

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                             |   |                      |
|-----------------------------|---|----------------------|
| CITY OF MORTON,             | ) |                      |
|                             | ) |                      |
| Employer.                   | ) |                      |
| -----                       | ) |                      |
| BRIAN K. RICE,              | ) |                      |
|                             | ) |                      |
| Complainant,                | ) | CASE 13267-U-97-3229 |
|                             | ) |                      |
| vs.                         | ) | DECISION 6074 - PECB |
|                             | ) |                      |
| TEAMSTERS UNION, LOCAL 252, | ) |                      |
|                             | ) |                      |
| Respondent.                 | ) | ORDER OF DISMISSAL   |
| _____                       | ) |                      |
| BRIAN K. RICE,              | ) |                      |
|                             | ) |                      |
| Complainant,                | ) | CASE 13268-U-97-3230 |
|                             | ) |                      |
| vs.                         | ) | DECISION 6075 - PECB |
|                             | ) |                      |
| CITY OF MORTON,             | ) |                      |
|                             | ) |                      |
| Respondent.                 | ) | ORDER OF DISMISSAL   |
| _____                       | ) |                      |

On June 27, 1997, Brian K. Rice filed unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that his employer and his exclusive bargaining representative had both violated Chapter 41.56 RCW. Two case numbers were assigned, consistent with the Commission's docketing procedure:

- Case 13267-U-97-3229 was opened for allegations that the Teamsters Union, Local 252 had interfered with employee

rights; had induced the employer to commit a violation; and had discriminated against Rice for filing charges.

- Case 13268-U-97-3230 was opened for allegations that the employer had discriminated against Rice.

A deficiency notice issued on August 29, 1997, pursuant to WAC 391-45-110,<sup>1</sup> pointed out problems which prevented finding that a cause of action existed concerning either of the complaints. Rice was given a period of 14 days in which to file and serve amended complaints with additional information, or face dismissal of the complaints for failure to state a cause of action. Nothing further has been heard or received from the complainant.

#### Allegations Against the Union

The statement of facts filed with the complaint form described a confrontation in which Rice was presented with (and was asked to sign) a letter containing several alleged violations of his job duties. After a telephone call was placed to a union representative and conversations transpired between the complainant and union representative and between the police chief and union representative, a pre-disciplinary hearing was scheduled. The bulk of the statement of facts concerns the behavior of the union business representative immediately before, and during, the pre-

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<sup>1</sup> At that stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

disciplinary hearing. It is inferred that all charges against the complainant were withdrawn after the pre-disciplinary hearing, inasmuch as Paragraph 15 of the statement of facts indicates that he "received a letter from the Morton City Council apologizing for the discrimination, distress and inconvenience that the situation had brought on ..." The balance of the statement of facts is devoted to the complainant's (unsuccessful) effort to obtain a statement from another employee as to what was said by the union representative at the pre-disciplinary hearing.

The deficiency notice advised Rice 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). That policy is closely related to the even longer-established principle 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. City of Walla Walla, Decision 104 (PECB, 1976). Employees having such claims must proceed in a court, which can assert jurisdiction over both the breach of duty of fair representation and any underlying contract violation. In this case, the complained-of behavior appears to be related to the processing of a potential grievance, and so falls into the category for which there is no relief available through unfair labor practice proceedings before the Commission.

The deficiency notice advised that the Commission does police its certifications, and will assert jurisdiction in "breach of duty of fair representation" situations where a union is alleged to have aligned itself in interest against some or all of the employees in a bargaining unit which it represents, on the basis of invidious grounds such as race, creed, sex, national origin, or based upon union membership or lack thereof. The actions of the union representative in this case were not, however, related to any form of unlawful discrimination. An introductory comment that Rice anticipated the union representative would honor some "silent code" related to his previous employment as a law enforcement officer fell short of indicating any form of unlawful discrimination. Moreover, there is no indication of how, if at all, any later statements attributed to the union representative actually harmed the complainant. Thus, the facts alleged in this complaint were (and remain) insufficient to state a cause of action against the union.

#### Allegations Against the Employer

The deficiency notice also advised Rice that it was difficult to discern any actionable misconduct on the part of the employer. The refusal of the employer to require a fellow employee to give a written statement concerning what was said by the union representative did not appear to violate any right protected by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. With response to the deficiency notice, this complaint fails to state a cause of action against the employer.

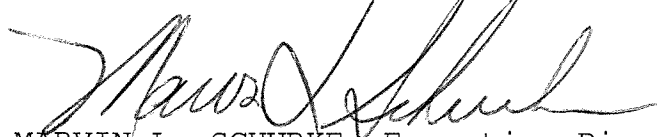
NOW, THEREFORE, it is

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 14th day of October, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke", is written over the printed name.

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.