STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| CURTIS J. VOLESKY, | ) | |
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| Complainant, | ) | CASE 12714-U-96-3050 |
| | ) | DECISION 5742 - PECB |
| vs. | ) | |
| | ) | CASE 12715-U-96-3051 |
| SPOKANE TRANSIT AUTHORITY, | ) | DECISION 5743 - PECB |
| | ) | |
| Respondent. | ) | ORDER OF DISMISSAL |
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| | ) | |

Curtis J. Volesky filed two unfair labor practice complaints with the Public Employment Relations Commission on September 19, 1996. The Spokane Transit Authority was identified as the employer in both cases. In the complaint docketed as Case 12714-U-96-3050, Don Reimer was named as respondent on the complaint form and was described in the statement of facts as a "manager"; in the complaint docketed as Case 12715-U-96-3051, Andrew Overhauser was named as respondent on the complaint form and was described in the statement of facts as a "superintendent". Boxes were marked on the complaint forms to indicate "interference", "domination", "discrimination", and "refusal to bargain" allegations.

Both complaints were reviewed for the purpose of making preliminary rulings pursuant to WAC 391-45-110,[1] and a deficiency notice issued on October 14, 1996, pointed out several problems with the complaints as filed. Volesky was given a period of 14 days in which

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[1] At this stage of the proceedings, all of the facts alleged in the compliant are assumed to be true and provable. The question at hand is whether, as a matter of law, either complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

to file and serve amended complaints which stated a cause of action, or face dismissal of the complaints. Nothing further has been heard or received from Volesky.

## Lack of Legal "Standing"

Any cause of action is limited to matters which the complainant has legal standing to pursue. Although the complaints were accompanied by a copy of the collective bargaining agreement between the Spokane Transit Authority and Amalgamated Transit Union, Local 1015, and Volesky used the title "V.P. Local 1015" under his signature on both complaints, the union was not named as the complainant in either case. To the extent that Volesky filed as an individual (who happened to hold some union office), he did not have any legal standing to pursue rights on behalf of employees other than himself.

## Individuals as Respondents

Every case processed by the Commission must arise out of an employment relationship involving a covered employer. While past cases have identified the Spokane Transit Authority as a public entity covered by RCW 41.56.020, there is no apparent circumstance under which the individual employer officials named in these complaints could be "respondent" in an unfair labor practice proceeding before the Commission, except in their capacities as agents of the covered employer. These cases were thus docketed with "Spokane Transit Authority" as the respondent.

## Insufficient Facts for "Interference" Allegation

A finding of an "interference" violation under RCW 41.56.140(1) would require proof of employer conduct which an employee reasonably perceived as a threat of reprisal or force, or a promise of benefit, related to the exercise of rights under the collective

bargaining statute. Although the complaint in Case 12714-U-96-3050 alleges that Reimer made a disparaging statement because of a grievance Volesky had filed, and the complaint in Case 12715-U-96-3051 quotes Overhauser as saying that Volesky was filing too many grievances, neither complaint references a threat or promise made directly to Volesky. The complaints, as filed, thus failed to state a cause of action for an "interference" theory.

Insufficient Facts for "Discrimination" Allegation

A finding of a "discrimination" violation under RCW 41.56.140(1) by reference to RCW 41.56.040 would require proof of intentional acts by the employer to deprive Volesky of some ascertainable right or benefit because of his exercise of rights protected by the statute. Although the allegations point to employer knowledge of Volesky's union activity (which would be necessary to a finding of "intent"), there was no allegation that Volesky had suffered any adverse effect from his union activities. Thus, neither complaint stated a cause of action for a "discrimination" theory.

Insufficient Facts for "Domination" Allegation

A finding of a "domination" violation under RCW 41.56.140(2) would require proof of employer officials improperly involving themselves in the internal affairs of a union; of the employer showing a preference between two unions competing for the same group of employees; or of the employer providing financial or other support to a union which could compromise its independence (e.g., giving rise to an inference that it was a "company union"). No facts were alleged which would support a "domination" theory in these cases.

Insufficient Facts for "Refusal to Bargain" Allegation

A finding of a "refusal to bargain" violation under RCW 41.56.140-(4) would require proof that the employer has failed or refused to

bargain with the exclusive bargaining representative of its employees. Only a union holding the status of "exclusive bargaining representative" has standing to file or pursue such allegations. An individual employee cannot assert a "refusal to bargain" theory, since the employer has no duty to bargain with individual employees. Thus, neither of these complaints filed by an individual employee stated a cause of action for a "refusal to bargain" theory.

NOW, THEREFORE, it is

ORDERED

The complaints filed in the above-captioned matters are DISMISSED as failing to state a cause of action.

ISSUED at Olympia, Washington, on the 6th day of November, 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.