

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY,	)	
	)	
Employer.	)	
-----	)	
EUGENE DEGENSTEIN,	)	
	)	
Complainant,	)	CASE 9610-U-92-2163
	)	
vs.	)	DECISION 4073 - PECB
	)	
WASHINGTON STATE COUNCIL OF	)	
COUNTY AND CITY EMPLOYEES,	)	
LOCAL 1135,	)	ORDER OF DISMISSAL
	)	
Respondent.	)	
	)	
	)	

The complaint charging unfair labor practices was filed in the above-entitled matter on February 3, 1992. The matter came before the Executive Director for processing pursuant to WAC 391-45-110,<sup>1</sup> and a preliminary ruling letter issued on March 17, 1992 pointed out defects with the complaint, as filed. The complainant was given 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 allegations of the complaint concern Mr. Degenstein's dissatisfaction with the amount of seniority credited to him after his reversion from a management position to a position within the bargaining unit represented by Local 1135. The complaint appears

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<sup>1</sup> At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

to allege that the union engaged in bad faith bargaining and discriminated against him by agreeing to the seniority language contained in the collective bargaining agreement;<sup>2</sup> that the union violated the contract by taking too long to render a decision with respect to his grievance; and that the union has denied him the right to arbitrate his grievance.

RCW 41.56.160 provides that a complaint will not be processed for any action occurring more than six months prior to the filing of the complaint with the Commission. It appears that the last relevant action prior to the filing of the complaint was the union's June 26, 1991 decision as to its interpretation of the contract. Thus, the complaint in this matter is untimely.

It is not a requirement of the bargaining process that a contract benefit equally all of the members of the bargaining unit. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953). It is unlawful for parties to a bargaining relationship to discriminate against a particular individual or group of individuals in fashioning the language of their collective bargaining agreement, but that is not what is alleged here. Apart from the timeliness of the complaint, the complainant would have needed to bring forth facts showing a purposeful discrimination. In the absence of such an amendment, the complaint fails to state a cause of action.

The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). The allegation that the union violated the contract by the amount of

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While some of the language in the statement of facts can be read as asserting wrongdoing by the employer, as well as by the union, the employer was not named as a respondent in the complaint and no case has been docketed against the employer.

time it took to make a decision on the complainant's grievance thus does not state a cause of action.

A union owes a duty of fair representation to the employees it represents, including the investigation and prosecution of grievances in a manner that is not arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967). An employee who has been denied access to arbitration due to a union's breach of its duty of fair representation may have a cause of action in the courts, as a third-party beneficiary to the collective bargaining agreement. The courts are equipped to rule on "fair representation" and "exhaustion of contract remedies" issues as a condition precedent to determining and remedying any contract violation. Because it lacks jurisdiction to remedy any contract violation, the Commission does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).


NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Entered at Olympia, Washington, on the 12th day of May, 1992.

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.