

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROSEMARY MILLER,)	
)	
Complainant,)	CASE NO. 6131-U-85-1155
)	
vs.)	DECISION NO. 2363 - PECB
)	
EDMONDS ASSOCIATION OF)	
EDUCATIONAL ASSISTANTS (PSE),)	
)	
Respondent.)	PRELIMINARY RULING
)	
)	

On December 2, 1985, Rosemary Miller filed a complaint charging unfair labor practices with the Public Employment Relations Commission listing Edmonds Association of Educational Assistants (PSE), as respondent.

This matter is now before the Executive Director for preliminary ruling pursuant to WAC 391-45-110. The question at hand is whether, assuming all the facts alleged to be true and provable, the complaint states claims for relief which can be granted through the unfair labor practice provisions of the Public Employment Collective Bargaining Act, Chapter 41.56 RCW.

The allegations recite a failure of the union to represent her adequately on grievances which led to her forced resignation. There is no allegation that the union was in collusion with the employer in bargaining contract provisions which would be discriminatory against the complainant or that the contract was applied in a discriminatory manner. The allegations against the union appear to involve a charge of breach of the union's "duty of fair representation".

The Public Employment Relations Commission has drawn a distinction between two types of fair representation issues, 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 more recent cases, jurisdiction has been declined with respect to breach of duty of fair representation claims arising exclusively from the processing of grievances arising under existing collective bargaining agreements. Such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer. By way of contrast, Elma School District (Elma Teachers Organization), Decision 1349 (PECB, 1982), involved allegations of discrimination against a grievant because of her previous support of another labor organization. A violation of the nature alleged in Elma would place in question and right of the organization involved to continue to enjoy the status and benefits conferred by the statute on an exclusive bargaining representative. This case appears to fall within the class governed by the Mukilteo case.

With the direction herein provided, complainant may be better able to amend the complaint to focus attention on claims within the Commission's jurisdiction.

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 23rd day of January, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.