

Everett Community College (WFT, Local 1873), Decision 7403 (CCOL, 2001)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EVERETT COMMUNITY COLLEGE,)	
)	
Employer.)	
-----)	
JANICE GARLINGTON,)	CASE 15575-U-01-3946
)	
Complainant,)	
)	DECISION 7403 - CCOL
vs.)	
)	
WASHINGTON FEDERATION)	
OF TEACHERS, LOCAL 1873,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
_____)	

The complaint charging unfair labor practices in the above-referenced matter was filed with the Public Employment Relations Commission by Janice Garlington (Garlington) on January 10, 2001. Garlington is employed by Everett Community College (employer). The complaint alleged that Washington Federation of Teachers, Local 1873 (union), interfered with employee rights in violation of RCW 28B.52.073(2)(a), and induced the employer to commit an unfair labor practice in violation of RCW 28B.52.073(2)(b), by failing to file a grievance to enforce section 22.23 of the collective bargaining agreement concerning the retraining of Homer Allen in the CIS unit.

The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice was issued on March 15, 2001, indicating that it was not possible to conclude that a cause of action existed at that time. The deficiency notice stated that the allegations of the complaint concerned a possible violation of section 22.23 of the parties' collective bargaining agreement. 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 Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). 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.

The deficiency notice indicated that in relation to the interference charge, a statement of facts attached to the complaint did not contain any factual allegation concerning denial by the union of the complainant's statutory rights under Chapter 28B.52 RCW. Absent such allegations, an interference violation cannot be sustained. In addition, the statement of facts did not contain any

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.

factual allegation concerning commission of an unfair labor practice by the employer under Chapter 28B.52 RCW. The deficiency notice explained that absent such allegations, a violation of RCW 28B.52.073(2)(b) cannot be sustained.

The deficiency notice advised Garlington that an amended complaint could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Garlington that in the absence of a timely amendment stating a cause of action, the complaint would be dismissed. Nothing further has been received from Garlington.

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 16th day of May, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

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.