

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SKAGIT COUNTY,)	
)	
Employer.)	
-----)	
STEVE ACERO,)	CASE 13041-U-97-3151
)	
Complainant,)	DECISION 5981 - PECB
)	
vs.)	
)	
GENERAL TEAMSTERS LOCAL UNION 788,)	
)	
Respondent.)	
-----)	
STEVE ACERO,)	
)	
Complainant,)	CASE 13042-U-97-3152
)	
vs.)	DECISION 5982 - PECB
)	
SKAGIT COUNTY,)	
)	ORDER OF DISMISSAL
Respondent.)	
-----)	

On March 17, 1997, Steve Acero filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. Boxes provided on the complaint form for "employee interference", "employer domination of union", "employer discrimination", "employer refusal to bargain", "union interference" and "union refusal to bargain" were all checked. Consistent with the Commission's case docketing procedures, two separate case files were opened:

- Case 13041-U-97-3151 was opened for allegations made against General Teamsters, Local Union 788 (union); and

- Case 13042-U-97-3152 was opened for allegations made against Skagit County (employer).

The allegations relate to the processing of a grievance which Acero filed under a collective bargaining agreement between the union and employer.

The cases were considered by the Executive Director under WAC 391-45-110.¹ A deficiency notice issued on May 12, 1997, informed Acero of several problems with his complaint.² Acero was given 14 days in which to file and serve an amended complaint that stated a cause of action, or face dismissal of his complaint.

The 14 day period expired on May 26, 1997. In a letter which was dated May 18, 1997, but was not received until May 27, 1997, Acero provided additional background information and requested a continuance to obtain legal counsel.³ No notice of appearance has been received as of the date of this order, and nothing further has been heard or received from Acero. The case is thus before the Executive Director for a preliminary ruling on the basis of the original complaint and the limited supplemental material on file.

¹ 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.

² The employer volunteered an extensive response to the complaint, in the form of a letter from its attorney filed on April 17, 1997. Such responses are not, and cannot be, considered in the preliminary ruling process.

³ Acero also indicated that he had terminated his employment with this employer, stating: "I quit several months ago due to stress brought on me by my employer".

Untimely Allegations

RCW 41.56.160 establishes a six-month "statute of limitations" on the filing of unfair labor practice complaints. These complaints filed on March 17, 1997, could only be considered timely as to actions taken by the employer and/or union on and after September 17, 1996.

The deficiency notice pointed out that the complaints were vague as to the nature and timing of a grievance dispute which underlies the complaints. The supplemental materials indicate that the grievance related to a discipline hearing which occurred on June 28, 1996, following a series of events which occurred on and after May 27, 1996. The supplemental materials also clarify that the grievance dispute concerned Acero's claim for overtime compensation for work performed on a special project in June of 1996.

The supplemental materials indicate that Acero was threatened by an employer official on June 21, 1996, if he pursued his overtime claim. While the filing and pursuit of grievances is clearly an activity protected by Chapter 41.56 RCW,⁴ so that this allegation would clearly have stated a cause of action if timely filed, it is not timely filed in this case.

The supplemental materials allege that Acero made a timely request to have a union representative present at a disciplinary meeting instigated by the employer on June 25, 1996, but that the employer insisted upon proceeding before a union representative was available. While the right of employees to union representation is clearly established under Chapter 41.56 RCW for situations in which the employee reasonably believes that disciplinary action could be

⁴ Valley General Hospital, Decision 1195-A (PECB, 1981).

forthcoming,⁵ so that this allegation would also clearly have stated a cause of action if timely filed, it is also untimely.

Violation of Contract Allegations

Acero contests the validity of discipline which was imposed upon him following a June 27, 1996 meeting (at which a union representative was present), based on three charges:

1. Violation of county policy regulations (i.e., failure to receive prior approval for the performance of overtime work);
2. Falsification of county document (i.e., completion of an official time sheet requesting 22.5 hours of overtime that was not authorized); and
3. Dishonesty (i.e., several instances of changed responses to questions and discovery of false or inaccurate statements).

⁵ See, City of Seattle, Decision 3593-A (PECB, 1989), where the Commission imposed extraordinary remedies, saying:

The Examiner awarded attorney fees to the complainant in this case, based on a conclusion that the City of Seattle, and its City Light Department, are repeat offenders in unfair labor practices under the Weingarten precedent. We share the Examiner's frustration with an employer that has continuously attempted in this case to defend the actions of managers that were not only in clear violation of the statute, but also in violation of the employer's own internal directive.

The principles enunciated in National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975) were found to be applicable under Chapter 41.56 RCW in City of Montesano, Decision 1101 (PECB, 1981) and Okanogan County, Decision 2252-A (PECB, 1986). That interpretation was affirmed by the Thurston County Superior Court on appeal in the Okanogan case. Thus, the law in such matters is clear: A public employee has a right to union representation, upon request, at an "investigatory" interview where the facts are to be examined.

Apart from the "statute of limitations" problem, these allegations would not state a cause of action even if they were timely filed. 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)

Reliance Upon Other Statutes

Any jurisdiction of the Public Employment Relations Commission in this matter flows from the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Acero cites several sources of authority outside of the collective bargaining law, including: RCW 49.60.030, RCW 40.16.030, RCW 49.52.050, and FLSA Regulation 778.316. 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 Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment, and does not have any authority under the statutes and rules cited in this case.

Breach of Duty of Fair Representation

The original allegations picked up with a letter sent by the employer on September 26, 1996, outlining proposed terms of settlement on Acero's grievance. The remaining allegations of the original complaint describe Acero's dealings with the employer and union about acceptance or rejection of a settlement. The deficiency notice pointed out that 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). Such matters must be pursued in the courts, which can also assert jurisdiction to determine and remedy any underlying contract violation. The supplemental materials filed in this case did not address this defect, other than to renew a plea for a hearing.


NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 11th day of July, 1997.

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 of review with the Commission pursuant to WAC 391-45-350.