

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHEIK M. KALIG,)	CASE 15934-U-01-4060
)	
Complainant,)	
)	DECISION 7592 - PECB
vs.)	
)	
PORT OF SEATTLE,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
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SHEIK M. KALIG,)	CASE 15935-U-01-4061
)	
Complainant,)	
)	DECISION 7593 - PECB
vs.)	
)	
INTERNATIONAL LONGSHORE &)	
WAREHOUSE UNION, LOCAL 9,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
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On August 1, 2001, Sheik M. Kalig (Kalig) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complaint contained allegations against the Port of Seattle (employer) and the International Longshore & Warehouse Union, Local 9 (union). The complaint was docketed by the Commission under two case numbers. Allegations against the employer were docketed as Case 15934-U-01-4060. The allegations against the union were docketed as Case 15935-U-01-4061.

The complaint in Case 15934-U-01-4060 alleged that the employer interfered with employee rights in violation of RCW 41.56.140(1), dominated or assisted the union in violation of RCW 41.56.140(2), and refused to bargain in violation of RCW 41.56.140(4), by its

failure to abide by the parties' collective bargaining agreement concerning transfers by seniority. The complaint in Case 15935-U-01-4061 alleged that the union interfered with employee rights in violation of RCW 41.56.150(1), induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2), and refused to bargain in violation of RCW 41.56.150(4), by its failure to enforce the parties' collective bargaining agreement concerning transfers by seniority. On August 16, 2001, the union filed a letter with the Commission in response to the complaints.

The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice was issued on August 20, 2001, indicating that it was not possible to conclude that a cause of action existed at that time. In relation to the letter filed by the union in response to the complaints, the deficiency notice indicated that under WAC 391-45-110 the preliminary ruling and deficiency notice process was limited to a review of the complaints. Therefore, the union's letter was not considered in preparing the deficiency notice.

In relation to Case 15934-U-01-4060, the deficiency notice stated that 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 deficiency notice stated that in relation to the allegations concerning employer domination or assistance of the union in violation of RCW 41.56.140(2), none of the facts alleged in the complaint suggested that the employer had involved itself in the internal affairs or finances of the union, or that the employer had

¹ At this stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

In relation to Case 15935-U-01-4061, the deficiency notice stated that 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 stated that in relation to the inducement to commit unfair labor practice allegations against the union, the complaint did not contain any sustainable factual allegations concerning commission of unfair labor practices by the employer. Absent such allegations, a violation of RCW 41.56.150(2) cannot be found.

The deficiency notice advised Kalig 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 Kalig that in the absence of a timely amendment stating a cause of action, the complaints would be dismissed.

On August 21, 2001, Kalig filed a letter with the Commission in the nature of an amended complaint. The letter reiterated Kalig's concern that the employer and union had not "taken care of" his grievance concerning transfers by seniority. The letter also addressed a complaint that Kalig brought to the parties' attention in January 2001 concerning an alleged "hostile work environment."

Kalig filed another letter in the nature of an amended complaint with the Commission on September 10, 2001. That letter provided further explanation as to how the parties had failed to follow the collective bargaining agreement in relation to Kalig's grievance concerning transfers by seniority.

The amended complaints filed by Kalig on August 21, 2001, and September 10, 2001, have been reviewed under WAC 391-45-110. Those filings have not cured the defects indicated in the August 20 deficiency notice, and the amended complaints do not state a cause of action.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 8th day of January, 2002.

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.