

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KATHLEEN MCDOWELL,)	
)	
Complainant,)	CASE 17378-U-03-4499
)	
vs.)	DECISION 8339 - CCOL
)	
COMMUNITY COLLEGE DISTRICT 3 -)	
OLYMPIC,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
<hr/> KATHLEEN MCDOWELL,)	
)	
Complainant,)	CASE 17379-U-03-4500
)	
vs.)	DECISION 8340 - CCOL
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	

On March 4, 2003, Kathleen McDowell (McDowell) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, concerning allegations against Community College District 3 - Olympic (employer) and the Washington Education Association (union). The Commission docketed the complaint as two case numbers. Case 17378-U-03-4499 concerns allegations of the complaint against the employer, while Case 17379-U-03-4500 involves allegations of the complaint against the union.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on October 9, 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. McDowell was given a period of 21 days in which to file and serve amended complaints, or face dismissal of the cases. On November 7, 2003, the deadline for filing amended complaints was extended to December 2, 2003.

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

DISCUSSION

Complaint Against Employer

The allegations of the complaint in Case 17378-U-03-4499 concern employer interference with employee rights in violation of RCW 28B.52.073(1)(a), by negotiating a provision in the parties' collective bargaining agreement that reduces the salaries of approximately 35 employees and treats some employees differently than other employees.

The statement of facts attached to the complaint indicates that the union and employer have negotiated a collective bargaining agreement covering "wages, hours, and other terms and conditions of employment" under RCW 28B.52.020(8). Except for limited parameters such as the prohibition of RCW 28B.52.045 on closed shop union security provisions, Chapter 28B.52 RCW does not dictate the contents of parties' collective bargaining agreements on particular subject matters. There is no statutory requirement that a collective bargaining agreement provide for identical "wages, hours, and other terms and conditions of employment" for all employees. The union and employer were free to agree to different contractual provisions for different employees.

Complaint Against Union

The allegations of the complaint in Case 17379-U-03-4500 concern union interference with employee rights in violation of RCW 28B.52.073(2)(a), by negotiating a provision in the parties' collective bargaining agreement that reduces the salaries of approximately 35 employees and treats some employees differently than other employees, providing incorrect and misleading information to union members concerning a negotiation proposal, and failing to provide adequate notice of a negotiation proposal to non-members of the union.

Several defects are noted with the complaint. One, as stated above for the complaint against the employer, the union and employer were free to agree to different contractual provisions for different employees. Two, the process used by a union to decide what proposals to present to a public employer in collective bargaining negotiations, what proposals to accept in negotiations, and what information to provide to its members concerning negotiation proposals, is purely of a union's own creation. Such process is part of a union's internal affairs and is often controlled by a union's constitution and/or bylaws. The constitution and bylaws of a union are the contracts among the members of the union for how the organization is to be operated. Disputes concerning alleged violations of the constitution and bylaws of a union must be resolved through internal procedures of the union or the courts. *Enumclaw School District*, Decision 5979 (PECB, 1997).

Three, a union owes a duty of fair representation to bargaining unit employees. However, 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.

Four, a union has the right to exclude non-members from participation in union business, including meetings in which bargaining strategy or proposed collective bargaining agreements are discussed. *Pe Ell School District (Pe Ell Education Association)*, Decision 3801 (EDUC, 1991); *Lewis County*, Decision 464-A (PECB, 1978). The union was not required to provide notice of negotiation proposals to non-members of the union.

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 5th day of January, 2004.

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.