

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY COLLEGE DISTRICT 3 -)	
OLYMPIC,)	
)	
Employer.)	
-----)	
JACKIE HIGGINS,)	CASE 17146-U-03-4437
)	
Complainant,)	
)	DECISION 8328 - CCOL
vs.)	
)	
WASHINGTON EDUCATION ASSOCIATION,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
)	

On January 28, 2003, Jackie Higgins (Higgins) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association (union) as respondent. Higgins is employed by Community College District 3 - Olympic (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on October 9, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Higgins was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case. On November 7, 2003, the deadline for filing an amended complaint was extended to December 2, 2003.

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.

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

DISCUSSION

The allegations of the complaint concern unspecified statutory violations by the union for 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, and providing incorrect and misleading information to union members concerning a negotiation proposal.

Several defects are noted with the complaint. One, 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.

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, the complaint fails to explain and specify what "other" statute has been violated by the union's actions.

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 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.