

As supplemented, the complainant alleges that he became aware in May or June of 1994 that there was some problem regarding processing of a grievance he had filed in 1992. The grievance claimed a seniority violation when he was bypassed for a particular job. The grievance was denied by an employer official in June of 1993, citing Article 6.2.7 of the collective bargaining agreement as a basis for selecting "the most qualified bidder". The grievance was scheduled for arbitration, but was not arbitrated. Counsel for the complainant made inquiry to the union in May of 1994, concerning the reasons why the grievance was dropped. A response from the union on June 29, 1994 indicated that a resolution of the grievance had been negotiated between the employer and union. In further correspondence, the complainant's counsel appeared to take issue with the union's interpretation of Article 6.2.7 of the collective bargaining agreement. Finally, it is alleged that the grievance process was actually concluded in October of 1994.

The original complaint invoked the duty of fair representation, but the preliminary ruling letter noted that further details were needed to form a conclusion as to the jurisdiction of the Commission in the matter. Specifically,

Without some indication that the union discriminated against him in its representation because of some protected activity on his part, such a matter would be outside of the Commission's jurisdiction ...

The supplemental materials clearly indicate that the complainant was not satisfied with the result negotiated by the union. Those materials may suggest that the union was lax in its pursuit of the complainant's grievance, and that there is a disagreement between the union and the complainant as to the proper interpretation of Article 6.2.7 of the collective bargaining agreement. The supplemental materials do not, however, indicate any claim or basis for a claim of discrimination against the complainant.

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). In that context, two types of "breach of duty of fair representation" claims have been identified in past Commission decisions. The Commission will police its certifications by determining allegations that an exclusive bargaining representative has aligned itself in interest against employees it is charged to represent, based on some invidious discrimination. However, since Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), the Commission has declined to assert jurisdiction over "fair representation" claims arising exclusively from disagreements between unions and bargaining unit employees about the processing of grievances under existing collective bargaining agreements. Fair representation claims of the latter type must be pursued in the courts, which can obtain jurisdiction over the employer and any underlying contract violation.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED for lack of jurisdiction.

DATED at Olympia, Washington, this 26th day of January, 1995.

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.