

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ARTHUR R. PETTIT,	)	
	)	
Complainant,	)	CASE 13585-U-97-3321
	)	
vs.	)	DECISION 6223 - PECB
	)	
BREMERTON SCHOOL DISTRICT,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
	)	

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The complaint charging unfair labor practices filed in the above-captioned matter on December 5, 1997, was considered by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on January 12, 1998, pointed out problems with the complaint and gave the complainant a 14-day period in which to amend the complaint or face dismissal. An amended complaint filed on January 26, 1998, is now before the Executive Director under WAC 391-45-110.

The complaint alleged that the employer interfered with employee rights under RCW 41.56.140(1), by sending a June 5, 1997 letter to the complainant concerning "his representation of fellow employees at informal grievances in accordance with the collective bargaining agreement". The deficiency notice identified two problems with the complaint, which are discussed under separate headings below.

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<sup>1</sup> 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.

No "Violation of Contract" Jurisdiction

The complaint described the complainant's presence at an informal grievance meeting held on May 23, 1997. A collective bargaining agreement attached to the complaint appeared to give employees a right, at Article XIV, section B.2., Grievance Procedure and Arbitration, to have a union representative present during an informal meeting between the grievant and his/her immediate supervisor. The deficiency notice pointed out, however, that any violation of the contract would have to be pursued through the grievance and arbitration machinery of the contract itself. 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. City of Walla Walla, Decision 104 (PECB, 1976).

The amended complaint and accompanying documents indicate the complainant has filed a grievance concerning the matters referred to in his complaint. That does not alter the fundamental problem that no cause of action exists for the implied contract violation in unfair labor practice proceedings under Chapter 391-45 WAC.

Interference Allegation Insufficient

The June 5, 1997 letter referred to in the complaint was authored by complainant's immediate supervisor. The allegation of unlawful "interference" is based on the following language in that letter:

Reporting to Mountain View Middle School on May 23, 1997, during work hours away from your work area without notifying your supervisors causes me concern. District policy and procedures and the union contract are very clear in this regard. Your role as a union representative does not relieve you of your District employee responsibilities.

The deficiency notice pointed out that, while an interference violation can be found if an employer's conduct could reasonably be perceived by employees as a threat of reprisal or force, or a promise of benefit, deterring them from the pursuit of lawful union activity, under City of Seattle, Decision 3066 (PECB, 1988), the June 5 letter to the complainant merely indicated that he was required to follow "District policy and procedures and the union contract". Employees are responsible for following their employers' policies and procedures, as well as for following any applicable collective bargaining agreement. In the absence of any indication that the agreement in this case excludes employees from application of the employer policies and procedures cited by the supervisor, the complaint failed to allege facts sufficient to show that the June 5 letter interfered with employee rights under RCW 41.56.140(1).

The amended complaint stated: "The factual basis for the complaint remains unchanged", but added an allegation that complainant was threatened by his supervisor for providing union representation to a fellow union member at the May 23, 1997 meeting. The amended complaint was accompanied by four documents which had not been filed earlier:

1. An undated letter from Tom Stier, vice-president of the union that represents the complainant, relates Stier's recollection of the May 23, 1997 meeting.
2. A July 1, 1997 letter from Adonis Bennett, explains his version of the May 23, 1997 meeting.
3. A June 29, 1997 "Statement of Formal Grievance" from the complainant, alleges that he is "being harassed, discriminated against and treated unfairly" by his supervisor. This document refers to the May 23, 1997 meeting, June 5, 1997

letter, and previous communications between the complainant and his supervisor.

4. A performance evaluation on the complainant, which appears to have been prepared by his supervisor on May 20, 1997.

The amended complaint and additional documents do not, however, cure the defects noted in the deficiency notice. Specifically, there is no basis to conclude that the reference in the June 5 letter to the complainant's responsibility to follow "District policy and procedures and the union contract" interfered with complainant's rights under RCW 41.56.140(1).

#### Statute of Limitations Problem

The amended complaint raises an additional difficulty with complainant's case. The Commission is governed by the following provisions of RCW 41.56.160(1):

The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. ...

In this case, the complaint filed on December 5, 1997, is timely only as to employer actions on or after June 5, 1997. The May events cannot be remedied in this case.


NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

Issued at Olympia, Washington, this 25<sup>th</sup> day of February, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.