

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ALEX RAJALA,)	
)	CASE NO. 4312-U-82-689
Complainant,)	
)	DECISION NO. 1610 - EDUC
vs.)	
)	PRELIMINARY RULING
WASHINGTON EDUCATION ASSOCIATION/ UNISERV,)	
)	
Respondent.)	

This matter is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. The complaint charging unfair labor practices filed in the captioned matter on October 29, 1982 was accompanied by a four page statement of facts, consisting of 16 paragraphs. Also filed with the complaint were the complaint's affidavit, consisting of 48 paragraphs, and a copy of the collective bargaining agreement between the Pomeroy School District and the Garfield County Teachers Association (GCTA) for the period September 1, 1980 through August 31, 1982. An amendment to the complaint was filed on December 2, 1982, adding a 17th paragraph to the statement of facts and making reference to nine additional pages of documents filed therewith. The question at hand is whether, assuming all of the facts alleged in the complaint to be true and provable, the complaint states a claim on which relief can be granted through the unfair labor practice procedures.

The allegations of the complaint are quite extensive, and so will not be set forth in full. To summarize, the complainant, a certificated employee of a school district, seeks to invoke the jurisdiction of the Public Employment Relations Commission under Chapter 41.59 RCW to determine a dispute between the complainant and the employee organization which is the exclusive bargaining representative of the bargaining unit in which he is employed. Specific allegations are directed against "uniserv", the service arm of the Washington Education Association and its local organizations.

Paragraph 5 of the complaint alleges that the complainant organized and led an independent employee organization in an unsuccessful campaign in 1979 seeking certification as exclusive bargaining representative of the educational employees of the employer.

Paragraph 6 of the complaint, as explained in paragraph 12 of the affidavit, alleges that the complainant pursued an appeal through internal union procedures from certain initial actions taken by the uniserv. While it appears that the appeal was successful, the allegation suggests additional background of adversity between the complainant and the uniserv.

Paragraph 7 of the complaint asserts a right under the collective bargaining agreement to process grievances to arbitration, then alleges that uniserv has contradicted the claimed right and has attempted to impose itself as a participant in any grievance arbitration.

Paragraph 8 of the complaint summarizes the next five paragraphs of the complaint, and so is set out in full:

(8) Paragraphs four through seven above state the rights I am asserting under Wash. Rev. Code 41.59.060 (1). Paragraphs eight through thirteen state my complaint against WEA/UniServ under this statute. WEA/UniServ is coercing or restraining the exercise of my rights under Wash. Rev. Code 41.59.060 in the following ways, developed below: threatening to take reprisals against me and against GCEA for my appeal of WEA/UniServ decisions (paragraph 9); asserting control of my grievance arbitration with no authority to do so (10); deciding against the merits of my grievance without investigation (11); assigning the same office to handle my grievance that fought against my union (12); refusing to allow my best case to be presented in arbitration (13).

Paragraph 14 of the complaint makes reference to RCW 41.59.140(2)(b), paragraph 15 of the complaint alleges that the association has attempted to cause the employer to encourage membership in the association by a refusal to deal with anybody other than uniserv in grievance arbitration, and paragraph 16 of the complaint alleges that uniserv has caused the district to refuse to deal with anyone other than uniserv in the grievance arbitration proceedings.

The affidavit filed with the complaint indicates that the underlying grievance has to do with the district's interpretation concerning the complainant's leave of absence; that the complainant requested the GCTA to submit the grievance for arbitration; that the GCTA acted to submit the grievance to arbitration; and that a dispute has developed concerning funding of the arbitration process, participation by the uniserv in the arbitration process and the arbitration procedure itself. It appears from the documents that the Washington Education Association and/or the uniserv authorized full funding of the costs of arbitration for the complainant's grievance, conditioned on its control of the proceedings. When the complainant insisted on exclusion of the uniserv from the arbitration process, and pursuit of the grievance with his own legal counsel, the WEA and/or uniserv threatened to withdraw financial support for that process.

Paragraph 17 of the complaint as amended alleges that the uniserv did the previously described acts in excess of or in violation of its own policies. Copies of certain uniserv council policy documents were attached to the amendment.

DISCUSSION

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of RCW 41.59 to enforce collective bargaining agreements, See: City of Walla Walla, Decision 104 (PECB, 1976). Nor does it enforce the agreement to arbitrate, See: Thurston County, Decision 103 (PECB, 1976). To the extent that the complainant claims a contractual right to arbitrate his grievance, that right is beyond the authority of the Commission to enforce.

Discrimination by an employee organization against a bargaining unit employee because of the employee's previous support of a different employee organization can constitute an unfair labor practice under Chapter 41.59 RCW. See: Elma School District, Decision 1349 (EDUC, 1982). However, for there to be a violation of that nature, the employee must be deprived of, or at least threatened with deprivation of, something to which he or she was entitled by Chapter 41.59 RCW. In Elma, the Examiner concluded, after hearing, that the employee involved was not deprived of the fair representation to which she was entitled by law. By contrast, the complainant in the case at hand rejects "representation" by the employee organization, seeking instead its financial support for an independently conducted grievance arbitration proceeding. Since it is well established that an individual employee is not entitled by the statute to the arbitration claimed by the complainant here, it is of limited utility to explore the reasons for which arbitration was refused.

RCW 41.59.020(2) defines collective bargaining as including the obligation of parties to execute a written collective bargaining agreement. The final and binding arbitration of grievances arising over the interpretation or application of collective bargaining agreements is authorized in RCW 41.59.130 and encouraged by RCW 41.58.020(4), but only in the context of the relationship between an employer and the organization which is the exclusive bargaining representative of the employees. RCW 41.59.090 provides:

Certification of exclusive bargaining representative--
Scope of representation. 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 representative: Provided, That any employee at any time may present his grievance to the employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, as long as such representative has been given an opportunity to be present at that adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect.

The proviso contained in RCW 41.59.090 does not guarantee individual employees any particular type of grievance procedure, and certainly does not guarantee them a right to arbitration. In fact, any attempt by the employer to give individual employees the right to arbitrate grievances independently would bear a substantial potential for conflict with the clause of RCW 41.59.090 which reads: "and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect." This is for the reason that an arbitrator in a proceeding between only one of the contracting parties (the employer) and a third-party beneficiary to the contract (the employee proceeding independently) could interpret the contract in a manner conflicting with the interpretation intended by both of the signatory parties, thereby undermining the union's status as exclusive bargaining representative of the bargaining unit. A similar quest for arbitration was ended, for similar reasons, in City of Seattle, Decision 1226 (PECB, 1981).

One alternative view of the allegations of this complaint would be to take them as asserting that the exclusive bargaining representative is aligned in interest against the complainant in connection with the handling of the complainant's grievance. The allegations of the complaint are clear enough as to the background for concern on the part of the complainant, but the complainant's fears are insufficiently tied to the substance of the underlying grievance or the relative positions of the complainant and his union on the grievance.

A second alternative view of the allegations of this complaint would be to take them as asserting that the union has breached its duty of fair representation in connection with its handling of the complainant's grievance. It is well established in decisions under the National Labor Relations Act that the exclusive bargaining representative owes bargaining unit employees a duty to consider and act on their grievances in a manner which is neither arbitrary, discriminatory or lacking in good faith. However, when these allegations are compared against that legal standard, they fail to disclose an absence or insufficiency of union representation. On the contrary, the complainant alleges that he has received too much! Further, the Public Employment Relations Commission has declined to assert

its unfair labor practice jurisdiction to determine "duty of fair representation" claims arising exclusively out of the processing of grievances. See: Mukilteo School District, Decision 1381 (PECB, 1982). The reason for that policy is that, although the Commission might have jurisdiction over the relationship between the employee and the exclusive bargaining representative, the Commission lacks jurisdiction over the employer for enforcement of the collective bargaining agreement. The courts have jurisdiction to enforce the collective bargaining agreement, and are in a position to deal with a "breach of duty of fair representation" claim if raised in such proceedings.

Paragraph 17 of the complaint as amended does not state a cause of action. Enforcement of the constitution and bylaws of an organization must be accomplished through whatever procedures are provided within the organization or through the courts. The Public Employment Relations Commission does not have authority to regulate the internal affairs of the organization.

For the reasons stated above, the complaint as amended up to this time fails to state a claim on which relief can be granted. With the direction provided here as to what is not available to the complainant through the unfair labor practice procedures of the Commission, he may be better able 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 11th day of April, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director