 in my personal file. On that date, I was in Jim Lair's office, Supervisor of South Base, for my first step termination hearing. I was informed that my termination was due to excessive accidents within a four year period. On September 3, 1982 under "Procedures for Handling Disciplinary Actions for Preventable Accidents," a new point system was implemented. This system enables Metro to go back over four years to review an employee's accident record and total points. With the loss of my grievance by the Union, I was unable to obtain the re-read which might have reduced my total points, thus, averting the termination action.

The matter is now before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings it is presumed that all of the facts alleged in the complaint are true and provable. The question at hand is whether the complaint states a claim for relief through the unfair labor practice provisions of RCW 41.56.

Although the complaint makes references to alleged violations by METRO of the collective bargaining agreement, there are no allegations that METRO acted in collusion with the union. The remedies sought in the complaint include reinstatement and back pay, clearing of her record or, alternatively, a monetary settlement measured by her wage loss. Only the union is named as a respondent. 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 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 agreements to arbitrate grievances. See: City of Walla Walla, Decision 104 (PECB, 1976); Thurston County Commissions 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.

The case at hand appears to fall entirely within the class governed by the Mukilteo case. The complainant had a grievance against the employer arising under a collective bargaining agreement. The union which is named as respondent may or may not have breached its duty of fair representation with respect to its processing of that grievance. However, such issues are matters for the courts to decide, if necessary, as an adjunct to resolution of the contract dispute.

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.

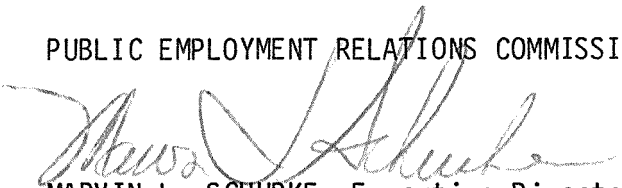
NOW, THEREFORE, it is

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