

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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|---------------------------------|---|----------------------|
| JOSE CANALES, JR., |) | |
| |) | CASE 11184-U-94-2604 |
| Complainant, |) | |
| |) | |
| vs. |) | DECISION 4969 - PECB |
| |) | |
| SNOHOMISH COUNTY PUBLIC UTILITY |) | |
| DISTRICT 1, |) | ORDER OF DISMISSAL |
| |) | |
| Respondent. |) | |
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| JOSE CANALES, JR., |) | |
| |) | CASE 11185-U-94-2605 |
| Complainant, |) | |
| |) | |
| vs. |) | DECISION 4970 - PECB |
| |) | |
| INTERNATIONAL BROTHERHOOD OF |) | |
| ELECTRICAL WORKERS, LOCAL 77, |) | ORDER OF DISMISSAL |
| |) | |
| Respondent. |) | |
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On June 16, 1994, Jose Canales, Jr. filed two unfair labor practice complaints with the Public Employment Relations Commission. In Case 11184-U-94-2604, Canales alleged that Snohomish County Public Utility District 1 had interfered with his rights, discriminated against him, had refused to bargain, and had attempted to dominate his union, by recent negotiations which had eliminated the classification and pay rate which he held. In Case 11185-U-94-2605, Canales alleged that International Brotherhood of Electrical Workers, Local 77, had interfered with his rights, refused to bargain, and breached its duty of fair representation, by recent negotiations which eliminated his classification and pay rate. The complaint against the union contained a single reference, without any details, of his having been mocked by a union official based on his race. As to both respondents, Canales alleged that the recent contract was in violation of an agreement made between the union

and employer 1987, to the effect that the wage rate for the construction crew foeman classification would be retained, even if the position were to be dropped for lack of work.

Both complaints were the subject of preliminary ruling letters issued on November 22, 1994.¹ In each case, problems were identified which prevented processing of the complaint. The complainant was given 14 days in which to file and serve an amended complaint.

On December 8, 1994, counsel for the complainant filed a letter in which an attempt was made to restate the complainant's "breach of duty of fair representation" theory against the union.² The matter is now before the Senior Staff Member, acting in the place of the Executive Director as authorized by WAC 391-08-630, to make the preliminary ruling under WAC 391-45-110.

DISCUSSION

The original complaints listed the names of other affected employees, giving rise to a suggestion that Canales might be attempting to file a "class action" complaint. The preliminary ruling letter noted that an individual does not have standing to file unfair labor practice claims on behalf of other individuals. C-TRAN, Decision 4005 (PECB, 1992).

The original complaints alleged "refusal to bargain" violations. The preliminary ruling letter noted that an individual does not

¹ At that 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.

² The supplemental filing did not appear to pursue any of the allegations against the employer.

have standing to pursue a "refusal to bargain" theory, since neither a union nor an employer are legally obligated to bargain with an individual. City of Seattle, Decisions 3763 and 3764 (PECB, 1991).

The references in the original complaints to the agreement reached in 1987 suggested that Canales might be attempting to pursue a "violation of the contract" theory. The preliminary ruling letter noted that the Commission has consistently declined to process "violation of contract" claims through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

The preliminary ruling letter noted that the original complaints lacked sufficient factual allegations to support the contention that the employer had dominated or unlawfully assisted the union, or had discriminated against him or interfered with any rights protected under Chapter 41.56 RCW. No further details were provided in the supplemental filing.

The original complaints mentioned the complainant's effort to initiate a grievance protesting the loss of the foreman pay rate. The preliminary ruling letter noted that the Commission does not assert jurisdiction over a union's breach of its duty of fair representation arising solely out of a failure to process a grievance on behalf of an individual employee. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). The supplemental filing related solely to the union's processing of Canales's grievance, but nothing in the additional materials appears to indicate that the complaint encompasses anything other than such an allegation.

The preliminary ruling letter noted that the Commission will exercise jurisdiction over a claim that a union has failed to represent an employee because of invidious discrimination, but that

additional factual allegations would be necessary in order for the complaint to state a cause of action in that regard. The supplemental material did not mention, let alone expand upon, the allegation of a racial bias on the part of the union. The allegation of discrimination was based on the complainant's Hispanic background. That allegation is thus deemed abandoned.

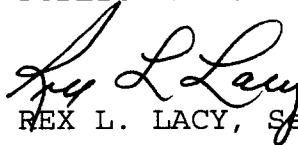
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-captioned matters are hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 27th day of January, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Senior Staff Member

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.