

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer)	
-----)	
A. CHAU,)	
)	
Complainant,)	CASE 8766-U-90-1915
)	
vs.)	DECISION 3833 - PECB
)	
SHEET METAL WORKERS UNION,)	
LOCAL 66,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

The complaint charging unfair labor practices was filed in the above-captioned matter on September 5, 1990. Only Sheet Metal Workers Union, Local 66, was named as a respondent, and the only remedy requested was "processing of grievance to arbitration", referring to a grievance protesting the complainant's discharge from employment by the Seattle School District.

A supplemental package of materials was filed by the complainant on October 10, 1990. A nine-page handwritten statement detailed the complainant's efforts to obtain work in the private sector since his discharge by the Seattle School District, as well as copies of correspondence and documents filed with the National Labor Relations Board.

A preliminary ruling letter issued on December 14, 1990, pursuant to WAC 391-45-110, pointed out several problems with the complaint as filed, and gave the complainant 14 days in which to file and serve an amended complaint. Nothing further was received from the complainant by the December 28, 1990 deadline thereby established.

On January 30, 1991, the complainant filed a three-page handwritten letter which did not indicate, on its face or otherwise, that a copy had been provided to the union named as respondent.

The matter is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is assumed that all of the facts alleged in the complaint are true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission. If the complaint fails to state a cause of action, as a matter of law, it must be dismissed.

The Nature of the Allegations

The documents on file indicate that the complainant completed an apprenticeship program and is a journeyman sheet metal worker, that he was employed by the Seattle School District for something in excess of two years, and that he was discharged from that employment on March 31, 1989. The complainant filed a grievance under the collective bargaining agreement, and it was processed through the initial steps of the contractual grievance procedure, but the union notified the complainant on January 31, 1990 that it was refusing to take the case to arbitration.

The preliminary ruling letter issued on December 14, 1990 noted:

Commission rules require an unfair labor practice complaint to be accompanied by a concise statement of facts detailing the events claimed to support the unfair labor practice charge. You have provided a number of documents, and several legal theories could be read into them. It is not the Commission's place to make guesses concerning the unfair labor practice allegations. ...

Apart from asking for clarification, that preliminary ruling letter pointed out that the Commission does not assert jurisdiction to directly determine or remedy violations of collective bargaining agreements through the unfair labor practice provisions of the Act, and that RCW 41.56.160 establishes a six-month statute of limitations on the filing of any unfair labor practice complaint.

Sufficiency of the Complainant's Response

The complainant did not file an amended complaint within the period allowed in the preliminary ruling letter. Issuance of an order of dismissal was delayed by the traditional holiday season and dealing with other priorities, so that no action had been taken by a time in January of 1990 when the complainant contacted the Commission's office, by telephone. The complainant asked to supplement his original complaint, and was told to send in the information with an explanation of why he had not responded within the time period that had been specified.

The first of two procedural problems evident from the documents filed on January 30, 1991 is the absence of any explanation for the delay in filing an amended complaint. The complainant has set forth a litany of past problems with his union and with legal counsel, but none of those appears to have occurred after the December 14, 1990 preliminary ruling letter.

The second procedural problem is more serious, as the documents filed with the Commission on January 30, 1991 do not contain any indication that a copy was provided to the union. WAC 391-08-120 clearly requires that all pleadings and other papers filed with the Commission be served on other parties to a case. The union was, and is, entitled to service of any charges against it. Even if the complaint was otherwise in good order, service of the January 30 documents on the union would have to be established before the case could be processed any further.

Jurisdiction Concerning the Complainant's Discharge

It is clear from the documents filed in this case that the complainant views the Public Employment Relations Commission as a forum of "last resort". Although the Seattle School District was not named as a "respondent" in the space provided on the complaint form, one available interpretation is that the complainant desires to have the Commission decide the merits of his discharge.

The Seattle School District is a "public employer" subject to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, but that statute does not empower the Commission to determine or resolve all disputes arising in "public employment". The unfair labor practice provisions of the statute protect the process of collective bargaining. There is no allegation here of the employer having discriminated against the complainant for engaging in union activity protected by Chapter 41.56 RCW.

It appears that the employer and union have negotiated a collective bargaining agreement which contains a "just cause" standard for discipline and discharge, as well as grievance procedure. Chapter 41.56 RCW does not make "violation of a collective bargaining agreement" an unfair labor practice subject to the jurisdiction of the Commission. City of Walla Walla, Decision 104 (PECB, 1976). The complainant's contractual job security rights were enforceable only through the grievance and arbitration mechanism of the contract, or by means of a lawsuit in the courts.

Duty of Fair Representation Allegations

Another interpretation available from the documents filed by the complainant in this case is that he claims that the union violated its "duty of fair representation" in its processing of the grievance protesting his discharge. The Commission has identified two different types of "duty of fair representation" situations:

First, the Commission declines to assert jurisdiction on "duty of fair representation" claims arising exclusively from disagreements concerning the merits of grievances. While a union does have a duty to investigate grievances and to act in good faith when deciding whether to process them, the employees involved in such situations invariably seek a remedy from the employer under the contract. An employee in such a situation must pursue the claim by means of a lawsuit in a court having jurisdiction to decide their rights as a third-party beneficiary to the contract.

Second, the Commission does assert jurisdiction on "duty of fair representation" claims where it is alleged that the union has discriminated on an unlawful basis in the negotiation or administration of the collective bargaining agreement, or has aligned itself in interest against employees within the bargaining unit that it is certified or recognized to represent.

To the extent that the complainant in this case merely disagrees with his union's decision about the merits of his grievance, that is not the type of issue over which the Commission asserts jurisdiction. Even if this complaint were timely filed, the case would have to be dismissed by the Commission and refiled by the complainant in an appropriate court.

The materials filed by the complainant contain claims that the union has discriminated against Asians and other minorities,¹ both as to the acquisition and retention of steady work with Seattle-area employers. Further, the complaint alleges that the union's action (or inaction) on the complainant's grievance was designed to benefit another employee who was a relative of a union official. Discrimination on the basis of race would be an unlawful use of the status and authority conferred on an exclusive bargaining representative by the statute, and could be the basis for imposing a remedial order against the union. Similarly, discrimination by a

¹ It is inferred that the complainant is of Asian ancestry.

union to favor the friends or relatives of union officials is unlawful. If timely, the complaint would state a cause of action on these matters.

Application of the Statute of Limitations

The complainant's discharge occurred more than 17 months prior to the filing of the unfair labor practice complaint. RCW 41.56.160 specifies a six-month "statute of limitations" on the filing of unfair labor practice complaints.

A grievance was filed during the month following the discharge, April, 1989. While the complainant alleges that the existence of the six-month statute of limitations on unfair labor practice complaints was not made known to him at that time, there would have been no occasion for the union or legal counsel to inform the complainant of that statute of limitations at a time when there was no evident basis to invoke the jurisdiction of the Commission.

The grievance protesting the complainant's discharge was processed in some manner until withdrawn by the union. While the complainant alleges that a legal aid clinic attorney advised him only of the statute of limitations for filing a lawsuit in court, that might have been viewed as consistent with pursuit of a "fair representation" claim on the merits of the grievance.²

The view of the allegations most favorable to the complainant in this case is that the union's action of withdrawing the grievance was unlawfully motivated. Even at that, the union's January 31, 1990 letter notifying the complainant of that action clearly marked the date from which the application of the statute of limitations must be computed. That date was still seven months and five days

²

Such a suit would also be consistent with the remedy requested by the complainant in his original complaint filed with the Commission.

before the complaint was filed. The statute of limitations has been enforced even where the complaint is tardy by only a few days. Port of Seattle, Decision 2796-A (PECB, 1988).

NOW, THEREFORE, it is

ORDERED

For all of the reasons stated above, the complaint charging unfair labor practices filed in this case must be, and is, DISMISSED.

Dated at Olympia, Washington, on the 31st day of July, 1991.

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.