

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF SEATTLE,)	
)	
Employer.)	
-----)	
LINDA CHADWICK,)	CASE 11240-U-94-2629
)	
Complainant,)	
)	
vs.)	DECISION 5075 - PECB
)	
INTERNATIONAL LONGSHOREMEN'S AND)	
WAREHOUSEMEN'S UNION, LOCAL 9,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On July 15, 1994, Linda Chadwick filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that International Longshoremen's and Warehousemen's Union, Local 9 (union) had violated RCW 41.56.150 in connection with her employment by the Port of Seattle (employer).¹ An amended complaint was filed on September 8, 1994. A preliminary ruling letter was issued on March 10, 1995, pursuant to WAC 391-45-110.² The parties were advised that certain problems existed with Chadwick's complaints against the union, as filed. The complainant

¹ The extensive documents filed by Chadwick on July 15, 1994 actually included charges against both the employer and union, but that fact was not discerned immediately. Once the existence of dual respondents was realized, Case 11313-U-94-2648 was docketed for the charges against the employer, and this case was limited to the charges against the union.

² 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 the law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

was given a period of 14 days following the date of the preliminary ruling letter in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint. Nothing further has been heard or received from the complainant.

DISCUSSION

Linda Chadwick is identified as an employee of the Port of Seattle, working in a position within a bargaining unit represented by the union. In her complaint against the employer, Chadwick alleged that she has been, in her own words:

[D]iscriminated against, ... continually exposed to a hostile work environment that Port Management was aware of, ... that the Port of Seattle ... knowingly and willingly violate the terms of the negotiated agreement under Article II, Article III, Article VII, Article X, Article XXIII, and Article XXVI, as they apply to bargaining unit recognition, my employment, sex discrimination, previously agreed upon selective certification, past practices, and personnel records.

In her complaint and amended complaint against the union, Chadwick alleged that the union breached its duty of fair representation in connection with her grievances against the employer.

The complainant filed extensive documentation along with her complaints. Included among those materials is correspondence and documentation concerning a grievance protesting her delayed recall from a layoff. Also included among her documentation was an August 18, 1994 letter from Local 9 to Chadwick, indicating that the union had completed its own investigation, and had concluded that her claim of past violations of the collective bargaining agreement lacked merit. The union reported that the employer had denied her "recall" grievance at a labor relations committee meeting, although

it appears that the employer granted a grievance about the layoff itself.³ In a September 5, 1994 letter to the union, Chadwick charged that she had "... yet to receive any fair representation from ILWU Local 9", and she requested that the union move her grievance to arbitration. In a letter dated September 27, 1994, the union reaffirmed to Chadwick that it had decided her grievance lacked merit. Further, the union denied her claim that she had a right, as an individual, to process the grievance to arbitration.

The Public Employment Relations Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). Such claims must be presented to a court having the jurisdiction to determine and remedy any underlying contract violation.

The Commission does assert jurisdiction over "duty of fair representation" claims where a union has aligned itself in interest against employees it is supposed to represent, based on some unlawful grounds. None of the factual allegations in this case suggest, however, that the union has discriminated on the basis of union membership or any other invidious basis, in connection with the filing and processing of Chadwick's grievance.

It is well-established that, while individual employees have some rights as third-party beneficiaries to collective bargaining agreements, they are not in a position to proceed independently with arbitration proceedings. It is the employer and union which "own" the contract, and a concern arises that arbitration proceedings conducted by or on behalf of an individual could result in a

³ The union had argued at the labor relations committee that employees should have received five days written notice of the layoff. In response, the employer agreed to provide five days pay in lieu of that notice.

final and binding arbitration award interpreting the contract in a manner which contravenes the intent negotiated in good faith by both the employer and union. See, City of Seattle, Decision 1226 (PECB, 1981).

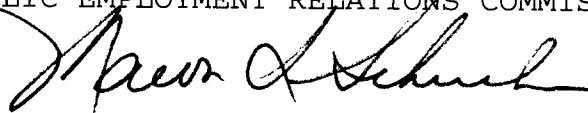
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, the 9th day of May, 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.