

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RONDEL A. MILLS,

Complainant,

vs.

CITY OF TACOMA,

Respondent.

CASE 128820-U-17

DECISION 12768 - PECB

ORDER OF DISMISSAL

Rondel A. Miller appeared on his own behalf.

Cheryl Comber, Deputy City Attorney, for the City of Tacoma

On March 1, 2017, Rondel A. Miller (employee) filed an unfair labor complaint against the City of Tacoma (employer) with the Public Employment Relations Commission (Commission).¹ A preliminary ruling was issued on April 5, 2017, which found that the complaint had stated a cause of action and the allegations related to employer discrimination in violation of RCW 41.56.140(1) and if so derivative inference in violation of RCW 41.56.140(1).

On April 26, 2017, the employer filed a motion, requesting a stay in the proceedings in order to obtain a declaratory judgement in federal court regarding jurisdiction as it is a dispute that required an interpretation of a collective bargaining relationship governed by the federal Railway Labor Act. This raised a question about whether the Commission's jurisdiction under RCW 41.56 RCW is preempted. Before making a decision on how to proceed, I directed the complainant to show cause why the matter should not be dismissed due to a lack of jurisdiction.

¹ In his complaint, Miller identified himself as union officer in the Brotherhood of Locomotive Engineers and Trainmen, Local 328, and so initially this matter was docketed as filed by the union. However, in later correspondence, Miller clarified that he filed the complaint on his own behalf.

ISSUE

1. Does the Commission have jurisdiction over this dispute? If not, should the case be dismissed?

No, the Commission lacks jurisdiction because the relevant labor relationship is governed by the federal Railway Labor Act and not Washington State's Chapter 41.56 RCW. The case should be dismissed.

BACKGROUND

Both the complaint's statement of facts and the relevant collective bargaining agreement include reference to the federal Railway Labor Act, and disputes going to the National Railroad Adjustment Board, NRAB. In a response to the employer's motion that raised the jurisdictional concern, the complainant acknowledged that the Railway Labor Act applied to the relevant collective bargaining relationship. He asked the Commission to also exert jurisdiction because the Railway Labor Act did not provide a process for cases like his, when an employee was suspended but not terminated.

ANALYSIS

In *Alaska Airlines v. Schurke*, 846 F.3d 1081 (9th Cir. 2017), federal preemption occurs in cases that involve the interpretation of a collective bargaining agreement under the jurisdiction of the Railway Labor Act. A review of the complaint's statement of facts shows that this case also involves a fact pattern that includes the interpretation of such a collective bargaining agreement. Therefore, the Commission lacks jurisdiction to hear this case. Because the relevant collective bargaining relationship is under the jurisdiction of the Railway Labor Act, the Commission does not have the option of exercising jurisdiction even when an employee was only suspended, and not terminated.

Because the Commission lacks jurisdiction over this dispute, a dismissal is more appropriate than a stay in proceedings.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 28th day of August, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY H. MARTIN, Examiner

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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 08/28/2017

DECISION 12768 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128820-U-17

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