

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

NORTH THURSTON SCHOOL DISTRICT,)	
)	
Employer,)	CASE 10682-U-93-2487
-----)	
CAROLYN HATCHETT,)	DECISION 4764 - EDUC
)	
Complainant,)	
)	
vs.)	
)	
WASHINGTON EDUCATION ASSOCIATION,)	
NORTH THURSTON EDUCATION)	
ASSOCIATION,)	
)	
Respondent.)	PRELIMINARY RULING
)	
)	

The complaint charging unfair labor practices filed with the Commission on September 23, 1993, and amended May 10, 1994, is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. 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.

The complaint, as amended, alleged that the union restrained certificated employees of North Thurston School District in selecting a bargaining representative of their own choosing, by preparing and circulating a letter questioning Hatchett's qualifications for the presidency of the North Thurston Education Association. The complaint, as amended, also alleged that the union had breached the duty of fair representation it owed Hatchett, by colluding with representatives of the employer to prepare and obtain signatures on the letter, by refusing to act as

complainant's advocate in the dispute, and by failing to process complainant's grievance. The complaint's allegations are all directed to events surrounding complainant's candidacy for presidency of the NTEA. The Commission has declined to exercise jurisdiction over internal union affairs under Chapter 41.56 RCW. Lewis County, Decision 464-A (PECB, 1978); King County, Decision 4253 (PECB, 1992). There is no indication that the Legislature granted any broader jurisdiction in Chapter 41.59 RCW than in Chapter 41.56 RCW. In fact, the Legislature specifically recognized that employee organizations regulate their own internal affairs. RCW 41.59.140(2)(a)(i).

Hatchett contends that the union's alleged actions "interfered with the right of employees to choose their own representatives". RCW 41.59.060 grants employees the "right to self-organization, to form, join, or assist employee organizations, to bargain collectively", and also to refrain from any of these activities. An exclusive bargaining representative is an employee organization that has earned certain rights and responsibilities through its selection by employees. RCW 41.59.020(1) and (6). RCW 41.59.140(2) provides that:

It shall be an unfair labor practice for an employee organization: (a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060....

Each of the rights granted employees by Chapter 41.59 RCW are exercised in the employer-employee context. Selection of union officers simply does not constitute selection of an employee organization as exclusive bargaining representative. In addition, the complaint lacks any allegation that Hatchett's standing in the workplace or conditions of employment have been adversely affected by the union's alleged actions.

Finally, RCW 41.59.140(3) protects free speech as follows:

The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

The Commission has held that no unfair labor practice is committed when a union sends a letter to its members during a representation proceeding, stating that a fellow worker supports a rival union. North Beach School District, Decision 2487 (PECB, 1986). The facts alleged by this complaint do not differ in any significant aspect from the facts of North Beach School District, supra.

The allegations with regard to the election of NTEA officers fail to state a cause of action for the reasons stated above, and will be dismissed.

Hatchett also asserts the union breached its duty of fair representation by refusing to advocate her position and to process her grievance. The law does not require or expect an exclusive bargaining representative to achieve absolute equality and complete satisfaction among the numerous employees they represent. Auburn School District, Decisions 3406, 3407 (EDUC, 1990).

The Commission does entertain allegations that an exclusive bargaining representative has discriminated against a member of the bargaining unit on invidious grounds. The complaint, as amended, alleges NTEA's president refused to process Hatchett's grievance because of discrimination against her as an African American woman. Assuming for purposes of this preliminary ruling that all of the facts alleged in the amended complaint regarding this allegation are true and provable, it appears that unfair labor practice violations could be found on this allegation.

NOW, THEREFORE, it is

ORDERED

1. The allegations with regard to the election of officers of the North Thurston Education Association in the petition filed in the above matter are dismissed for failure to state a cause of action.
2. PLEASE TAKE NOTICE THAT the persons charged with an unfair labor practice in this matter shall file and serve its answer to the allegations of the complaint with regard to refusal to process complainant's grievance because of invidious discrimination on the basis of race and sex within 21 days following the date of this letter.

DATED at Olympia, Washington, this 20th day of September, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.