

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AUBURN SCHOOL DISTRICT	)	
_____	)	
CLIFFORD L. BURSCH,	)	
	)	
Complainant,	)	CASE 8280-U-89-1796
	)	
vs.	)	DECISION 3408 - EDUC
	)	
AUBURN EDUCATION ASSOCIATION,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	

The complaint charging unfair labor practices was filed in the above-entitled matter on November 6, 1989. The complaint named only the Auburn Education Association as respondent, but certain of the factual allegations suggested a claim of wrongdoing by the Auburn School District. 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 was given a period of 14 days in which to file and serve an amended complaint, or face dismissal of the case for failure to state a cause of action. Nothing further has been heard or received from the complainant.

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 his rights have been violated by a collective bargaining agreement which provides for certificated employees of the Auburn School District to be 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 the state allocation model is unfair in 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. 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.

The exclusive bargaining representative of employees has a duty under state law to bargain collectively, in good faith, with the employer of employees that it represents, and 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 union is not obligated to secure equal treatment or the complete satisfaction of each employee it represents. 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.

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 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.

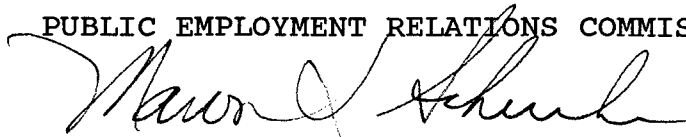
NOW, THEREFORE, it is

ORDERED

The above-captioned case is DISMISSED for failure to state a cause of action.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over the printed name of the Executive Director.

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.