

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JAYCEE THOMAS,  <p style="text-align: right;">Complainant,</p>	}	CASE NO. 4532-U-83-736
vs.	}	
MUNICIPALITY OF METROPOLITAN SEATTLE (METRO),  <p style="text-align: right;">Respondent.</p>	}	
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JAYCEE THOMAS,  <p style="text-align: right;">Complainant,</p>	}	CASE NO. 4581-U-83-753
vs.	}	DECISION NO. 1618 - PECB
AMALGAMATED TRANSIT UNION, LOCAL 587,  <p style="text-align: right;">Respondent.</p>	}	PRELIMINARY RULING
<hr style="border: 0.5px solid black;"/>		

The complaint charging unfair labor practices was filed in the above-entitled matter on March 4, 1983. The statement of facts filed in support of the complaint fills six typewritten pages. The matter was originally docketed as one case, but re-examination of the documents discloses that the complainant intends to name both his union and his former employer as respondents. Accordingly, a separate case has been docketed, under Case No. 4581-U-83-753, for the allegations against the union. The matters are presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it must be presumed that all of the facts alleged in the complaints are true and provable. The question at hand is whether, on the facts alleged, the complaints state a claim for relief through the unfair labor practice provisions of Chapter 41.56 RCW.

The factual allegations of the complaint are quite extensive, and so will not be set forth in full. To summarize: The complainant, a transit bus operator employed by the public employer, seeks to invoke the authority of the Public Employment Relations Commission under Chapter 41.56 RCW to redress his discharge by the employer and claimed misconduct by the union in connection

with processing of his grievance(s). It appears that the complainant was employed by METRO at least as early as June, 1979, and that he was discharged on or about June 12, 1982. The complainant was disciplined for attendance violations, and he reviews the circumstances leading up to a number of the attendance violations, taking issue with both the facts and with the reasonability of the employer responses to certain facts. The complaint alleges that some of the evidence relied upon by the employer in connection with the discharge was falsified. The complainant alleges that his grievance was processed through the first step of a grievance procedure without resolution. The complaint suggests that an offered settlement was rejected on advice of the union. The complaint goes on to allege that the employer used his non-compliance with the offered settlement as its basis for terminating the complainant's employment. A hearing was held on his grievance as late as October, 1981, but the results of those proceedings are unclear. The complaint alleges that he was poorly represented by the union throughout the grievance procedure, and that other employees met with similar misfortune. In conclusion, the complaint alleges that the employer's absence procedures are unfair, that there was a procedural defect concerning the notice of his discharge, that the employer relied on false evidence, that the employer made false and slang statements in connection with a grievance hearing, and that the procedures of the Washington State Human Rights Commission became unavailable to the complainant because the grievance procedure took longer than the six month statute of limitations applicable to proceedings before that agency.

#### DISCUSSION

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provision of RCW 41.56 to enforce collective bargaining agreements. See: City of Walla Walla, Decision 104 (PECB, 1976). It appears from the allegations of the complaint that the complainant relies primarily, if not exclusively, on rights conferred by the collective bargaining agreement covering his employment. Many things may be "unfair" in the eyes of an employee locked in a discharge dispute with his or her employer, but only the types of conduct prohibited in RCW 41.56.140 and RCW 41.56.150 are subject to redress in unfair labor practice proceedings before the Public Employment Relations Commission. To enforce rights secured by the the contract it would be necessary for the complainant to seek relief through the courts as a third-party beneficiary to the contract. Even though the burdens on an employee seeking judicial relief are heavy and expensive, those circumstances do not confer jurisdiction on this Commission where no such jurisdiction exists by statute.

The complainant alleges that his representation by the union was poor. That allegation can be read broadly as an allegation that the union breached its duty of fair representation with respect to its processing of the complainant's grievances. 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 some 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.

As framed, the allegations of the complaint do not sufficiently indicate a claim that the employer interfered with, restrained or coerced the complainant in the exercise of his rights under RCW 41.56.040 or that it has discriminated against the complainant for his exercise of such rights, to form an opinion that the employer has committed an unfair labor practice. Similarly, the allegations do not sufficiently indicate a claim against the union within the scope of the Commission's jurisdiction. With the information provided here as to what is not available to him through the unfair labor practice procedures of the Commission, the complainant may be better able to focus attention on any facts supporting claims which are within the jurisdiction of the Commission.

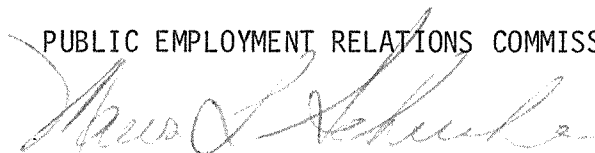
NOW, THEREFORE, it is

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 April, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director