STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
MARIA LINA AMBALADA, Complainant, vs. PUBLIC SAFETY EMPLOYEES LOCAL 519, SEIU, AFL-CIO, Respondent.	CASE 12364-U-96-2929 DECISION 5544 - PECB
MARIA LINA AMBALADA, Complainant, vs. KING COUNTY, Respondent.	CASE 12365-U-96-2930 DECISION 5545 - PECB ORDER OF DISMISSAL

On March 4, 1996, Maria Lina Ambalada filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, asserting claims against both her employer and her exclusive bargaining representative in one statement of facts. Case 12364-U-96-2929 was docketed for allegations that Public Safety Employees Local 519, SEIU, had interfered with the complainant's rights in violation of RCW 41.56.150(1), and induced the employer to commit an unfair labor practice, in violation of RCW 41.56.150(2); Case 12365-U-96-2930 was docketed for allegations that King County had interfered with the complainant's rights and discriminated against her in violation

of RCW 41.56.140(1), and dominated or assisted the union in violation of RCW 41.56.140(2).[1]

The cases were considered together by the Executive Director for preliminary rulings under WAC 391-45-110.[2] In a preliminary ruling letter issued on April 9, 1996, the complainant was advised that several problems with the complaint, as filed, prevented a conclusion that unfair labor practice violations could be found. The complainant was given a period of 14 days in which to file and serve amended complaints which stated a cause of action, or face dismissal of the cases.

An attorney entered an appearance on behalf of the complainant on April 22, 1996, and simultaneously requested that the deadline for filing an amended complaint be extended to May 13, 1996. One more week was added by the Commission staff, based on a delayed response to a request for copies of Commission decisions cited in the preliminary ruling letter.

On May 17, 1996, the complainant filed an amended statement under cover of a letter stating: "At this time, I have no attorney. Therefore I am submitting the attached document as an amendment ..." Nothing on the face of the documents indicated that a copy of the documents filed with the Commission on May 17, 1996 was being served on the employer or union.

In a post-script to the original statement of facts, the complainant wrote: "I have WAC and RCW, and I just cannot reconcile and

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[1] The docketing of a separate case for each named respondent was consistent with Commission practice.

[2] 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.

organize it to where you can understand it with out much confusion". While some liberality is warranted in considering pleadings filed by a pro se claimant, that does not warrant disregard of fundamental jurisdictional or procedural problems. The Executive Director must act on the basis of what is contained within the four corners of a statement of facts, and is not at liberty to fill in gaps or make leaps of logic.

The first of the defects noted in the preliminary ruling letter had to do with the form of the statement of facts. The complainant's attention is directed to WAC 391-45-050, which states:

> Each complaint shall contain, in separate numbered paragraphs:
>
> ...
>
> (3) **Clear and concise statements of the facts** constituting the alleged unfair labor practices, **including times, dates, places and participants in occurrences**.
>
> [Emphasis by **bold** supplied.]

It was noted that the eight pages of handwritten materials supplied with the original complaint were neither "clear" nor "concise".

The first paragraph (which began "My name is ...") only set forth background to allegations which follow. It identified Maria Lina Ambalada as an employee of King County (employer) in its Department of Adult Corrections, who was represented for purposes of collective bargaining by Public Safety Employees, Local 519 (union).

The second paragraph (which began "That on Feb. 16, 1995 ...") alleged the complainant was discharged on that date or on an unspecified date thereafter, due to a medical problem. The preliminary ruling letter noted that RCW 41.56.160 imposes a six-month period of limitations on the filing of unfair labor practice charges, and that the complaint filed on March 4, 1996, was untimely for any action prior to September 4, 1995. It was also

noted that the Public Employment Relations Commission has no jurisdiction to hear or determine allegations of discrimination on the basis of a disability.[3]

The third paragraph (which began "I was informed ...") made reference to a union representative's advice,[4] but the focus was on the treatment the complainant received in what appeared to be a constitutional due process hearing held by the employer under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). The complainant was advised that the Public Employment Relations Commission has no jurisdiction to enforce her constitutional rights outside of the collective bargaining process.

The fourth paragraph (which began "That as an active member ...") was an exceedingly general allegation that the union president was under the influence of the employer's department head. There were no dates or specific incidents which could be interpreted as sufficient to support a charge of unfair labor practices.

The fifth paragraph (which began "That in August 25, 1995 ...") related to a meeting where union officials discussed whether to take the complainant's grievance to arbitration. The complainant was advised that this was beyond the six-month limitation on unfair labor practice charges, and that 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).

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[3] Such allegations would have to be taken up with the Washington State Human Rights Commission or with the appropriate federal agency.

[4] The complaint form and other references in the statement of facts identified Jared Karstetter as the union representative involved.

The sixth paragraph (which began "I then appeared ...") related to a meeting of the union's executive board on September 5, 1995, when the union apparently decided to pursue the complainant's grievance to arbitration. Nothing in this paragraph suggested any unlawful conduct by the employer or union.

The seventh paragraph (which began "Before the arbitration ...") alleged that the complainant sent the union a letter in which she described issues and/or theories which she desired to have advanced. Nothing in this paragraph suggested any unlawful conduct by the employer or union at that time.

The eighth paragraph (which began "On Jan. 17, 1996 ...") first described a conversation in which the complainant asked the arbitrator for information about the arbitration process, and the arbitrator referred the complainant back to the union representative. The paragraph continued by describing dual "mediator" and "arbitrator" roles assumed by the arbitrator, and discussions of possible settlements. Nothing in this paragraph suggests any unlawful conduct by the employer or union at that time.

The ninth paragraph (which began "The process was tumultous ...") described the complainant's discomforts during the arbitration proceedings, and then indicated that a settlement offer was made on January 18, 1996. Again, nothing in this paragraph suggests any unlawful conduct by the employer or union at that time.[5]

The tenth paragraph (which began "I was home ...") alleged the complainant received a telephone message from a fellow employee, indicating that the union president had advised the employer not to pursue the previously-described settlement offer, and that some

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[5] References to "$34,000.00" and "reinstatement" weigh against an inference that the employer's settlement offer was insubstantial.

unspecified union members did not want the complainant back. Nothing in this paragraph alleged any misconduct by the employer. Although a union owes a duty of fair representation to all of the employees in a bargaining unit that it represents, the Commission only asserts jurisdiction over a limited class of "fair representation" disputes: (1) The Commission will assert jurisdiction where it is alleged that the union has aligned itself in interest against one or more bargaining unit employees based on unlawful considerations (e.g., race, creed, national origin, or union membership) which would place in question the union's right to enjoy the benefits of status as an exclusive bargaining representative under the statute; and (2) the 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). The facts of paragraph 10 were insufficient to bring the dispute within the type over which the Commission asserts jurisdiction.

The eleventh paragraph (which began "I was and still is ...") related that the actions attributed to the union president in the tenth paragraph were brought up with the union's representative and with the mediator, but that nothing further was done about the matter. There was no allegation of misconduct by the employer. Again, the facts are insufficient to bring the dispute within the type of "fair representation" dispute over which the Commission would assert jurisdiction over the union.

The twelfth paragraph (which began "During the remaining hours ...") **and the thirteenth paragraph** (which began "At around noon of Jan. 19, 1996 ...") both related to conversations between the complainant and the union representative on January 19, 1996. There is reference to threats and coercion to accept the offered settlement, but no facts supporting those conclusionary characterizations. It is alleged that the union representative indicated he

would recommend that the grievance not be pursued if the complainant refused to accept the settlement offer, but disagreements about the merits of grievances are squarely within the Mukilteo case.[6] There were no allegations misconduct against the employer.

The fourteenth paragraph (which began "So I verbally accepted ...") merely described the complainant's physical condition while the settlement offer she accepted was being formalized. It did not allege any misconduct on the part of the employer or union.

The fifteenth paragraph (which began "I agreed to accept ...") stated a belief on the part of the complainant that she would be entitled to take the settlement to her own attorney after the transcript of the hearing was issued. The basis for such a belief was not set forth. This did not allege any misconduct on the part of the employer or union.

The sixteenth paragraph (which began "As soon as ...") alleged that the complainant recanted the settlement offer. This did not allege any misconduct on the part of the employer or union.

The seventeenth paragraph (which began "Jan. 22, 1996 ...") and **the eighteenth paragraph** (which began "I took my attorney ...") related the union representative's resistance to the complainant's attempt to withdraw from the settlement. There was no allegation of misconduct by the employer or union.

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[6] A union is not required to proceed to arbitration on each and every grievance filed by a bargaining unit member. The duty of fair representation imposed upon a union by the decision of the Supreme Court of the United States in Vaca v. Sipes, 386 U.S. 171 (1967), includes only an investigation of the grievant's claims and a good faith determination about the merits of the claim. A union official's explanation of the pitfalls of a grievance is a normal and predictable component of the grievance process, and would be subject to challenge only if it is arbitrary, discriminatory or in bad faith.

The nineteenth paragraph (which began "Prior to Feb 9, 1996 ...") indicated that the complainant requested that the final signing of the settlement be delayed, based on advice from a psychiatrist, and that the union representative threatened to abandon her grievance if the settlement offer was not accepted. Again, there were no facts which state a cause of action before the Commission.

The twentieth paragraph (which began "In the past ...") indicated the complainant believes she was called upon to relinquish her rights under an "EEO" claim filed in 1993, her rights to an accommodation of her disability, her "civil rights" and/or her right to challenge a termination of her employment, up to November of 1996. The Public Employment Relations Commission has no authority to remedy violations of federal statutes, such as the Americans with Disabilities Act (ADA) or the statutes administered by the Equal Employment Opportunities Commission.

The twenty-first paragraph indicated that the complainant may have a fundamental misunderstanding of the Commission's role. It reads:

> There is something wrong. I need help on this. The Commission must have a remedy.

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The agency does not have authority to resolve each and every dispute that might arise in public employment, and only has jurisdiction to resolve collective bargaining disputes between employers, employees, and unions. The Commission and its staff maintain an impartial posture in all proceedings before the agency, and cannot act as advocate for or legal advisor to any party.

The final two pages of the statement of facts (which begin "Also in April of '95 ...") were written with a different pen, and appeared

to have been written about two weeks after the first 21 paragraphs and post-script. They indicated that the complainant continued to be paid in April of 1995, that she approached the union about filing a grievance, and that she took the matter to the office of the King County Ombudsman after the union declined to file a grievance. The document went on to report difficulties in obtaining a copy of the employer's response to the complaint that she filed with the ombudsmen's office. The document then indicated that a copy of the requested information had been received as of February 27, 1996, and was being included in the complaint, but no such document was filed with the complaint. None of this falls within the jurisdiction of the Commission.

The materials filed on May 17, 1996, do not cure the defects noted in the preliminary ruling letter:[7]

The first paragraph, which merely reiterates that the complainant has been an employee of King County and a member of Local 519 for 17 years, and **the second paragraph**, which merely reiterates that she has been on "leave without pay status per arbitration settlement" since February of 1996, merely repeat background facts.

The third paragraph appears to constitute a shift of focus away from the union staff member referred to repeatedly in the original complaint, and towards the union president. A history of criticism directed towards the union president is not, however, a basis for unfair labor practice proceedings before the Commission.

The fourth paragraph alleges that the union president aligned herself in interest against the complainant, but the alleged

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[7] The materials filed on May 17, 1996, could not be a basis for finding a cause of action to exist unless they were duly served on the employer and union, and are reviewed here with a lingering concern that they have not been properly served on other parties.

conduct occurred in connection with the processing of a grievance so that Mukilteo, supra, is controlling. There is no allegation that the union president was motivated by invidious discrimination that would be a basis for proceedings before the Commission.

The fifth paragraph and **the sixth paragraph** appear to concern internal union affairs, over which the Commission does not assert jurisdiction.

The seventh paragraph begins with a reference to a "petition" of members of Local 519 "questioning her role as union president", which also appears to be a matter of internal union affairs. A reference in the same paragraph to "my organizing the Asian employees of the Department ..." is too vague and ambiguous to be a basis for further proceedings before the Commission. While a union is prohibited by RCW 41.56.150(1) from interfering with the right of employees to organize and select an exclusive bargaining representative of their own choosing, its stretches inference beyond credible limits to interpret this one fleeting reference to "organizing" as activity protected by Chapter 41.56 RCW.[8]

The eighth paragraph alleges that the president of the union went to the management with opposition to a settlement of the complainant's grievance. There is no reference to discrimination based on invidious grounds such as race, creed, sex or union membership, so this is not a matter within the Commission's jurisdiction. The fundamental premise of the policy set forth in Mukilteo, supra, is that the Commission would not have jurisdiction to remedy the

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[8] Supporting this conclusion: (1) The complainant alleges that she is a member of Local 519, and there is no reference to her support of any other labor organization; (2) the direct connection with "Asian" contradicts an assumption that this was union organizing which must be "colorblind"; (3) the location of the "organizing" reference in a paragraph concerning an intra-union controversy supports an inference that it was also related to internal union affairs.

underlying contract violation even if it were to find a breach of the duty of fair representation by the union. An employee who has been prejudiced by a breach of the duty of fair representation in connection with the filing of a grievance would need to seek relief in the courts, which could assert jurisdiction over both the employer and union.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-captioned matters are DISMISSED for failure to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Issued at Olympia, Washington, on the 23rd day of May, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.