STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOHN D. SUTHERLAND, Complainant, vs. AUBURN EDUCATION ASSOCIATION, Respondent.	CASE 8256-U-89-1786 DECISION 3406 - EDUC
JOHN D. SUTHERLAND, Complainant, vs. AUBURN SCHOOL DISTRICT, Respondent.	CASE 8344-U-89-1813 DECISION 3407 - EDUC ORDER OF DISMISSAL

The complaint charging unfair labor practices in Case 8256-U-89-1786 was filed on October 30, 1989. That complaint named only the Auburn Education Association as respondent. The case was reviewed by the Executive Director for the purpose of making a preliminary ruling pursuant to WAC 391-45-110, and a letter was directed to the complainant on December 12, 1989. Among the inquiries put to the complainant at that time was a request for clarification of his allegations, if any, against the Auburn School District.

The complainant responded with an amended complaint filed on December 20, 1989. He therein made it clear that he seeks a remedy against the Auburn School District. Case 8344-U-89-1813 was thereupon docketed for the allegations against the employer,

consistent with Commission procedure where two or more separate respondents are named.

The complainant is a certificated employee of the Auburn School District, working as a teacher in a bargaining unit represented by the Auburn Education Association. He alleges that the employer and union have violated his rights, and that they have committed unfair labor practices under Chapter 41.59 RCW, by their agreement to have certificated employees of the Auburn School District paid according to the "state allocation model". Previous to the agreement at issue here, certificated employees in the Auburn School District were paid according to a salary schedule developed and/or negotiated locally. 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 an unfair labor practice violation could be found.

The complained-of "state allocation model" is the formula used by the State of Washington for distributing funds to local school districts. The complainant alleges that a "flaw", "problem" or "glitch" exists in the state allocation model with respect to its treatment of certificated employees who have masters degrees, and that the defect has been recognized for at least two years. The complainant then alleges that the employer and union were both aware of those defects, but that they nevertheless agreed to adopt the state allocation model as the basis for paying employees of the Auburn School District. The complainant holds a masters degree, and apparently did not receive as large a salary increase as was given to some other employees.

The complainant alleges that the union had an obligation to negotiate a contract which protected the rights of all members to equity in pay, and that the union knowingly failed to represent the interests of all members of the bargaining unit. His allegations

are based on the premise that the union must negotiate equal rights and benefits for all bargaining unit employees.[1] He does not allege that he has been discriminated against on account of any of the traditional bases for invidious discrimination (race, creed, sex, national origin, etc.) or because of his union activity or lack thereof.

As an employer covered by Chapter 41.59 RCW, the Auburn School District has a duty to bargain collectively, in good faith, with the exclusive bargaining representative of its employees. RCW 41.59.020(2). As the exclusive bargaining representative of the non-supervisory certificated employees of the Auburn School District, the Auburn Education Association has a concomitant duty to bargain collectively, in good faith, with the Auburn School District, but it also has a "duty of fair representation" towards all of the employees in the bargaining unit it represents. RCW 41.59.020(2); RCW 41.59.090. The duty of fair representation has been defined in the following terms:

> [T]he exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. . . .

Vaca v. Sipes, 386 U.S. 171 (1967), at 177.

The National Labor Relations Board (NLRB) had previously ruled that a breach of the "duty of fair representation" by a union violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations

---

[1] In his amended complaint, he poses rhetorical questions, as follows: "Could a union adopt a contract that allowed a planning period for some but not others? How about a salary schedule that gave more money to science teachers than all others? Or perhaps a salary schedule that recognized only those MA degrees earned after 1970?"

Act. Miranda Fuel Co., Inc., 140 NLRB 181 (1962). Absolute equality of treatment is not, however, the standard. The Supreme Court of the United States described the duty as follows:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) at 338.

The complaint and amended complaint in these cases appear to be based on "equality" and "complete satisfaction of all who are to be represented" notions rejected by the Supreme Court. From the allegations of the complaint, it appears that the employer and union have merely negotiated a contract that matches the salaries paid to individual employees with the revenue they generate from the state. The complaint does not set forth facts sufficient to support an allegation that the agreement was wholly without basis in fact or wholly unreasoned (i.e., "arbitrary"). Neither does it set forth facts sufficient to suggest that the union or employer were acting "dishonestly" or in bad faith when they adopted the state allocation model for local use in Auburn.

Allegations that others with similar credentials were given higher salary placement than he was given are contractual issues over which the Commission does not assert jurisdiction. City of Walla Walla, Decision 104 (PECB, 1976). If there has been a breach by the union of its duty of fair representation in connection with the processing of the complainant's grievance, that is the type of "fair representation" problem better left to the courts in a

"violation of contract" lawsuit. Mukilteo School District (Public School Employees of Washington, Decision 1381 (PECB, 1982). The Commission does not assert jurisdiction in such matters, because it lacks jurisdiction over any underlying contract violation by the employer.

To the extent that the union has or may have "misled" its members, that would tend to be only a "political" issue within the organization absent some claim of an unlawful motivation.

Based on the foregoing, it is concluded that the complaint and amended complaint filed in the above-entitled matters fail to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

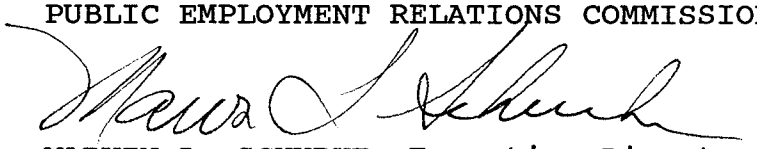
NOW, THEREFORE, it is

ORDERED

The above-captioned cases are DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 30th day of January, 1990.

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 391-45-390.