STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT, Employer	CASE 10553-U-93-2448
ROBERT STEPHENS, Complainant, vs. SEATTLE EDUCATION ASSOCIATION, Respondent.	DECISION 4536 - EDUC CASE 10606-U-93-2465 DECISION 4537 - EDUC PRELIMINARY RULINGS
ROBERT STEPHENS, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE 9860-U-92-2249 DECISION 4534 - EDUC CASE 10423-U-93-2409 DECISION 4535 - EDUC

On June 24, 1992, Robert Stephens filed unfair labor practice charges with the Public Employment Relations Commission. Stephens is identified as a counselor employed by the Seattle School District, and he asserts rights against the employer under the Educational Employment Relations Act, Chapter 41.59 RCW.[1] Stephens filed additional charges against the employer on January 29, 1993.[2]

---

[1] Case 9860-U-92-2249. Stephens filed two different fact statements under three different complaint forms naming different Seattle School District officials as "respondent". The public entity is the employer under Chapter 41.59 RCW, and is responsible for the acts of its agents. Commission practice treats the entity, not individual officials, as respondent. The materials have thus been treated as a single case involving multiple counts.

[2] Case 10423-U-93-2409.

Stephens also filed materials on June 8, 1993, which were taken as allegations against his union,[3] and he filed a complaint against the Seattle Education Association on July 28, 1993.[4]

All four complaints are before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, a complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

Case 9860-U-92-2249

The allegations in one of the fact statements filed on June 24 concern discrimination on the basis of race and union activity, after Stephens won a lawsuit against the employer. The second fact statement filed on June 24, 1992 concerns a dispute about a change of Stephens' job description. Those allegations were detailed in a preliminary ruling letter issued on April 26, 1993, when Stephens was given 14 days to file an amended complaint to correct several noted deficiencies. Nothing further has been heard or received from Stephens on those allegations.

A cause of action exists as to an allegation that union animus was part of the motivation for the employer's refusal to reinstate Stephens to its payroll in May of 1992, after he was released from medical leave with recommendation that he not return to the same assignment he had previously held.

No cause of action exists as to several allegations involving contract violations. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective

---

[3] Case 10553-U-93-2448.

[4] Case 10606-U-93-2465.

bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).[5]

No cause of action exists before the Commission as to events for which the dates are unspecified, or which occurred prior to December 24, 1991.[6]

---

[5] Examples of this type are: (1) Employer has not properly compensated Stephens for certain services; (2) Employer did not have just cause to suspend Stephens for refusing to leave payroll office when he went there to pursue pay issues; (3) Employer official gave false information which led to suspension; (4) Employer failed or refused to correct errors concerning Stephens' seniority and salary schedule placement, after problems were brought to its attention by union and Stephens; (5) Superintendent failed or refused to respond to problems brought to his attention; (6) Employer officials were able to act quickly in gathering information to suspend Stephens; (7) Employer changed Stephens' job from full-time counselor to combined teacher / counselor; (8) Employer invaded Stephens' privacy, by mailings and phone calls to his home; and (9) Employer evaluated Stephens and placed him on probation during a time when he was on medical leave.

[6] RCW 41.59.150 imposes a six-month limitation on filing unfair labor practice charges. Incidents involving union activity may be admissible to show the motivation of employer officials in the incident for which a cause of action exists: (1) Employer official prevented Stephens from presenting information in his capacity as union official; (2) Employer official told Stephens "District got him his job, not the union. That he worked for the District, not the union"; (3) Employer official told Stephens, "When you come into this building, you have to take off your union hat"; (4) Stephens was suspended for refusal to leave payroll office when pursuing wage claim; (5) Employer official referred to Stephens' union role at meeting on new job description; (6) Committee refused to recognize the authority of collective bargaining agreement; (7) Employer reprimanded Stephens for attending grievance meeting involving his employment.

No cause of action exists here as to an allegation of discrimination on the basis of race or sex.[7]

No cause of action exists here as to allegations that rules adopted by the Superintendent of Public Instruction or the State Board of Education have been violated.[8]

Case 10423-U-93-2409

The materials filed on January 29, 1993 concern Stephens' pursuit of a grievance concerning his work assignment during the 1992-93 school year.[9] Amendatory materials filed on February 2, February 18, and March 16, 1993 were also added to this case file. Those allegations were also detailed in the April 26, 1993 preliminary ruling letter. Nothing further has been heard or received from Stephens on those allegations.

No cause of action exists as to the alleged contract violations, for reasons set forth above. City of Walla Walla, supra.[10]

---

7 Such matters would have to be taken up with the state Human Rights Commission or other appropriate forum.

8 Examples are: (1) Employer violated provisions of Chapter 180-87 WAC, by changing his assigned duties, and by evaluating him against the changed duties; and (2) Employer official involved in these incidents is not qualified for the position held.

9 All of the materials filed on January 29, 1993 were filed under this case number, notwithstanding that a duplicate set had been submitted under cover of an "amended" complaint in the earlier case.

10 Examples are: (1) Grievance on assignment of teaching duties in addition to counseling, use of classroom and materials, secretarial assistance, and compensation for supplemental curriculum development work; and (2) Issue concerning the number of contacts Stephens had with students, parents and teachers.

No cause of action exists here as to an allegation of discrimination on the basis of race or sex, for reasons set forth above.[11]

No cause of action exists here as to events for which the dates are unspecified, or which occurred prior to July 29, 1992.[12]

No cause of action exists as to certain other allegations, described as follows:

An allegation of discrimination on the basis of Stephens' union activities, implemented through an unsatisfactory performance evaluation, was insufficiently detailed.

Allegations that Stephens was improperly denied time off to confer with a union representative fail to state a cause of action, because nothing in the collective bargaining statute guarantees employees time off for consultation with their union.

Case 10553-U-93-2409

Certain materials filed by Stephens during January through March of 1993 suggested the existence of some dispute between Stephens and the Seattle Education Association, but Stephens had not filed any unfair labor practice charges naming the Seattle Education Association as respondent. The April 26, 1993 preliminary ruling letter noted that there was basis for the Commission to determine whether the union engaged in any misconduct in connection with a request for documents or in dropping a grievance.

---

[11] Again, such matters could be taken up with the state Human Rights Commission or other appropriate forum.

[12] The six-month period imposed by RCW 41.59.150 would be computed from the January 29, 1993 date on which these allegations were first filed. Examples of untimely allegations are: (1) Undated grievance relates back to a letter sent by Stephens in April of 1991, concerning various pay claims; and (2) allegation that superintendent of Seattle School District violated the collective bargaining agreement by failing to respond to the April, 1991 letter.

A package of materials received by the Commission from Stephens on May 3, 1993 was understood to be aimed at detailing a dispute between Stephens and the union. There was no complaint form, but an affidavit reviewed the history of Stephens' grievances back to the 1991-92 school year. Other documents in that package were grievances and copies of correspondence exchanged between Stephens and the union, dating back to October of 1991. Those documents culminated in a March 29, 1993 memorandum from the union's Grievance Review Commission to Stephens, announcing that one of Stephens' grievances would not be taken to arbitration, and an April 19, 1993 letter from the president of the Seattle Education Association to Stephens, announcing that the union's board of directors had voted to uphold the Grievance Review Commission decision.

Status as the "exclusive bargaining representative" of a bargaining unit is accompanied by certain privileges for the organization holding that status, but is also accompanied by a duty to provide "fair representation" to all of the employees in the bargaining unit. The Public Employment Relations Commission polices its certifications, and an organization could be subject to loss of its status as exclusive bargaining representative if found guilty of aligning itself in interest against represented employees on a basis of invidious discrimination. That is not to say that the Commission involves itself in each and every "breach of duty of fair representation" allegation that might arise between employees and unions subject to its jurisdiction. In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), two different lines of "fair representation" precedent were reviewed and distinguished. Many disputes are limited to differences of opinion about the merits or processing of contract grievances, where the employee ultimately seeks a remedy against the employer for an alleged contract violation. In light of the fact that the Commission does not have "violation of contract" jurisdiction over the employer, Commission precedent

beginning with Mukilteo, supra, has been to refuse to assert jurisdiction in "duty of fair representation" disputes arising exclusively out of the processing of contract grievances.

The grievances filed by Stephens contain numerous references to and allegations of discrimination by employer officials on the basis of race or sex, but there is nothing among the documents filed on May 3, 1993 which suggests that the union has discriminated based on race or sex in its handling of the grievances filed by Stephens. On its face, the action of the grievance committee to withhold one grievance from arbitration was due to a procedural problem. Stephens was advised to pursue another pending grievance which had properly raised the subject. Accordingly, the differences between Stephens and the union about the appropriate procedure appear to be contract interpretation matters over which the Commission does not assert jurisdiction.

Case 10606-U-93-2465

The materials filed on July 28, 1993 are under cover of a complaint form in which the Seattle Education Association is expressly named as the respondent. A detailed statement of facts accompanying the complaint form contains numerous incidents by which the union and its officials are accused of being discourteous to Stephens in connection with his attempt to file and process a contract grievance, of being superficial in investigation of the grievance, or of altogether failing to investigate the grievance. While racial discrimination is mentioned as one of the subjects of the underlying grievances, nothing suggests that the union itself was acting on a racially discriminatory basis.

An individual employee has rights as a third-party beneficiary to a collective bargaining agreement covering the bargaining unit in which he works. In Vaca v. Sipes, 386 US 171 (1967), the Supreme Court of the United States ruled that a cause of action exists in

the courts for a grievant who can establish that his or her union has breached its duty of fair representation in connection with the processing of a contractual grievance. Under the Vaca formula, the employee can sue the employer for the contract violation. When the employer asserts the seemingly-inevitable defense that the employee has failed to exhaust contractual remedies, the employee must establish that the union breached its duty of fair representation, by failing to investigate the grievance, or by processing it in a manner that was perfunctory, arbitrary or in bad faith. If the employee establishes both a breach of the duty of fair representation and a violation of the collective bargaining agreement, the court has power to remedy the underlying contract violation. The absence of that ultimate remedial authority is precisely the reason that the Public Employment Relations Commission refrains from becoming involved in "fair representation" cases of the Vaca type. See, Mukilteo School District, supra. This case thus fails to state a cause of action before the Commission.

NOW, THEREFORE, it is

ORDERED

1. (Decision 4535 - EDUC) The complaint charging unfair labor practices in Case 9860-U-92-2249 is disposed of as follows:

   A. The matter shall be assigned in due course to an Examiner, for further proceedings under Chapter 391-45 WAC limited to the allegation:

      > That union animus was part of the motivation for the employer's refusal to reinstate Stephens to its payroll in May of 1992, after he was released from medical leave with recommendation that he not return to the same assignment he had previously held.

B. Except as specified in the foregoing paragraph, all other allegations in Case 9860-U-92-2249 are DISMISSED.

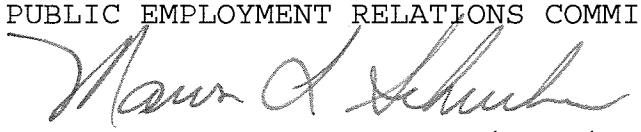
2. (Decision 4535 - EDUC) The complaint charging unfair labor practices in Case 10423-U-93-2409 is DISMISSED.

3. (Decision 4536 - EDUC) The complaint charging unfair labor practices in Case 10553-U-93-2448 is DISMISSED.

4. (Decision 4537 - EDUC) The complaint charging unfair labor practices in Case 10606-U-93-2465 is DISMISSED.

Issued at Olympia, Washington, on the 4th day of November, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1.B. and 2 through 4 of this order may be appealed by filing a petition for review with the Commission under WAC 391-45-350.