

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	)	
	)	
Employer.	)	
_____	)	
JOHN R. MROZ,	)	CASE 7650-U-88-1607
Complainant,	)	
vs.	)	DECISION 3245 - PECB
SERVICE EMPLOYEES INTERNATIONAL	)	
UNION, LOCAL 6,	)	ORDER DENYING MOTION
Respondent.	)	FOR SUMMARY JUDGMENT
_____	)	

Laura Rasset, Labor Relations Specialist, appeared for the employer.

Abelite & Gallagher, by J. Michael Gallagher, Attorney at Law, appeared for the complainant.

Hafer, Price and Rinehart, by John Burns, Attorney at Law, appeared for the respondent.

On October 31, 1988, John R. Mroz filed a complaint with the Public Employment Relations Commission, alleging that his employer, King County, and his exclusive bargaining representative, Service Employees International Union, Local 6, had committed unfair labor practices in violation of Chapter 41.56 RCW. Consistent with the Commission's practice of assigning a separate case number to each individual complainant and to each individual respondent, two separate cases were docketed: Case 7650-U-88-1607 involves the allegations against the union; Case 7651-U-88-1698 involves the allegations against the employer.

On December 12, 1988, the Executive Director of the Public Employment Relations Commission sent a letter to Mroz, requesting a brief outline of the allegation(s) against the union and the employer. On December 23, 1988, Attorney J. Michael Gallagher entered an appearance on behalf of Mroz and filed a clarification of the unfair labor practice charges.

On January 18, 1989, the Executive Director advised counsel for the complainant that the original complaint and supplementary documents left the Commission in doubt as to the factual allegations which would be presented in any hearing on these cases. In that letter the Executive Director made the statements:

You have clarified that the basic nature of the complaint is that the employer and union have tolerated or conspired to maintain a bargaining relationship in which the inclusion of "supervisors and other management personnel" in the same bargaining unit with their subordinates has resulted in conflicts of interest and prejudice to the bargaining rights of rank-and-file employees. The possibility of such a conflict has long been recognized by the commission, and was the basis for an order in City of Richland, Decision 279-A (PECB, 1978) aff. 29 Wa.App 599 (Division III, 1981), pet. rev. den. 96 Wa.2d 1004 (1981), excluding supervisors from a bargaining unit.

The complainant was directed to file an amended complaint within 14 days.

On February 1, 1989, the complainant requested an extension of the time for filing an amended complaint, because of inclement weather. The extension was granted.

On February 7, 1989, the complainant submitted an amended complaint containing the following statement:

Thus, an actual conflict of interest, unfair labor practice and breach of the duty of fair representation exists: the union advises the employer that adverse action is appropriate and then attempts to represent the employee against whom the adverse action is taken in a grievance filed by that employee.

Based upon the amended complainant, the Executive Director issued a preliminary ruling on February 28, 1989. The Executive Director therein limited the allegations which state a cause of action to:

The actions of the employer and union to maintain a bargaining relationship in a mixed unit of supervisors and rank-and-file employees resulting in prejudice to the rights of the complainant due to conflicts of interest within the bargaining unit.

the complaint does not state a cause of action concerning, and the commission will not determine the merits of, the complainant's underlying grievance concerning use of a tape recorder on the job.

A hearing has been scheduled in this matter for July 17 and 18, 1989, in the King County Administrative Building. Pursuant to notice of that hearing, the union filed an answer to the amended complaint on April 20, 1989.

On May 31, 1989, the union filed a motion for summary judgment in which it alleges that the Commission does not have jurisdiction in the above-entitled matter. It argues that the Commission has consistently held that complaints charging a breach of the duty of fair representation do not state a cause of action that is within the jurisdiction of the Commission. The union cites Othello School District, Decision 3037 (PECB, 1988), as the most recent statement by the Commission on this subject. The union requests that a summary judgment be granted, and that the union be dismissed from the case.

On June 9, 1989, the union filed a supplemental motion for dismissal of the unfair labor practices complaint. It therein acknowledged that the issue of "fair representation" had been eliminated from the case by the Executive Director's preliminary ruling. The union states that the only issue remaining concerns the appropriateness of the existing bargaining unit, and it now moves for dismissal on the basis that the statutes delineating unfair labor practices, RCW 41.56.140 and 41.56.150, do not provide for the determination of appropriate bargaining units or for the splitting up of existing bargaining units. Further, the union argues that the complainant did not follow the procedures under Title 391 WAC or RCW 41.56.060 regarding the determination of an appropriate bargaining unit, and that there can be no issue remaining to be litigated between the parties in these cases.

#### DISCUSSION

On the allegation(s) remaining at issue in this case, the complainant has charged that a conflict of interest is present in the administration of the collective bargaining agreement by the employer and the union, as a result of the composition of the bargaining unit. It is the joint participation of the employer and union in maintaining that relationship that led to the docketing of cases naming both the employer and the union as respondents.

The alleged conflict of interest was also the basis for the preliminary ruling issued by the Executive Director. Under the standards for preliminary rulings, where all of the facts alleged in the complaint are assumed to be true and provable, the existence of a mixed bargaining unit of supervisors and rank-and-file employees poses a fact pattern in which a conflict of interest could exist. City of Richland, supra. The "investigatory" and/or "non-adversarial" unit clarification procedures of Chapter 391-35 WAC are not available to an individual employee:

WAC 391-35-010 PETITION FOR CLARIFICATION OF AN EXISTING BARGAINING UNIT -- WHO MAY FILE. In the absence of a question concerning representation, a petition for clarification of an existing bargaining unit may be filed by the employer, the exclusive representative or their agents, or by the parties jointly.

Yet, an individual employee whose collective bargaining rights are prejudiced as the indirect result of an agreement between an employer and union is entitled to a remedy, just as would be an employee whose rights were prejudiced by direct collusion or discrimination. Thus, an employee who believes that his or her collective bargaining rights have been interfered with or prejudiced because of a unit composition maintained by an employer and union has recourse by filing unfair labor practice charges against the parties to the burdensome agreement.<sup>1</sup>

NOW, THEREFORE, it is

ORDERED

The motion of Service Employees International Union, Local 6, for summary judgment is denied.

Issued at Olympia, Washington, the 7th day of July, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
WALTER M. STUTEVILLE, Examiner

<sup>1</sup>

The Othello School District decision relied upon by the union at an earlier stage of this proceeding was issued in a case where an individual employee complained of having been excluded from a bargaining unit (and thus from seniority rights which would have guaranteed job opportunities) by an unlawful agreement of the employer and the exclusive bargaining representative of the unit. Although the case was later dismissed on the merits, a cause of action was found to exist at the preliminary ruling level. The same principles apply here.