

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF SEATTLE,)	
)	
Employer.)	
-----)	
KELLY MAYTUM,)	CASE 12643-U-96-3014
)	
Complainant,)	DECISION 5710 - PECB
)	
vs.)	
)	
TEAMSTERS UNION, LOCAL 174,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On August 14, 1996, Kelly Maytum filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complainant identified himself as an employee of the Port of Seattle (employer), working in "Port Construction Services". The complaint alleges that Maytum's exclusive bargaining representative, Teamsters Union, Local 174 (union), has interfered with his rights as an employee, and discriminated against Maytum for filing charges.¹

The complaint was considered by the Executive Director 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

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.

defects with the complaint, as filed.² Maytum was given 14 days to file and serve an amended complaint, or face dismissal of the allegations. Nothing further has been heard or received from the complainant.

The complaint was not accompanied by a statement of facts, as required by WAC 391-45-050. That regulation includes:

Each complaint shall contain, in separate numbered paragraphs:

...
(2) **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]

The only attachments to the complaint form filed in this case were: (1) a copy of a letter dated July 8, 1996, from a "Jerry Halberg" to the union's executive board; (2) a copy of a form titled "Employer-Union Pension Certification", signed by employer and union officials; (3) a copy of a form titled: "Agreement Accepting Construction Industry Welfare Trust" signed by an employer official; and (4) a copy of a collective bargaining agreement between the employer and the union for the period from January 1, 1995 through December 31, 1997.

The deficiency notice sent to Maytum on September 20, 1996, analyzed the July 8 letter as if it were intended to be a statement of facts. The following concerns were identified, however:

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.

1. The second, third, and fourth paragraphs of the letter relate to a request for appointment of an independent panel under the union's constitution. The Public Employment Relations Commission does not have jurisdiction to determine or remedy violations of a union's constitution or bylaws. Such claims would have to be addressed through the procedures set forth within that constitution or bylaws, or through the courts.

2. The fifth and sixth paragraphs of the letter describe a separate contract with "Port Construction Services", and the term "Privately Owned" is used in that connection. The Public Employment Relations Commission does not have jurisdiction to determine or remedy unfair labor practice allegations arising out of employment in the private sector. WAC 391-45-019.

3. The seventh and eighth paragraphs of the July 8 letter refer to a meeting of employer and union officials on March 28, 1996. Maytum's name is used for the first time in that paragraph, in reference to his request to participate in that meeting. The Commission has no jurisdiction in a dispute concerning internal union affairs. While the letter may contain a hint of an allegation that the employer and union have agreed upon an unlawful bargaining unit structure, to sustain a cause of action would require that the complainant fill in the factual gaps to avoid a necessity for leaps of logic.

4. The ninth, tenth, and eleventh paragraphs of the letter all describe transactions between various employees and the union, and all appear to fall within the "internal union affairs" category.

5. The twelfth paragraph concerns an agreement to "disavow" a separate contract for Port Construction Services, and the following three paragraphs describe actions of employer and union officials which rejected or modified that agreement. The duty to bargain in good faith operates between an employer and the exclusive bargaining representative of its employees, so that individual employees do not have legal standing to file and pursue "refusal to bargain" charges.

6. The balance of the July 8 letter sets forth claims which the author of that letter desired to assert before the "panel" procedure invoked in the initial paragraphs:

- a. That union officials Hasagawa and/or Berenbaum brought reproach upon the union, and interfered with the union's performance of its legal obligations;
- b. that the union officials violated their oaths of office and oaths of loyalty; and
- c. that Berenbaum misused the hiring hall list;
- d. that Hasagawa violated specific rules of order;
- e. that Hasagawa retaliated against a member, Jerry Halberg, who had filed disciplinary charges and participated in disciplinary hearings against Hasagawa; and
- f. that Hasagawa engaged in retaliatory actions against members who has run against him in union elections.

Items a. through d. are internal union matters, not subject to the jurisdiction of the Commission. Item e. does not involve Maytum, and he has no legal standing to assert rights on behalf of another employee. Item f. lacks specific facts as to dates, times, and participants in any actions against Maytum.

Having received no reply to the DEFICIENCY NOTICE, Maytum's claims can only be analyzed on the basis of the information filed with the original complaint. The information provided may indicate the existence of valid concerns on the part of Maytum or other employees, but 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.

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 a 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 the facts alleged in this case are not sufficient to bring the dispute within the type over which the Commission asserts jurisdiction.

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.

ISSUED 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.

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.