

City of Vancouver, Decisions 6358, 6359, 6360, 6361, 6362, and 6363
(PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF VANCOUVER,)	
)	
Employer.)	
-----)	
JEFF S. DIETZ,	)	CASE 13748-U-98-3368
Complainant,	)	DECISION 6358 - PECB
)	
JERROLD J. JENSEN,	)	CASE 13749-U-98-3369
Complainant,	)	DECISION 6359 - PECB
)	
DAVID B. HOLMES,	)	CASE 13750-U-98-3370
Complainant,	)	DECISION 6360 - PECB
)	
vs.)	
)	
INTERNATIONAL ASSOCIATION OF	)	ORDER OF DISMISSAL
FIRE FIGHTERS, LOCAL 452,)	
)	
Respondent.)	
)	
JEFF S. DIETZ,	)	CASE 13869-U-98-3304
Complainant,	)	DECISION 6361 - PECB
)	
JERROLD J. JENSEN,	)	CASE 13870-U-98-3305
Complainant,	)	DECISION 6362 - PECB
)	
DAVID B. HOLMES,	)	CASE 13871-U-98-3406
Complainant,	)	DECISION 6363 - PECB
)	
vs.)	
)	
CITY OF VANCOUVER,	)	ORDER OF DISMISSAL
)	
Respondent.)	
)	

On March 2, 1998, Jeff S. Dietz, Jerrold J. Jensen, and David B. Holmes each filed unfair labor practice complaints with the Commission under Chapter 391-45 WAC, each setting forth the same

statement of facts. The complainants are identified as fire fighters who are employed by the City of Vancouver, Washington, (employer) within a bargaining unit represented by International Association of Fire Fighters, Local 452 (union).¹

The complaints were initially understood as alleging misconduct on the part of the union and, consistent with long-standing procedures under the Commission's computerized case docketing system, one case number was assigned for each individual employee. Upon closer examination, it was realized that each employee was also seeking remedies against the employer. Three additional case numbers were then assigned for the charges against the employer.

The allegations concern actions of the employer and union in signing a letter of agreement which names these complainants, and states that they must obtain EMT-B certification on or before December 31, 1999. The letter of agreement was allegedly not shown to the affected employees prior to the time when the union membership voted to accept a new collective bargaining agreement for the period from February 1, 1998 through December 31, 2000. The complainants identify what they believe to be conflicts between the letter of agreement and Article 15 of the collective bargaining agreement. In particular, they complain that the letter of agreement subjects them to discharge without resort to the grievance procedure and "just cause", if they do not obtain EMT-B certification within the required time frame.

¹ The statements of facts begin with: "Complainants are **four** City of Vancouver firefighters..." [emphasis by **bold** supplied], but the Commission has neither a complaint nor even a name from a fourth individual.

These cases were considered together by the Executive Director under WAC 391-45-110, and a deficiency notice issued for all six cases on April 28, 1998, pointed out several problems with the complaints, as filed.² The complainants were given a period of 14 days in which to file and serve amended complaints which stated a cause of action, or face dismissal of the cases for failure to state a cause of action. Nothing further has been heard or received from the complainants.

Absence of "Discrimination" Allegations

There is no indication or allegation in these complaints that the challenged agreement discriminates on the basis of union membership, which would constitute a discrimination violation under RCW 41.56.140(1) and/or RCW 41.56.150(1) and (2). Nor is there any suggestion that the challenged agreement discriminates on some other invidious basis (e.g., race, sex, creed, national origin or similar grounds), which would call into question the right of the union to enjoy the benefits of status as an exclusive bargaining representative under the state collective bargaining law.

Commission Does Not Enforce Union Procedures

To the extent that the complainants are alleging some violation of the union's constitution or bylaws, they fail to state a cause of action for proceedings before the Commission. Chapter 41.56 RCW does not impose any requirement for membership ratification of the

² 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 the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

contracts negotiated by unions under the Public Employees' Collective Bargaining Act. See, Naches Valley School District, Decision 2516 (EDUC, 1986). The constitution and bylaws of a union are the contract among its members for how the affairs of the organization are to be conducted. As with other contractual rights, relief for violations must come through the procedures established within the union documents themselves, or through the courts.

Commission Does Not Resolve Contractual Disputes

To the extent that the complainants are alleging either a violation of the collective bargaining agreement covering their employment or seek resolution of the claimed conflict between the letter of agreement and the collective bargaining agreement, they fail to state a cause of action for proceedings before the Commission. It is well-established that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). Such matters must be pursued through the grievance and arbitration machinery of the contract itself, or through the courts.

Closely related to the absence of "violation of contract" jurisdiction, but equally well-established, is the principle that the 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 through the courts, which can assert jurisdiction over the underlying contractual dispute.

NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, this 15th day of July, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARWIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed to the Commission pursuant to WAC 391-45-350.