

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE – CORRECTIONS,

Employer.

JOE T. PORTUGAL;

Complainant,

vs.

TEAMSTERS LOCAL 117,

Respondent.

CASE 22663-U-09-5793

DECISION 10542 - PSRA

ORDER OF DISMISSAL

On August 25, 2009, Joe T. Portugal (Portugal) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the International Brotherhood of Teamsters, Local 117 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 28, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Portugal was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On September 15, 2009, Portugal filed a request that the complaint be “dismissed without prejudice at this time rather than dismissed.” The Commission does not dismiss cases without prejudice. Portugal has not filed an amended complaint. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

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.

DISCUSSION

The allegations of the complaint concern union interference with employee rights in violation of RCW 41.80.110(2)(a), discrimination for filing charges in violation of RCW 41.80.110(2)(c), refusal to bargain in violation of RCW 41.80.110(2)(d), and unspecified "other" violations, by its actions toward Portugal.

The deficiency notice pointed out the defects to the complaint. One, the statement of facts requests intervention by the National Labor Relations Board (NLRB). The NLRB is a federal agency with jurisdiction over private sector labor relations. The Public Employment Relations Commission is an agency of the State of Washington with jurisdiction over public sector labor relations in the state. The Commission would have jurisdiction in this case. Unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for presentation of evidence supporting its complaint at a hearing before an examiner in accord with WAC 391-45-270.

Two, WAC 391-45-050 governs the contents of unfair labor practice complaints and requires a statement of facts to be set forth in numbered paragraphs. WAC 391-45-050(2) requires a complaint to contain a clear and concise statement of the facts constituting the alleged unfair labor practice, including times, dates, places and participants in occurrences. Related to this, RCW 41.80.120(1) requires an unfair labor practice complaint to be filed within six months of the alleged violation in order to obtain remedial relief. The statement of facts does not have numbered paragraphs, does not specify the times and dates of the alleged violations, and does not give sufficient information regarding Portugal's union grievance.

Three, it is an unfair labor practice in violation of RCW 41.80.110(2)(a) for a union to interfere with the collective bargaining rights of employees based upon the employees' union activities. However, the statement of facts indicates that Portugal's dispute with the union centers on its alleged failure to properly represent him in his dispute with the employer over his grievance and issues related to the grievance. The Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. While a union does owe a duty of fair representation to bargaining unit employees with respect to the processing of grievances, such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Four, it is an unfair labor practice in violation of RCW 41.80.110(2)(c) for a union to discriminate against an employee because the employee has filed an unfair labor practice complaint or given testimony in an unfair labor practice proceeding. This provision does not apply to the filing of grievances. Portugal does not allege that he has previously filed an unfair labor practice complaint or given testimony before the Commission.

Five, only an exclusive bargaining representative may file refusal to bargain allegations under RCW 41.80.110(2)(d). Individual employees such as Portugal do not have standing to file such claims.

Six, the remedy request concerns reopening Portugal's grievance and enforcing the agreement with the employer concerning his trial period. Only the grievance issue is related to the claim against the union. As noted above, the Commission has no jurisdiction to grant this remedy.

Seven, the statement of facts does not identify the nature of "other" violations or specify a statute.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 22663-U-09-5793 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of September, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.