

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF BREMERTON, Employer.)	
LOWELL CASTLE, Complainant, vs. TEAMSTERS UNION, LOCAL 589, Respondent.)	CASE NO. 5333-U-84-963 DECISION NO. 1935 - PECB PRELIMINARY RULING

On June 27, 1984, Lowell Castle (complainant) filed a complaint charging unfair labor practices against Teamsters Union, Local 589 (respondent), alleging that respondent violated RCW 41.56.150(1). The matter is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is presumed that all of the facts alleged in the complaint are true and provable. The issue presented is whether the facts presented constitute a cause of action within the meaning of Chapter 41.56 RCW.

The complaint was not accompanied by a statement of facts specifying particular events from which the unfair labor practice allegations arose. Instead, complainant submitted a series of correspondence to provide background for the charges made. The correspondence indicates that Castle was employed by the City of Bremerton as a well driller. Apparently, complainant had several disagreements with the city regarding the condition and operation of several wells in the Bremerton area. In addition, Castle had a dispute involving his city-provided housing at one of the well locations. Castle alleges that he approached his bargaining representative, Teamsters Union, Local 589, to assist him in the housing dispute. The correspondence indicates that complainant was not satisfied with the assistance offered to him by respondent, but does not reflect the final disposition of that matter. On November 30, 1983, complainant received a letter from the city's water superintendent, informing him that the city was going to eliminate the well driller position effective January 1, 1984. The letter detailed the change as being due to expenditure reductions, the civil service processes available in a lay off situation, and encouraged Castle to

contact the city personnel director if he had any questions. The next correspondence enclosed with the complaint is a letter from Castle to Teamsters Union, Local 589, dated April 16, 1984, in which complainant requested the union to assist Castle with a dispute regarding "sick pay" accumulated under terms of a collective bargaining agreement between respondent and the city. According to the contract in effect at the time, a retiree could receive 35% of accumulated sick leave, up to a maximum of 120 days, upon retirement from service with the city. Castle maintained that the city "retired" him from well drilling by "not funding the well drilling program for 1984." On April 26, 1984, the union sent a letter to Castle stating that the problem was the complainant's refusal to accept that he had been laid off by the city, and was not eligible for retirement pay. The letter went on to detail steps taken by the union on Castle's behalf, and concluded that the city had properly followed civil service procedures in complainant's layoff. Another of the documents submitted is an undated letter written by Castle to the union, reiterating his position that the city's termination of well drilling services was illegal and that his dismissal must be considered to be a "retirement." Complainant went on to request representation from respondent to secure the compensation he sought. Castle also mentioned previous difficulties he had with the city regarding housing and bookkeeping responsibilities. In that discussion, Castle alludes to a refusal by the union to help him in his efforts to correct the situation. However, those incidents seem to have occurred in calendar years 1982 and 1983, and are well beyond the six-month statute of limitations on unfair labor practices. RCW 41.56.160.

It is apparent that complainant and respondent have a disagreement whether Castle was laid off or "retired" by the City of Bremerton. At no point does Castle allege that the city committed any unfair labor practice. As to the union, it appears that the facts, as presented, could be characterized as claiming a breach of duty of fair representation.

Elma School District, Decision 1349 (PECB, 1982) involved allegations of discrimination against a grievant because of her previous support of another labor organization. A breach of duty of fair representation violation of the nature alleged in Elma would place in question the right of the organization involved to continue to enjoy the status and benefits conferred by the statute on an exclusive bargaining representative. There is no allegation here of any discriminatory treatment of the complainant by his union. The complainant and the union appear to disagree about what benefits are available to the complainant under the terms of the contract. In Mukilteo School District, Decision 1381 (PECB, 1982), and in several subsequent cases, the Commission has declined to assert jurisdiction in cases where an alleged breach of the duty of fair representation arises exclusively from the processing of a claim arising under an existing collective bargaining

agreement. Such matters must be pursued in a civil suit filed in a Superior Court that has jurisdiction over the employer accused of violating the collective bargaining agreement. This case appears to fall within the class governed by the Mukilteo case. The documents submitted do not mention that a grievance had ever been filed on the retirement pay-off issue. Respondent may or may not have breached its duty of fair representation, but that would merely be a threshold issue, as set forth in the Mukilteo case, to be raised in a court of law. The allegations do not constitute an unfair practice that can be remedied through proceedings before the Public Employment Relations Commission.

With the direction herein provided, complainant may be better able to amend the complaint to focus attention on claims within the Commission's jurisdiction.

NOW, THEREFORE it is

ORDERED

The complaint will be allowed a period of fourteen (14) days following the date of the Order to amend the complaint. In the absence of amendment the complaint will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 28th day of September, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director