

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| NANCY C. BARNEY, |) | |
| |) | |
| Complainant, |) | CASE 8174-U-89-1771 |
| |) | |
| vs. |) | DECISION 3369 - PECB |
| |) | |
| PUBLIC SCHOOL EMPLOYEES OF |) | |
| WASHINGTON, |) | |
| |) | |
| Respondent. |) | |
| |) | |
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| NANCY C. BARNEY, |) | CASE 8175-U-89-1772 |
| |) | |
| Complainant, |) | DECISION 3370 - PECB |
| |) | |
| vs. |) | |
| |) | |
| AUBURN SCHOOL DISTRICT |) | ORDER OF DISMISSAL |
| |) | |
| Respondent. |) | |
| |) | |
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The complaints charging unfair labor practices filed in the above-captioned matters on September 18, 1989 concern precisely the same set of facts. Case 8174-U-89-1771 was docketed for allegations against the local unit of Public School Employees of Washington. Case 8175-U-89-1772 was docketed for allegations against the Auburn School District. Both cases were reviewed by the Executive Director for the purpose of making preliminary rulings pursuant to WAC 391-45-110. At that stage of the proceedings, it is assumed that all of the facts alleged are true and provable. The complainant was notified, by letter dated November 13, 1989, that it did not appear that an unfair labor practice violation could be found.

The complainant alleges that the union interfered with her rights under the statute, and that it induced the employer to commit an unfair labor practice, and that the employer in fact interfered with her rights guaranteed by Chapter 41.56 RCW, all as the result of a grievance settlement between the employer and union in another case. The grievance settlement awarded a transfer or promotion of another employee to a particular position as a remedy for an earlier contract violation. The effect of the grievance settlement was to preclude the complainant from being considered for that position.

The Public Employment Relations Commission lacks jurisdiction to remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). Accordingly, the Commission declines to assert jurisdiction over "breach of duty of fair representation" allegations arising exclusively from the processing of claims under an existing collective bargaining agreement. See, Mukilteo School District, Decision 1381 (PECB, 1982), where an employee complained that a union had breached its duty of fair representation by refusing to process a grievance concerning the employer's awarding of a position to a less senior employee. Like the instant case, the complainant in Mukilteo actually sought placement in the requested position as a remedy for the alleged violation (i.e., a remedy against the employer for violation of the contract). Such claims must be processed through civil litigation in the courts, where the employee can seek a remedy against the employer as a third-party beneficiary to the contract and the court has jurisdiction to enforce the contract against the employer.

The principles found controlling in the Mukilteo case appear to be fully applicable here. There is no indication of discrimination aimed at the complainant because of her previous union activity or for any other reason prohibited by law.

The complainant was given a 14 day period in which to file and serve amended complaints, and was notified that the above-entitled matters would be dismissed in the absence of an amended complaint which states a cause of action. Nothing further has been heard or received from the complainant.

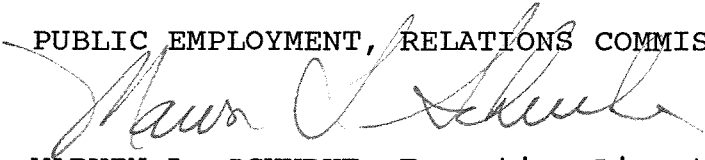
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above-entitled matters are DISMISSED for failure to state a cause of action.

Dated at Olympia, Washington, the 8th day of December, 1989.

PUBLIC EMPLOYMENT, RELATIONS COMMISSION



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.