

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIRPAL SANDHU,)	
)	
Complainant,)	CASE 16762-U-02-4375
)	
vs.)	DECISION 8202 - PECB
)	
INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL 286,)	ORDER OF DISMISSAL
)	
Respondent.)	
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KIRPAL SANDHU,)	
)	
Complainant,)	CASE 17740-U-03-4592
)	
vs.)	DECISION 8203 - PECB
)	
TACOMA SCHOOL DISTRICT,)	ORDER OF DISMISSAL
)	
Respondent.)	
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On October 2, 2002, Kirpal Sandhu (Sandhu) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Tacoma School District (employer) and International Union of Operating Engineers, Local 286 (union) as respondents. The Commission docketed the matter as Case 16762-U-02-4375 involving a complaint against the union. Upon further review of the complaint, it was discovered that the complaint also contained allegations against the employer. Case 17740-U-03-4592 was docketed for the allegations of the complaint against the employer.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 19, 2003, indicated that it was not

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.

possible to conclude that a cause of action existed at that time. Sandhu was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases.

No further information has been filed by Sandhu. The Unfair Labor Practice Manager dismisses the complaints for failure to state a cause of action.

DISCUSSION

Complaint Against Union

The allegations of the complaint in Case 16762-U-02-4375 concern union interference with employee rights in violation of RCW 41.56.150(1), inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), and refusal to bargain in violation of RCW 41.56.150(4), by failing to represent Sandhu in the processing of several grievances.

The deficiency notice indicated that five different complaint forms were filed with the Commission. All five forms listed the union as the respondent, but each form named a different employee of the union. Commission rules provide that an unfair labor practice complaint can only be filed against an entity (union or employer) and not an individual employee:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(1) Information identifying the parties and (if known) their representatives, including:

. . . .
 (b) The name, address and telephone number of the entity (employer or employee organization) accused of committing unfair labor practices (respondent), and the name, address, telephone number, fax number, and e-mail address of its principal representative; and

. . . .

Decisions of the Commission reinforce the principle that an unfair labor practice complaint may only be filed against a union or public employer. In *Quillayute Valley School District*, Decision 2809 (PECB, 1987), the Executive Director stated:

As a starting point for analysis, the parties to a collective bargaining relationship under Chapter 41.56 RCW must be an employer within the coverage of the statute and a bargaining representative within the meaning of the statute.

For these reasons, the complaint in Case 16762-U-02-4375 was docketed as a case against the union.

The deficiency notice pointed out several defects with the complaint. First, 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.

Second, the complaint refers to allegations of racial discrimination and retaliation for filing a complaint with the federal Equal Employment Opportunity Commission. The Public Employment Relations Commission does not have jurisdiction over allegations of racial discrimination.

Third, as the complaint fails to state a cause of action against the employer under RCW 41.56.140, there are insufficient factual allegations to support a cause of action that the union induced the employer to commit an unfair labor practice in violation of RCW 41.56.150(2).

Fourth, in relation to the allegations of union refusal to bargain in violation of 41.56.150(4), the refusal to bargain provisions of

Chapter 41.56 RCW can only be enforced by an employee organization or an employer, and individual employees do not have standing to process such allegations.

Complaint Against Employer

The allegations of the complaint in Case 17740-U-03-4592 concern employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), domination or assistance of a union in violation of RCW 41.56.140(2), and refusal to bargain in violation of RCW 41.56.140(4), by its conduct involving grievances filed by Sandhu.

The deficiency notice pointed out several defects with the complaint. First, 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 the presentation of its case. See WAC 391-45-270. The Commission staff is not at liberty to take on advocacy responsibilities such as assembling a coherent presentation, filling in gaps, or making leaps of logic. Sandhu has failed to explain how the provisions of RCW 41.56.140 have been violated by the employer's conduct.

Second, in reference to the allegations of discrimination under RCW 41.56.140(1), the complaint fails to allege facts indicating that the employer's actions were taken in reprisal for union activities protected under Chapter 41.56 RCW.

Third, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

Fourth, in relation to the allegations of employer refusal to bargain in violation of 41.56.150(4), the defect noted above for the allegations of union refusal to bargain is equally applicable to these allegations against the employer. The refusal to bargain provisions of Chapter 41.56 RCW can only be enforced by an employee organization or an employer, and individual employees do not have standing to process such allegations.

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 15th day of September, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, 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.