

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - LABOR AND	)	
INDUSTRIES,	)	
	)	
Employer.	)	
-----	)	
TEENA SCHMIDT,	)	
	)	CASE 17598-U-03-4552
Complainant,	)	
	)	DECISION 8451 - PSRA
vs.	)	
	)	
WASHINGTON FEDERATION OF STATE	)	
EMPLOYEES,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
_____	)	

On June 13, 2003, Teena Schmidt (Schmidt) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Federation of State Employees (union) as respondent. Schmidt is employed by the Washington State Department of Labor and Industries (employer). The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on January 12, 2004, indicated that it was not possible to conclude that a cause of action existed at that time. Schmidt was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

---

<sup>1</sup> 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 Schmidt. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

#### DISCUSSION

The allegations of the complaint concern union violation of RCW 41.56.080 by informing the employer in a December 19, 2002, memo that union shop steward Dale Pettit would not be representing Schmidt on an appeal before the Washington State Personnel Appeals Board.

The complaint is defective. RCW 41.56.080 states as follows:

RCW 41.56.080 CERTIFICATION OF BARGAINING REPRESENTATIVE -- SCOPE OF REPRESENTATION. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

In *State - Labor and Industries*, Decision 8261 (PSRA, 2003), the provisions of RCW 41.56.080 were discussed as follows:

RCW 41.56.080 grants rights to employees in relation to their exclusive bargaining representative. . . .

The obligations of an exclusive bargaining representative under RCW 41.56.080 may give rise to a "breach of duty of fair representation" claim by an employee. . . .

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. Schmidt must pursue her alleged violation of RCW 41.56.080 claims before a court.

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 1<sup>st</sup> 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.