STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE,	)	
	)	
NIGEL KEIFFER,	)	
Complainant,	)	CASE 7292-U-88-1501
vs.	)	DECISION 3199 - PECB
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,	)	PRELIMINARY RULING AND ORDER ON PROPOSED AMENDED COMPLAINT
Respondent.	)	

The complaint in this matter was not filed on the form provided by the Commission. The opening paragraph of the document filed on March 3, 1988 stated:

> In accordance with the National Labor Relations Act [sic] please consider this as a formal complaint of Unfair Labor Practices against the Business Manager of Local 17, IFPTE, Mike Waske and Business Representative Wayman Alston and Local 17, hereinafter referred to as the Union, for breach of duty to provide fair representation, negligence, discrimination, unfair and invidious actions against me (a shop steward). The union has also participated and collaborated with the City of Seattle's Dept. of Administrative Services in its efforts to discredit, harass and retaliate against this shop steward.
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> . . .
>
> I allege that the union has violated the city's personnel rules . . .
> **(emphasis supplied)**

The complaint and an amendment filed in July of 1988 were reviewed by the Executive Director for purposes of making a preliminary ruling pursuant to WAC 391-45-110, and a letter was directed to Mr. Keiffer on September 13, 1988, pointing out numerous defects in the complaint. The complainant was given a period of time in which to cure the defects, or face dismissal of substantial portions of the complaint.

Mr. Keiffer submitted a package of materials on September 30, 1988, and those materials were reviewed under WAC 391-45-110. In a letter issued on October 28, 1988, only a very narrow range of issues was assigned to an Examiner for further proceedings. Specifically, the only allegations which were found to state a cause of action were against the union, and then only for interference or discrimination (described collectively as "retaliation" in the letter) against the complainant for seeking an employment-related office in competition with a union official.

No cause of action had been identified up to that point against the City of Seattle, and the employer was under no obligation to file an answer or defend in this case.[1]

A document filed by Mr. Keiffer on March 20, 1989, seeks modification of the preliminary ruling and inclusion of the

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[1] Each and every case before the Public Employment Relations Commission must arise out of an "employment" relationship. Accordingly, the docketing system used by the Commission requires that the name of the employer be recorded in each case, even though the employer may not be an active participant in the proceedings. Thus, the name of the City of Seattle necessarily appears on the docket records for this case.

City of Seattle as a respondent. The Examiner has thus referred the case back to the Executive Director for further review under WAC 391-45-110, as well as for clarification of the precise issues which have been assigned to the Examiner for further proceedings under Chapter 391-45 WAC.

Under a heading of "Causes of Action", the complainant again relies on the National Labor Relations Act, the Seattle Municipal Code, the Railway Labor Act, the Landrum-Griffin Act, the union constitution and the collective bargaining agreement between the employer and the union, notwithstanding advice to him in the September 13, 1988 preliminary ruling letter that the jurisdiction of the Commission is limited to the administration of Chapter 41.56 RCW. The complainant has not set forth any additional facts which suggest the existence of causes of action in addition to the "retaliation against the complainant for seeking an employment-related office in competition with incumbent union officials" topic that has already been assigned to the Examiner for hearing.

"PERC Jurisdiction"

Under a heading of "PERC Jurisdiction", the complainant cites Commission precedent for the evident purpose of having the agency process his "violation of contract" and/or "breach of duty of fair representation concerning a grievance" theories in this case.

It has been consistently held since City of Walla Walla, Decision 104 (PECB, 1976), 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. Grievance arbitration is permitted by RCW 41.56.122, is endorsed by the Legislature in

RCW 41.58.020, and is made available to the parties without charge in RCW 41.56.125. In pursuit of that policy, the Commission reviewed and restated its "deferral to arbitration" policies in Stevens County, Decision 2602 (PECB, 1987), thus reinforcing the idea that the Commission will avoid making "violation of contract" determinations, except as a last resort, in "unilateral change" unfair labor practice cases.[2]

The empty victory achieved by an employee in one of the cases cited by the complainant here, City of Redmond, Decision 886 (PECB, 1980), was at least in part the basis for the decision in Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), wherein it was concluded that the Commission would no longer assert jurisdiction over "fair representation" claims arising exclusively out of the processing of a contract grievance. If the union has breached its duty of fair representation in connection with the processing of the complainant's grievances, the complainant's remedy would have to come through the courts, in a lawsuit against the employer in which the complainant claims standing as third-party beneficiary to the contract in light of union misconduct.

The Commission does have authority to police its certifications, and a union that discriminates against a bargaining unit employee because of the employee's exercise of protected activity would both: (1) Subject the union to a remedial order favoring the complainant employee, and (2) place in question the right of the union to continue to hold status as exclusive bargaining representative of employees under the

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[2] It must be noted, in passing, that an individual complainant does not have standing to file or pursue a "unilateral change / refusal to bargain" unfair labor practice case. Grant County, Decision 2703 (PECB, 1987).

statute. The complainant can go forward with the "retaliation against the complainant for seeking an employment-related office in competition with incumbent union officials" topic that has already been assigned to the Examiner for hearing in this case.

"Statute of Limitations"

Under a heading of "Statute of Limitations", the complainant urges that evidence should be taken on a variety of matters that occurred more than six months prior to the filing of the complaint.

Background evidence is admissible if it is relevant and material to causes of action which are properly before the Commission, but cannot itself be the basis for finding a violation or making a remedial order. The Examiner will proceed accordingly, on the "retaliation against the complainant for seeking an employment-related office in competition with incumbent union officials" topic that has already been assigned to the Examiner for hearing.

"Restatement of Issues"

I. Under a heading of "Restatement of Issues", the complainant now alleges mis-conduct by the City of Seattle:

DISCRIMINATION

1. A denial of vacation requests which occurred in November of 1987. The matter appears to be a contract violation over which the Commission would not assert jurisdiction.

2. A belittling and insulting of the complainant by management in December of 1987 and January of 1989. These matters appear to be contract violations over which the Commission would not assert jurisdiction.

3. An omission of leniency and "sunset options" towards the complainant. The matter appears to be a contract violation over which the Commission would not assert jurisdiction.

4. An editing and delay of the complainant's work that did not occur to female employees. The matter appears to be a sex discrimination matter over which the Commission would not assert jurisdiction.

5. A disregard of the complainant's harassment and retaliation allegations. The matter appears to be a sex discrimination matter or a contract violation, either of which would be outside the jurisdiction of the Commission.

6. A discharge for "incompetence" while others were not reprimanded for mismanagement and failure to follow procedures. In the absence of any claim of union animus on the part of the employer, the allegation fails to state a cause of action.

BIAS, ULTERIOR MOTIVE AND ANIMUS

1. A bias against the complainant by a supervisor who is a female, in reprisal for a reverse-discrimination lawsuit filed by the complainant. In the absence of any claim of union animus on the part of the employer, animus based upon filing or pursuit of other types of "discrimination" charges is not a matter which states a cause of action before the Commission. Extensive litigation of unfair labor practice charges filed by Local 17 on behalf of certain City of Seattle

employees who claimed that they had been discriminated against for filing a sex discrimination claim recently resulted in an Examiner's decision concluding that such discrimination, standing alone, is not subject to a remedy before the Commission. City of Seattle, Decision 3066 (PECB, 1989).

2. An allegation that a department head stated "I'm not afraid of the Union" refers to a document dated in 1986, and so is beyond the statute of limitations.

3. An allegation of protected union activity followed by reprimands refers to documents which were written in February and April of 1988, but were first filed with the Commission in March of 1989. Unless this allegation was previously brought forth in a timely manner, it is barred at this late date by the statute of limitations.

4. An allegation of a harassing memo (shortly after return from funeral leave) also refers to documents which were first filed with the Commission in March of 1989. Unless this allegation was previously brought forth in a timely manner, it is barred at this late date by the statute of limitations.

5. An allegation concerning the service of a discharge letter and related civil service proceedings does not set forth facts sufficient to state a cause of action before the Commission.

RETALIATION

1. An allegation of "disappearance of support from Local 17" following the filing of a reverse-discrimination suit in 1986 is barred by the statute of limitations.

2. An allegation of poor investigation following a threat made against the complainant refers to documents which were first filed with the Commission in March of 1989. Unless this allegation was previously brought forth in a timely manner, it is barred at this late date by the statute of limitations.

3. An allegation of employer interference with a campaign for a seat on the civil service body does not state a cause of action under the collective bargaining law.

4. An allegation of pressure to drop an ethics complaint enforced by a reprimand occurred in January of 1988, but is apparently only recently called to the attention of the Commission. It is barred by the statute of limitations.

5. An allegation of reprisals for presenting issues to the City Council (apparently as an individual) in February of 1988 is barred by the statute of limitations. Additionally, without more details, it is not possible to conclude that this was an activity protected by the collective bargaining law.

6. An allegation of reprisals for filing a civil service complaint in February of 1988 is barred by the statute of limitations. Additionally, without more details, it is not possible to conclude that this was an activity protected by the collective bargaining law.

7. An allegation of reprisals against a subordinate for the complainant's filing of unfair labor practice charges relates to an incident which occurred in March of 1988. The claim is barred by the statute of limitations. Additionally, it is not evident how the individual complainant in this case

would have standing to assert rights on behalf of another individual employee.

8. An allegation of a reprimand issued on April 8, 1988 without investigation is barred by the statute of limitations.

9. A claim of failure of the employer to investigate sex discrimination claims in April and May of 1988 would not state a cause of action before this Commission in any case, and would also be barred by the statute of limitations.

10. Advice to the complainant that a meeting held in May of 1988 could lead to discipline is barred by the statute of limitations.

11. The fact that four individuals were parties to an investigation during or about May of 1988 is barred by the statute of limitations.

12. The termination of the complainant from employment in June of 1988 is beyond the statute of limitations.

REPRISAL BASED ON PERSONAL BIAS OF PARTIES

1. Allegations concerning investigations connected with the complainant's discipline of two other employees are beyond the statute of limitations.

II. Under a heading of "Restatement of Issues", the complainant now alleges mis-conduct by the union:

DEMONSTRATED INCONSISTENT AND DIFFERENTIAL TREATMENT

1. To the extent that the complainant alleges that the union withheld assistance or legal representation for the complainant in reprisal for his running for a seat on the civil service body in competition with the union business manager, that issue is already before the Examiner. To the extent that the union has otherwise been inconsistent in its processing of grievances, the allegation is of a type over which the Commission declines to assert jurisdiction under Mukilteo School District, supra.

BIAS, ULTERIOR MOTIVE AND ANIMUS

1. An allegation of disparate grievance handling based upon the sex of the grievants involved evidently relates to events that occurred while the grievant was an employee of the City of Seattle, or more than six months ago. Unless the complainant can demonstrate where this allegation was previously brought forth in a timely manner, it is barred at this late date by the statute of limitations.

2. The allegation that the union "acknowledged" the candidacy of its official but "ignored" the candidacy of the complainant does not appear to relate to the complainant's wages, hours or working conditions, and so does not appear to state a cause of action for unfair labor practice proceedings before the Commission. The cause of action which has been found to exist in this case is on a different point, i.e., that the union refused to process or mis-handled the complainant's grievances (concerning his wages, hours and working conditions) in reprisal for the complainant's candidacy.

3. A threat made by another union shop steward in December of 1987 is now barred by the statute of limitations.

4. The allegation that the union "acknowledged" the employer's "animus" against the complainant does not appear to set forth any misconduct on the part of the union.

REPRISAL FOR ENGAGING IN PROTECTED ACTIVITY

1. Allegations that the complainant was improperly removed from office as a union steward were previously found insufficient to state a cause of action, and that conclusion has not been changed by their restatement.

COMPLAINTS OF HARASSMENT AND RETALIATION

1. To the extent that the complainant alleges that the union's failure to investigate numerous complaints filed by the complainant was in reprisal for his running for a seat on the civil service body in competition with the union business manager, that issue is already before the Examiner. To the extent that the union has merely been lax in its processing of grievances, the allegation is of a type over which the Commission declines to assert jurisdiction under Mukilteo School District, supra.

FAILURE TO PROCESS GRIEVANCES

1. AND 2. To the extent that the complainant alleges that the union's failure to investigate numerous complaints filed by the complainant was in reprisal for his running for a seat on the civil service body in competition with the union business manager, that issue is already before the Examiner.

3. AND 4. In the context of the foregoing, allegations that the complainant was denied union assistance on grievances concerning a written warning and a discharge occurring after the filing of the unfair labor practice complaint would clearly state a cause of action if they were timely filed. They are, however, brought to the attention of the Commission for the first time more than six months after the events complained of, and so are barred by the statute of limitations.

5. AND 6. Allegations that the union refused to process grievances in July of 1988 are both untimely and fail to state a cause of action under Mukilteo School District, supra.

NOW, THEREFORE, it is

ORDERED

1. The complaint does not state a cause of action, and is DISMISSED, as to the City of Seattle.

2. The complaint states a cause of action against the union for retaliation against the complainant for seeking employment-related office in competition with a union official, and is re-referred to Examiner Rex L. Lacy.

3. Except as specified in paragraph 2 of this order, the allegations against the union are DISMISSED.

Dated at Olympia, Washington, the 25th day of April, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director