Washington State Patrol, Decision 5887 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE PATROL, Employer.	)	
MICHAEL W. ALDRIDGE, Complainant, vs.	)	CASE 12836-U-96-3092 DECISION 5887 - PECB
WASHINGTON STATE PATROL TROOPERS ASSOCIATION, Respondent.	)	ORDER OF DISMISSAL

The complaint charging unfair labor practices filed with the Public Employment Relations Commission on November 22, 1996 alleged that the Washington State Patrol Troopers Association (union) interfered with rights guaranteed Trooper Michael W. Aldridge as a public employee, by failing to process a grievance on his behalf. The complaint form was accompanied by a 15-page document which was a mixture of factual allegations, legal arguments, and remedy requests. The underlying grievance protested the employer's conduct of an investigation after Aldridge used his service weapon to stop a burglary at his residence.

The complaint was considered by the Executive Director under WAC 391-45-110.[1] A deficiency notice issued on January 17, 1997,

[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.

advised the complainant that the complaint did not state a cause of action, as filed. In response to numerous allegations that the employer had violated the collective bargaining agreement or its own policies, it was noted that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW,[2] and that the Commission does not determine or remedy "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.[3] That letter continued:

> Thus, the Commission only asserts jurisdiction to police its certifications, where the alleged facts, if proven, would indicate a union has breached its duty of fair representation by acting, or failing or refusing to act, because of the employee's exercise of rights protected by Chapter 41.56 RCW, as in City of Seattle, Decision 3199-A (PECB, 1989), or because of some other invidious discrimination that would place in question the right of the union to enjoy the benefits of status as "exclusive bargaining representative" under RCW 41.56.080.

It was noted that there were no allegations of discrimination by the union on any of the traditional invidious grounds, such as race, sex, religion, or national origin. Although the complaint mentioned that Aldridge had been an unsuccessful candidate for union office at some unspecified time, and that he had voiced opposition at unspecified times as to how the union was being run,

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[2] That policy has remained in effect, without change, since City of Walla Walla, Decision 104 (PECB, 1976).

[3] The deficiency notice cited Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

those assertions were not deemed sufficient to suggest that the union had breached its statutory duty of fair representation in refusing to process this particular grievance to arbitration.

The complainant was given a period of 14 days in which to file and serve an amended complaint, or face dismissal of the case. Aldridge's response to the deficiency notice was in the form of a three-page telefacsimile transmission sent to the Executive Director on January 31, 1997. While the complainant's initial statements in that message appeared to indicate that he did not intend to amend the complaint, other material in that message appeared to constitute a lengthy statement of position and facts in support thereof. Because of this inconsistency, Aldridge was furnished an additional 10 days in which to file any additional facts in writing and to serve respondent with a copy thereof.[4]

On February 24, 1997, Aldridge filed a five-page addendum and 14 identified documents consisting of 146 pages.[5] The entire file is

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[4] Commission precedent interpreting the Administrative Procedure Act, Chapter 34.05 RCW, as well as the Commission's rules, preclude the use of telefacsimile transmissions to "file" documents for adjudicative proceedings such as this unfair labor practice case under Chapter 391-45 WAC. See, Island County, Decision 5147-B (PECB, 1995) and WAC 391-08-120(1).

[5] Included were: Notices issued by the employer regarding the investigation; the transcript of an investigatory interview; letters from union counsel regarding previous grievances; the grievance at issue in this case; correspondence from the office of Prosecuting Attorney regarding the burglary suspect; court records regarding the burglary suspect; correspondence regarding the grievance; correspondence relating to the union's disposition of Aldridge's grievance; materials concerning criteria for and training of union grievance evaluators; and reproductions of portions of the union's house publication.

again before the Executive Director for the purposes of making a preliminary ruling under WAC 391-45-110.

The Allegations of the Amended Complaint

Paragraph 1 of the addendum, like Paragraphs 1 through 4 of the original statement of facts, only provides background to the allegations which follow. The complainant's discharge of his service revolver at the burglar precipitated an investigation by the employer regarding a possible violation of its policies. In the course of that investigation, the employer interviewed the complainant on February 28, 1996, with a union representative in attendance.

Paragraph 2 of the addendum, like Paragraphs 5 and 6 of the original statement of facts, alleges that employer actions or inaction during the investigation violated the collective bargaining agreement and/or the employer's own rules. These allegations do not state any misconduct by the union, and the employer has never been named as a party in this proceeding. Even if the employer had been named as a respondent, the Commission does not assert jurisdiction to determine or remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW. City of Walla Walla, supra. To the extent that there is any allegation against the union, it is of a breach of the duty of fair representation of the type covered by Mukilteo School District, supra.

Paragraph 3 of the addendum indicates that Aldridge was exonerated by the employer, and was made whole for the time he was involved in the investigation. Crediting the employer with what he clearly believes was a wise decision does not, however, constitute a basis

to conclude that the union engaged in any conduct within the jurisdiction of the Commission.

Paragraph 4 of the addendum reiterates previous allegations regarding the union's past practices relating to input on grievances from its attorneys. One new allegation is that a letter written in 1994 by a former union attorney who is now chief of the Washington State Patrol indicated an inclination to pursue a grievance if the member involved were someone other than the complainant, but there are multiple reasons to conclude that no further proceedings are warranted on that allegation: First, this complaint filed in November of 1996 is clearly untimely, under RCW 41.56.160, regarding events which occurred in 1994; second, no purported basis for the alleged animus against Aldridge was asserted; third, no copy of the letter was submitted.

Paragraphs 5 and 6 of the addendum allege that advice furnished by the union's attorney "may be racially motivated".[6] Apart from the fact that this is a substantial shift of theories which may have been suggested by the deficiency notice issued in this case, the only support offered for these claims are entirely conclusionary. Aldridge now claims that Aitchison is more zealous in protecting the rights of white employees than black employees, based upon an alleged failure to pursue a claim on behalf of a black trooper who was under disciplinary investigation at some unspecified time,[7] and based an article in a union publication which described Aitchison's

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[6] Paragraph 1 of the addendum stated, but did not expand upon, the fact that Aldridge is African-American.

[7] It is alleged that another union attorney changed views about the existence of a violation after consulting with Aitchison, refused thereafter to pursue the matter or discuss it with the trooper, and referred the trooper's calls to Aitchison.

role in obtaining reversal of discipline imposed upon two white police officers for racist actions against a black family. In the absence of any factual allegations which suggest any direct application of racial considerations to this complainant, the allegation that Aitchison does not vindicate the rights of black and white employees with equal fervor are not sufficient to warrant a hearing.[8]

Paragraph 7 notes that the union was selected as exclusive bargaining representative of the trooper bargaining unit in 1987, and then continues with conclusionary allegations of abuse of the union membership by arbitrary and undemocratic actions of union officers. The choice of an exclusive bargaining representative is a right of bargaining unit employees under RCW 41.56.040, and bargaining unit employees retain a right to change representatives through proceedings under RCW 41.56.060 and .070, without having to demonstrate reasons for their dissatisfaction with an incumbent exclusive bargaining representative. Thus, such questions are not for the Commission (let alone for an employer) to decide, and the Commission does not have plenary jurisdiction to scrutinize the internal affairs of unions.

Paragraph 8 also appears to use terminology suggested by the deficiency notice issued in this case, in alleging that the union "invidiously" discriminated when it chose to pursue a grievance on behalf of a former board member while refusing to pursue the complainant's grievance about the investigation which followed the discharge of his service weapon. Again, however, the main focus is

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[8] An allegation that Aitchison became extremely upset when the complainant advised a union membership meeting that Aitchison is not a member of the Washington bar is tied directly to this complainant, but is not tied to the complainant's race.

on the grievant's belief that the investigation was improper and that his grievance is meritorious. Similarly, nearly all of the extensive materials supplied with the addendum concern the merits of the grievance. The complainant's disagreement with the union about the merits of his grievance falls squarely within the type of cases described in Mukilteo, supra.[9]

The one portion of the original complaint which remotely suggested the existence of a cause of action before the Commission was the vague suggestion that the union's handling of the grievance was somehow related to the complainant's exercise of rights within the union, including a campaign for union office and criticism of the union leadership. Those allegations were not fleshed out in the amendatory materials,[10] and are deemed to have been abandoned.

The Executive Director must act on the basis of what is contained within the four corners of a complaint, and is not at liberty to

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[9] Under Vaca v. Sipes, 386 U.S. 171 (1967) and its progeny, a union is obligated to make a good faith determination on the merits of grievances, but is not obligated to take up a grievance where it sees little chance of success on the merits. Disagreements between a union and its members about the merits of grievances can be presented to a court in proceedings initiated by an employee as third-party beneficiary to the collective bargaining agreement, and the court may waive the usual requirement for exhaustion of contractual remedies if it finds that the union breached its duty of fair representation. The court can then assert jurisdiction over the employer and the underlying contractual claim. Expenditure of substantial resources would leave complainants with empty victories, if the Commission were to act in such matters. The Commission would still not have jurisdiction to reach underlying contract claims.

[10] Nothing in the amendatory materials even suggests the unnamed union officer directly or indirectly took any action to frustrate processing of the complainant's grievance.

fill in gaps or make leaps of logic. It is not possible to conclude in this case that a cause of action exists. Neither the original complaint nor the amended complaint sets forth facts, as opposed to conclusions, which could establish that a violation of the statute has occurred.

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED.

DATED at Olympia, Washington, this 9th day of May, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.