City of Seattle, Decision 5707 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	)	
JANIS ALFORD, Complainant,	)	CASE 12666-U-96-3023 DECISION 5707 - PECB
vs.	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 77, Respondent.	)	ORDER OF DISMISSAL

On August 22, 1996, Janis Alford filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complainant identified herself as an electrical appliance repair person employed by Seattle City Light (employer). Alford alleges that her exclusive bargaining representative, International Brotherhood of Electrical Workers, Local 77 (union), has interfered with her rights as an employee, and has refused to bargain.[1]

The complaint was considered for the purpose of making a preliminary ruling under WAC 391-45-110, and a deficiency notice issued on September 20, 1996, pointed out certain defects with the complaint,

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[1] The employer is not named as a respondent in this case, and it does not appear that the employer is charged with any wrongdoing. Every case processed by the Commission must, however, arise out of an employment relationship existing under one of the statutes administered by the Commission. Even when the employer is not named as a party to the immediate dispute, the name of the employer appears on the docket records and captions for a case, in order to identify the public sector employment relationship from which the Commission asserts jurisdiction.

as filed.[2] The complainant was given 14 days to file and serve an amended complaint, or face dismissal of the case. Nothing further has been heard or received from the complainant.

The first problem detailed in the deficiency notice is jurisdictional, in that individual employees lack legal standing to file or pursue "refusal to bargain" charges. Grant County, Decision 2703 (PECB, 1987). The duty to bargain exists only between an employer and an exclusive bargaining representative, and only those parties have legal standing to pursue refusal to bargain charges.

The second defect noted is procedural, in that the materials now on file consist primarily of argument. WAC 391-45-050 states:

> Each complaint shall contain, in separate numbered paragraphs:
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> ...
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> (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]

Although documents enclosed with the complaint are dated, there is no chronological narrative of facts which might explain how the union is alleged to have interfered with Alford's rights. The information provided by Alford in ten numbered paragraphs falls short of detailing facts upon which an unfair labor practice violation could be found.

Paragraph 1 alleges, generally, that Alford was not given a chance to defend herself, and that she received no union assistance in

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[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 has stated a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

connection with the processing of a grievance. A union owes a duty of fair representation to all of the employees in a bargaining unit that it represents, but the Commission only asserts jurisdiction over a limited class of "fair representation" disputes. In particular, 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). While 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),[3] no such facts are alleged in this case. The Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic. It is not possible to conclude from the materials now on file that a cause of action exists within the type over which the Commission asserts jurisdiction.

Paragraph 2 provides information concerning Alford's position at Seattle City Light, and suggests that she had been "job sharing" with another employee. The paragraph is understood to be factual background only, and does not allege wrongdoing by any party.

Paragraph 3 refers to management "abrogating" of positions, but does not identify those positions. On its face, this information appears to be tangential to the charge against the union.

Paragraphs 4 and 5 refer to an enclosed set of correspondence between the employer and union. Alford contains a conclusionary statement that the correspondence indicates a retaliatory motive on

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[3] The Commission polices its certifications, and such discrimination would place in question the union's right to enjoy the benefits of status as an exclusive bargaining representative under the statute.

the part of the union, i.e., that the union was demanding that her 4-day work shift be returned to its original schedule of 5 days per week, because Alford signed a letter in support of a supervisor at Seattle City Light. Other than the sequence of referenced events, however, no facts are presented that connect that letter with the union's position concerning the complainant's hours of work. Indeed, other facts alleged in the complaint indicate that the hours of work issue was not raised until nearly nine months after the letter, which could support a conclusion that the two were entirely unrelated. Furthermore, there was no allegation that the union had any involvement in the memo that purportedly resulted in its retaliation against Alford. These paragraphs do not provide enough factual information to support the finding of an unfair labor practice.

Paragraph 6 begins with facts concerning a medical disability which was originally used to justify Alford's reduced work week, but then contradicts the medical justification with two non-medical reasons for continuation of her shortened work week. In its present form, this paragraph can only be taken to be background information.

Paragraph 7 makes general allegations concerning the productivity and personal motives of certain named shop stewards. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon this 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. Apart from the fact that the allegations appear to be no more than speculative, the Commission would have no jurisdiction or occasion to rule on the productivity claims.

Paragraphs 8 and 9 appear to assert that the employer had no fiscal justification to eliminate Alford's reduced work week. The wisdom or relevance of the employer's situation is not clearly relevant,

however, in a situation where charges are being made against the exclusive bargaining representative.

Paragraph 10 accuses an unidentified shop steward of personal motives for not representing Alford in an appropriate manner. The facts in the complaint are insufficient to state a cause of action. In summary, having received no reply from the complainant concerning the deficiency notice, this complaint charging unfair labor practices can only be analyzed on the basis of the information received in the original complaint. Those materials are unclear, and do not provide a "concise statement of ... facts." 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 factual gaps or make leaps of logic.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington this 31st day of October, 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.