Bremerton School District, Decision 5722-A (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BREMERTON SCHOOL DISTRICT, Employer.	
ARTHUR R. PETIT, Complainant, vs. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 114, Respondent.	CASE 12682-U-96-3031 DECISION 5723-A - PECB
ARTHUR R. PETIT, Complainant, vs. BREMERTON SCHOOL DISTRICT, Respondent.	CASE 12681-U-96-3030) DECISION 5722-A - PECB DECISION OF COMMISSION

This case comes before the Commission on a petition for review filed by the complainant, seeking to overturn an order of dismissal issued by Executive Director Marvin L. Schurke under the preliminary ruling procedure of WAC 391-45-110.[1]

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[1] Bremerton. School District, Decisions 5722 and 5723 (PECB, 1996).

BACKGROUND

Bremerton School District (employer) and Service Employees International Union, Local 114 (union), were parties to a collective bargaining agreement in effect from September 1, 1992 through August 31, 1995, covering employees in the areas of transportation, maintenance, food services, custodial services, campus security, print shop and warehouse. The complaint identifies Arthur Petit as a custodian employed by the employer within that bargaining unit.

In a complaint charging unfair labor practices filed with the Commission on September 3, 1996, under RCW 41.56.140 and RCW 41.56.150, Petit alleged that the union breached its duty of fair representation, and that the union and employer have collusively violated the collective bargaining agreement and discriminated against the complainant for his union activities. Separate cases were docketed for the allegations against the employer (Case 12681-U-96-3031) and for those against the union (Case 126B2-U-96-3032).

The complainant alleged the following sequence of events:

(1) On May 29, 1996, pursuant to Article XIV, Section C of the collective bargaining agreement, Petit filed a formal grievance protesting the employer's failure to interview him for a promotion. The grievance related to discrimination for union activity, and violation of seniority provisions of the collective bargaining agreement.

(2) The employer denied the grievance on June 12, 1996.

(3) Petit immediately informed the union president that he wanted the matter arbitrated, pursuant to Article XIV, Section C of the collective bargaining agreement.

(4) The union president and the superintendent of schools did not meet to select an arbitrator within 10 days after failing to resolve the grievance, as required by Article XIV, Section (1) of the collective bargaining agreement.

(5) More than 60 days have passed and the union president and superintendent of schools have not acted.

On September 24, 1996, Executive Director Marvin L. Schurke notified the complainant of deficiencies in the complaint.[2] The Executive Director noted 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, and that it does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. The complainant was allowed 14 days to file and serve an amended complaint, and was advised that the cases would be dismissed in the absence of a timely amendment which stated a cause of action.

On October 8, 1996, the complainant filed amended complaints, which included a more detailed statement of facts and pertinent appendices. The case was considered again by the Executive Director under WAC 391-45-110. Finding that the amended complaint did not alter the fundamental nature of the complainant's claims, the Executive Director dismissed both complaints on October 31, 1996 for failure to state a cause of action.

On November 20, 1996, the complainant filed a petition for review and requested additional time to file written argument.[3] By letter dated November 21, 1996, the Executive Director advised the

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[2] Under WAC 391-45-110, all of the facts alleged in a complaint charging unfair labor practices 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 Commission.

[3] Under WAC 391-45-350, a petition for review must have attached to it any brief which the party filing the appeal desires to have considered by the Commission. Other parties to the proceeding have 14 days following the date on which they are served with a copy of the petition for review to file a responsive brief. The Executive Director may grant any party an extension of time for filing of its brief or written argument.

parties that the brief in support of the petition for review was due November 27, 1996. Nothing further has been received from any of the parties to this case.

DISCUSSION

We have thoroughly reviewed the record, including the amendatory materials filed on October 8, 1996, and find the allegations insufficient to state a cause of action under Chapter 41.56 RCW.

The Violation of Contract Claims

The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla. Decision 104 (PECB, 1976).

In the case at hand, the complainant alleges the union president and the school's representative acted in collusion in failing to resolve a grievance and failing to take a grievance to arbitration, as he claims they were required to do by Article XIV, Section (1) of the collective bargaining agreement. These are "violation of contract" claims which do not state a cause of action.

Duty of Fair Representation Claims

The Commission does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). That policy is closely related to the lack of jurisdiction to remedy underlying contract violations which are generally the primary focus of the employees in such situations.

In the case before us, the complainant seeks redress against the union for collusion with the employer, but that alleged collusion is in failing to resolve a grievance and failing to take the grievance to arbitration. A union owes a duty of fair representation to the employees it represents in a manner that is not arbitrary, discriminatory or in bad faith. Vaca v. Sipes, 386 U.S. 171 (1967). An employee who has been denied access to arbitration due to a union's breach of its duty of fair representation may have a cause of action in the courts, as a third-party beneficiary to

the collective bargaining agreement, and the courts are equipped to rule on "fair representation" and "exhaustion of contract remedies" issues, as well as to remedy any underlying contract violation. See, Seattle School District, Decision 4917-A (EDUC, 1995).

Discrimination for Union Activity Claim

The complainant takes issue with the Executive Director's finding that the allegations are insufficient to support a claim of "discrimination for union activity". The statement of facts attached to the amended complaint included an allegation that the grievance filed on May 28, 1996 alleged discrimination for union activity, as well as violation of seniority provisions of the working collective bargaining agreement. The Executive Director dismissed the "discrimination" claim, however, based on the failure of the complainant to provide "clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences", as required by WAC 391-45-050(2). RCW 41.56.140(1) and RCW 41.56.150(1) enumerate how an employer and a union might discriminate against an individual. We find nothing in the complainant's allegations that indicate when or how the employee was involved in union activity or exercised his rights "guaranteed by this chapter". We also find nothing in the complainant's allegations that indicate specifically how the employer may have discriminated against him. Thus, even accepting that the grievance may have alleged "discrimination for union activity", no detailed facts are alleged which actually equate the failure of the employer to interview the complainant with any exercise of his rights under the collective bargaining law. We are unable to determine from the material provided that a cause of action would exist for discrimination.

NOW, THEREFORE, it is

ORDERED

The dismissal of the unfair labor practice complaints filed in the above-captioned matters is affirmed.

Issued at Olympia, Washington, the 21st day of January, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

MARILYN GLENN SAYAN, Chairperson

[SIGNED]

SAM KINVILLE, Commissioner

[SIGNED]

JOSEPH W. DUFFY, Commissioner