

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,)	
)	
Employer.)	
-----)	
DOUGLAS MCDONALD,)	
)	
Complainant,)	CASE 19851-U-05-5035
)	
vs.)	DECISION 9191 - PECB
)	
SEIU, LOCAL 925,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On October 11, 2005, Douglas McDonald (McDonald) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Service Employees International Union (SEIU), Local 925 (union) as respondent. McDonald is employed by King County (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 4, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. McDonald was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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.

On November 28, 2005, McDonald filed an amended complaint. The Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint 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 discrimination for filing an unfair labor practice charge in violation of RCW 41.56.150(3), by failing to follow the terms of a collective bargaining agreement involving classifications, qualifications for positions and filling of vacant positions.

The deficiency notice pointed out several defects with the complaint. One, the Commission is bound by the following provisions of Chapter 41.56 RCW:

RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS AND CEASE AND DESIST ORDERS. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.

The complaint contains information concerning events occurring more than six months before filing of the complaint. Events described in the statement of facts attached to the complaint occurring before April 11, 2005, will be considered merely as background information.

Two, if bargaining unit employees bring issues or concerns to the attention of a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. This obligation on the union is known as the duty of fair representation. If the union determines that the concerns have merit, the union has the right to file a grievance under the parties' contractual grievance procedure. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes a duty of fair representation to bargaining unit employees, 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). Such claims must be pursued before a court which can assert jurisdiction to determine (and remedy, if appropriate) any underlying contract violation.

Three, RCW 41.56.150(1) prohibits union interference with employee rights, and threats of reprisal or force or promises of benefit associated with the union activity of employees made by union officials, are unlawful. However, the alleged facts are insufficient to conclude that the union made any threats of reprisal or force or promises of benefit, in violation of RCW 41.56.150(1).

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).

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 McDonald has previously filed an unfair labor practice complaint with the Commission. The complaint does not contain any such factual allegations.

Amended Complaint

McDonald filed an "addendum to the complaint" with the amended complaint which stated as follow:

[T]he County hired an unqualified individual, reclassified him, gave him a salary in excess of the pay scale for the classification, and granted him seniority over me.

. . . .

[The union] broke contract language by not following the implemented classifications in our contract and the requirements within those classifications.

. . . .

Despite my requests, SEIU Local 925 has not attempted to correct the date of implementation, seniority, and pay on this matter.

While the amended complaint adds further explanations for the allegations of the complaint, the amended complaint fails to cure the defects indicated in the deficiency notice. The complaint and amended complaint make reference to alleged violations of the parties' collective bargaining agreement. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976). The Commission acts to interpret collective bargaining statutes and does not act in the role of arbitrator to interpret collective bargaining agreements. *Clallam County*, Decision 607-A (PECB, 1979); *City of Seattle*, Decision 3470-A (PECB, 1990); *Bremerton School District*, Decision 5722-A (PECB, 1997).

In relation to the amended complaint's allegations of an "other unfair labor practice," the amended complaint fails to explain and specify what "other" rule or statute has been violated by the union's actions.

NOW, THEREFORE, it is

ORDERED

The amended 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 14th day of December, 2005.

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.