

Bremerton School District, Decisions 5722 and 5723 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BREMERTON SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
ARTHUR R. PETIT,)	CASE 12681-U-96-3030
)	
Complainant,)	DECISION 5722 - PECB
)	
vs.)	
)	
BREMERTON SCHOOL DISTRICT,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
ARTHUR R. PETIT,)	CASE 12682-U-96-3031
)	
Complainant,)	DECISION 5723 - PECB
)	
vs.)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 114,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	

On September 3, 1996, Arthur R. Petit filed two unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC. The complainant identified himself as an employee of the Bremerton School District (employer), and stated that he works as a custodian within a bargaining unit represented by Service Employees International Union, Local 114 (union). The employer is named as the respondent on "domination or assistance of union" charges in Case 12681-U-96-3030; the union is named as the respondent on "union interference with employee rights" and "other unfair labor practice" charges in Case 12682-U-96-3031.

The complaints were considered together for the purposes of making a preliminary ruling under WAC 391-45-110. A deficiency notice

sent to the parties on September 24, 1996, pointed out several defects with the complaint, as filed. The complainant was given 14 days to file an amended complaint which stated a cause for action by the Commission or face dismissal of the allegations.

On October 8, 1996, the complainant filed an amendment to his original complaint. The case is again before the Executive Director for processing under 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.

Insufficiency of Complaints

The deficiency notice issued on September 24, 1996, indicated that the complainant had not supplied all of the information required by WAC 391-45-050. While complainants are not required to use the complaint form promulgated by the Commission, complaints drafted by parties must still provide all of the information required by that form. In this case, the complaints lacked identification of the union and employer representatives who had been involved with the dispute.

The amended complaints were filed on the complaint form promulgated by the Commission, and they include adequate identification of the employer and union officials involved. This deficiency would no longer be a basis for dismissal of the cases.

Violation of Contract Claim

The controversy arises out of a claimed violation of Petit's rights under seniority provisions of the collective bargaining agreement between the employer and union, with respect to a promotion. The

deficiency notice cited City of Walla Walla, Decision 104 (PECB, 1976), as authority for the proposition 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.

The amended complaint does not alter the fundamental nature of the complainant's "violation of contract" claim. The complaint against the employer thus still fails to state a cause of action.

Discrimination for Union Activity Claim

There is a fleeting reference in the amended complaint that the "grievance alleged discrimination for union activity", but there are no other facts supporting that allegation. That statement is not sufficient to state a cause of action for "interference" or "discrimination" under RCW 41.56.140(1) or 41.56.150(1). WAC 391-45-050(2) requires "clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

Duty of Fair Representation Claim

The complainant seeks relief against the union for its refusal to arbitrate a grievance concerning his seniority rights under the collective bargaining agreement between the employer and the union. Closely related to the absence of "violation of contract" jurisdiction, 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). Thus, the deficiency notice indicated that the complaint against the union also failed to state a cause of action before the Commission.

The amended complaint does not alter the fundamental nature of the complainant's "breach of duty of fair representation on grievance" claim. The Commission polices its certifications, and it 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) which would place in question the union's right to enjoy the benefits of status as an exclusive bargaining representative under the statute. There are no allegations of such discrimination in these complaints, however. In making a preliminary ruling, 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 facts alleged in these cases are not sufficient to bring the dispute within the type over which the Commission asserts jurisdiction. The complaint against the union thus still fails to state a cause of action.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-captioned matters are 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.