

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERENA SMITH,)	
)	
Complainant,)	CASE 17356-U-03-4484
)	
vs.)	DECISION 8370 - PECB
)	
WHATCOM TRANSIT AUTHORITY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
<hr/> SERENA SMITH,)	
)	
Complainant,)	CASE 17357-U-03-4485
)	
vs.)	DECISION 8371 - PECB
)	
AMALGAMATED TRANSIT UNION,)	
LOCAL 843,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	

On March 28, 2003, Serena Smith (Smith) filed two complaints charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The first complaint concerned allegations against Whatcom Transit Authority (employer) and was docketed as Case 17356-U-03-4484. The second complaint concerned allegations against Amalgamated Transit Union, Local 843 (union), and was docketed as Case 17357-U-03-4485. The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on December 23, 2003, indicated that it was not possible to conclude that a cause of action existed at that time. Smith was

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.

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 Smith. 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 17356-U-03-4484 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), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), refusal to bargain in violation of RCW 41.56.140(4), and other unspecified unfair labor practices, by its termination of Smith in reprisal for union activities protected by Chapter 41.56 RCW.

Several defects are noted with the complaint. One, the Public Employment Relations Commission does not have jurisdiction concerning reasonable accommodation for an on-the-job injury, or allegations of discrimination based on disability. Two, in relation to the allegations of other unfair labor practices, the complaint fails to explain and specify what "other" statute has been violated by the employer's actions.

Three, 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). Four, in relation 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.

Five, in relation to the allegations of violation of RCW 41.56.140(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations. Six, in relation to the allegations of violation of RCW 41.56.140(4), the duty to bargain under Chapter 41.56 RCW exists only between an employer and the incumbent exclusive bargaining representative of its employees. The refusal to bargain provisions of RCW 41.56.140(4) can only be enforced by an employee organization. Individual employees do not have standing to process refusal to bargain allegations.

Complaint against Union

The allegations of the complaint in Case 17357-U-03-4485 concern union inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.150(3), and other unspecified unfair labor practices, by failing to represent Smith in the processing of a grievance concerning her termination.

Several defects are noted with the complaint. One, as for the complaint above against the employer, the complaint fails to explain and specify what "other" statute has been violated by the union's actions. Two, 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.

Three, like the complaint above against the employer, in relation to the allegations of violation of RCW 41.56.150(3), a violation concerning discrimination for filing unfair labor practice charges cannot stand absent evidence that the complainant has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations. Four, 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).

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 1st day of March, 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.