

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
MARGOT H. SIMS,)	CASE 13553-U-97-3310
)	
Complainant,)	DECISION 6261 - EDUC
)	
vs.)	
)	
SEATTLE EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On November 20, 1997, Margot H. Sims filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Seattle Education Association had discriminated against her by failing to represent her interests. The complaint was reviewed under WAC 391-45-110, and a deficiency notice issued on January 23, 1998, informed the complainant of problems with the complaint, as filed. The complainant was given a period of 14 days in which to file and serve an amended complaint, or face dismissal of the case.

A document filed by the complainant on February 4, 1998, is now before the Executive Director under WAC 391-45-110.

Complaint is Untimely

The deficiency notice indicated that the complaint appeared to be untimely under RCW 41.56.160, which provides in part:

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

A complaint filed on November 20, 1997, can only be considered timely, on its face, as to actions which occurred on and after May 20, 1997. There is not allegation here that the violation of the complainant's rights was concealed from her. To the contrary, it clearly appears that Sims and the union had communications about the underlying "sabbatical leave" issue in 1996. The amendatory letter confirms that she was "embroiled in a new dispute" concerning a subsequent request for sabbatical leave, but saying that it would have been "impolitic" to file sooner does not negate the six month statute of limitations or explain away her tardiness in filing with the Commission.

No Jurisdiction Over Substantive Claim

Even if the complaint in this case was timely filed, it does not appear that the Commission has any jurisdiction in the matter. 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.

The Commission has consistently declined to 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). The Legislature could have made "violation of contract" an unfair labor practice subject to the jurisdiction of an administrative agency, as has been done in at least Oregon and Wisconsin, but it has not chosen to do so. Thus, the enforcement of collective bargaining agreements remains with the grievance and arbitration procedures set forth in the contract itself, or through the courts.

Similar constraints exist in the matter of the "duty of fair representation". The Supreme Court of the United States brought the courts into that arena in Vaca v. Sipes, 386 US 171 (1967), where it ruled that a cause of action exists in the courts for grievants who can establish that their union has breached its duty of fair representation in connection with the processing of a contractual grievance. Passing over the "fair representation" hurdle gives such a grievant access to a remedy in a court which can assert jurisdiction over the employer and the underlying collective bargaining agreement. The same authority does not exist before the Commission, however, and the Commission has long declined to 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). The Legislature could have made "breach of the duty of fair representation" an unfair labor practice subject to the jurisdiction of an administrative agency,¹ but has not chosen to do so. Thus, the jurisdiction in such matters remains with the courts.

NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, on the 15th day of April, 1998

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.

¹ The Commission polices its certifications, and asserts jurisdiction where a union is alleged to have breached its duty of fair representation by discrimination on unlawful grounds such as race, sex or union membership, but there are no such allegations here.