

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,)	
)	
Employer.)	
-----)	
RALPH CARR,)	
)	
Complainant,)	CASE 14938-U-99-3767
vs.)	DECISION 7139 - PECB
)	
WASHINGTON STATE COUNCIL OF COUNTY)	
AND CITY EMPLOYEES, LOCAL 2084,)	
)	
Respondent.)	ORDER OF DISMISSAL
-----)	
RALPH CARR,)	
)	
Complainant,)	CASE 14939-U-99-3768
vs.)	DECISION 7140 - PECB
)	
KING COUNTY,)	
)	
Respondent.)	ORDER OF DISMISSAL
-----)	

Ralph Carr, Jr. filed two unfair labor practice complaints with the Public Employment Relations Commission on December 17, 1999, under Chapter 391-45 WAC. The complaints were reviewed by the Senior Staff member, acting under WAC 391-08-630(5), for processing under WAC 391-45-110. The purpose of that review was to comply with RCW 34.05.419(2), which requires administrative agencies to:

Examine each application, notify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require...

At that 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 the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

A deficiency notice was issued on April 7, 2000, addressing the approximately 136 paragraphs of allegations set forth in the two complaints. Carr was notified that only one of those allegations might state a cause of action for proceedings before the Commission, and he was given a period of 21 days to file and serve an amended complaint. The Commission's rules governing the contents of unfair labor practice complaints were pointed out, and Carr was specifically directed:

1. To set forth clear and concise statements of **facts** giving rise to his allegations;
2. To use separate numbered paragraphs for his allegations; and
3. To provide details as to the times, dates and participants in occurrences.

An amended complaint filed by Carr on April 28, 2000,¹ has now been reviewed by the Senior Staff Member under WAC 391-45-110.

The amended complaint does not comply with the requirements set forth in the deficiency notice issued on April 7, 2000. Instead of furnishing necessary information, Carr has made accusations of racial discrimination which do not fall within the Commission's

¹ Carr's amended complaint consisting of six pages was accompanied by copies of documents Carr had allegedly filed with the Attorney General of the State of Washington, in which Carr alleged that the Commission and its employees, King County and its employees, and the union and its employees are, and were, all racists.

jurisdiction. The two complaints, as amended, concern topics over which the Commission does not assert jurisdiction and, therefore, do not state a cause of action. The complaints are dismissed.

BACKGROUND

Ralph Carr, Jr., is identified as an individual employed by King County, Washington (employer). Specifically, Carr is identified as working as an intake counselor in the employer's Department of Youth Services. Carr's position is within a bargaining unit represented by the Washington State Council of County and City Employees (union). Carr alleges that he was a union supporter and activist, that he has served as secretary of the local union, and that he currently holds positions as vice president of the local union and as a member of its negotiating team.

On the complaint form in Case 14938-U-99-3767, Carr marked boxes to allege that the employer had interfered with employees rights, dominated or assisted the union, discriminated against Carr, discriminated against Carr for filing unfair labor practice charges, refused to bargain in good faith, and committed "other" unfair labor practices.

On the complaint form in Case 14939-U-99-3768, Carr marked boxes to allege that the union had interfered with employee rights, induced the employer to violations of the statute, discriminated against Carr for filing unfair labor practice charges, refused to bargain in good faith, and committed "other" unfair labor practices.

Carr's original complaints in these matters were accompanied by a motion for temporary relief, in which he requested that the Commission take action to halt alleged retaliatory actions by the

employer and union. On March 7, 2000, Carr filed a second motion for temporary relief. Under WAC 391-45-430, the processing of such a motion is only appropriate if a complaint is found to state a cause of action under WAC 391-45-110. Hence, no action has been taken on the motions for temporary relief.

Nature of Unfair Labor Practice Proceedings

The Legislature has delegated to the Public Employment Relations Commission the authority to determine and remedy violations of the "unfair labor practice" sections of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. See, RCW 41.56.140, RCW 41.56.150, and RCW 41.56.160. The Commission adopted Chapter 391-45 WAC as administrative rules for processing unfair labor practice cases. The provisions of Chapters 10-08 and 391-08 WAC also apply to the processing of unfair labor practice complaints before the Commission.

Unlike proceedings before the National Labor Relations Board, the Commission does not investigate or prosecute complaints as an advocate for any party involved in the proceedings. Under RCW 41.58.005, the Commission and its staff serve in an impartial role, making decisions based on the evidence and arguments put forth by the parties to the dispute. In making preliminary rulings under WAC 391-45-110, the agency staff must act on the basis of what is contained in the statement of facts, and is not at liberty to fill in gaps or make leaps of logic. If a complaint fails to state a cause for action, the defects(s) must be cured or it will be dismissed. If a complaint states a cause of action, the respondent(s) are required to file an answer, an Examiner is assigned to hold a formal hearing, the Examiner issues a decision based upon the evidence produced by the parties, and the Examiner's decision can be appealed to the Commission.

Protected Activity

RCW 41.56.040 protects the right of public employees to organize themselves into unions for the purpose of collective bargaining. RCW 41.56.140(1) and RCW 41.56.150(1) prohibit interference with or discrimination against public employees in the exercise of collective bargaining rights. The filing and processing of grievances is a activity protected by Chapter 41.56 RCW. Valley General Hospital, Decision 1195-A (PECB, 1981).

The Deficient AllegationsSome Allegations Untimely -

The complaints in these cases appear to allege violations of Carr's rights over a prolonged period of time. RCW 41.56.160 establishes a six-month limitation of the filing of unfair labor practice complaints. The original complaints filed in these cases on December 17, 1999, can only be considered timely as to unlawful employer or union actions occurring on or after June 17, 1999.

Discrimination Outside of Collective Bargaining Statute -

The complaints in these cases appear to allege violations of the statute(s) which prohibit forms of discrimination other than discrimination related to union activity. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment. Claims that laws other than Chapter 41.56 RCW have been violated would have to be pursued before the appropriate administrative agency (or agencies), or in the courts.

Contractual Claims -

The complaints in these cases appear to allege violations of Carr's rights under the collective bargaining agreement applicable to his employment. Even within the collective bargaining process, the Commission does not have jurisdiction over all types of disputes. Specifically, 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). A closely-related principle is that the Commission does not assert jurisdiction over "breach of the duty of fair representation" claims arising out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). Such disputes must be processed through the grievance and arbitration machinery within the contract, or through the courts, which can assert jurisdiction to determine and remedy any underlying contract violations.

Internal Union Affairs -

In these cases, Carr alleges that he was denied the right to represent members of the bargaining unit in processing grievances while he was employed by King County in the bargaining unit represented by the union. The Commission does not assert jurisdiction over disputes concerning the interpretation or enforcement of union constitutions and bylaws, which constitute the contract among members for how their organization is to be operated. See, Lewis County, Decision 556-A (PECB, 1979). While the statute gives employees a right to representation, it does not confer a "right" upon any individual to represent other individuals. Carr's rights as a union official raise issues of internal union affairs. Disputes concerning internal union affairs must be pursued before a court, which can assert jurisdiction to determine and remedy violations of the union's constitution and bylaws.

Refusal to Bargain Allegations -

Carr's complaints contain allegations of "refusal to bargain in good faith" by the employer and/or union. An individual employee does not have legal standing to file refusal to bargain charges. Clark County, Decision 3200 (PECB, 1989); Enumclaw School District, Decision 5979 (PECB, 1997). The duty to bargain only exists between the employer and the union certified or recognized as the exclusive bargaining representative of its employees, and only those parties can file and process "refusal to bargain" charges. The fact that Carr allegedly held office in the union does not alter his status as individual with regard to the filing of these unfair labor practice complaints.

Insufficient Facts -

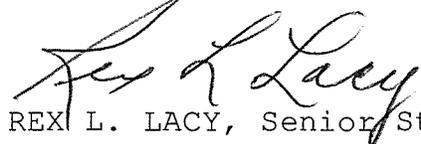
Carr's original complaint contained a vague allegation that the union encouraged the employer to take action against Carr. While the deficiency notice pointed out that such an allegation could be a basis for further proceedings before the Commission, Carr never provided the factual details required by WAC 391-45-050.

ORDER

The complaints in these matters are hereby DISMISSED.

ISSUED at Olympia, Washington, on the 3rd day of August, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Senior Staff Member

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.