STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA SCHOOL DISTRICT, Employer.	)	
ALEATHA HARRIS, Complainant, vs. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 286, Respondent.	)	CASE 12017-U-95-2821 DECISION 5337 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed with the Commission in the above-captioned matter on September 6, 1995. Aleatha Harris identified herself as an employee of the Tacoma School District, and alleged that her exclusive bargaining representative, International Union of Operating Engineers, Local 286, interfered with her rights as an employee and committed "other unfair labor practices". The Tacoma School District was not named as a respondent in the complaint.

A preliminary ruling letter issued on October 6, 1995, pursuant to WAC 391-45-110,[1] notified the parties of certain problems which precluded processing of the complaint as filed. A response filed by Harris on October 16, 1995, in which she sought to "restate" her concerns, is taken to be an amendment to her original complaint.

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[1] 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, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Procedural Defects

The document filed on October 16, 1995 appears to have cured some procedural defects noted in the preliminary ruling letter. Thus:

* Where the original complaint was accompanied by a number of letters and other correspondence, Harris has now provided a "clear and concise statement of facts", as required by WAC 391-45-050(3).

* Where the original complaint lacked indication of the remedy requested, Harris has now stated what remedy she is requesting.

At the same time, the October 16, 1995 letter may have created a new procedural defect: Where the complainant might be given the benefit of the doubt about service of the original complaint,[2] the document filed on October 16, 1995 contains no indication that a copy has been served on the union. Since service on other parties is required by WAC 391-08-120 for all documents, and since the preliminary ruling letter called upon Harris to "file and serve" a response, a failure to serve the union would be a fatal defect.

Jurisdiction of the Commission

Race and Sex Discrimination -

In her "restatement", Harris charges that she was disciplined by her employer based upon racial and sex discrimination.[3] The enforcement of the state law against discrimination, Chapter 49.60 RCW, and state jurisdiction over complaints of discrimination on the basis of race or sex, lies with the Washington State Human

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[2] The original complaint was filed on a Commission-promulgated form which specifically requires service of a copy on the other party or parties to the dispute.

[3] The complaint in this case did not name the employer as a respondent, so there would be no basis to proceed against the employer on any claims or issues.

Rights Commission. The Public Employment Relations Commission has no direct jurisdiction in such matters. City of Seattle, Decision 205 (PECB, 1977).

Duty of Fair Representation -

Harris goes on to allege that the union business agent, Jim Wrenn, filed charges based only upon age discrimination, and that he refused to change the complaint when she brought the error to his attention. Therefore, she alleges that the union did not fully represent her.

A union owes a "duty of fair representation" to the employees in a bargaining unit for which it is the exclusive bargaining representative, but that duty relates to the collective bargaining process. The filing and processing of discrimination charges under some other statute is outside of the realm of the collective bargaining process, and outside of the union's duty of fair representation. Pateros School District, Decision 3744 (EDUC, 1991).

Employer Domination of Union

Harris alleges, generally, that the failure to represent her is the result of Wrenn being both a part-time business agent for the union and a full-time custodian for the Tacoma School District. Although she alleges the existence of a "conflict of interest" no other facts are set forth in support of that allegation.

It is well-established under both federal and state law that it is unlawful for an employer to control or dominate a labor organization, or to contribute financial support to it.[4] As noted above, however, this complainant has not filed charges against her employer. The case could only be directed at the union's accep-

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[4] See: Section 8(a)(2) of the federal National Labor Relations Act, RCW 41.56.140(2), and Washington State Patrol, Decision 2900 (PECB, 1988).

tance of unlawful financial support or other assistance, as an interference with employee rights under RCW 41.56.150(1).

No case is cited or found which holds that a union is prohibited from using a bargaining unit member to act as its agent in representing other members of the same bargaining unit. Indeed, many unions rely heavily, if not exclusively, on stewards and officers who are also employees of the employer with which the union is negotiating and administering contracts. The simple fact that Wrenn is both a union official and a school district custodian is not sufficient to warrant a hearing.

Harris has not provided factual allegations concerning any actual involvement by the employer in internal union affairs. Although Harris variously titles Wrenn as a "full time custodian" and a "chief custodian", there is no indication that he was her supervisor while she worked part-time at another school. The facts in the complaint are thus insufficient to form the conclusion that an unfair labor practice violation could be found.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in this matter is DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 31st day of October, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director