

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL ROCHON,)	
)	
Complainant,)	CASE 20297-U-06-5167
)	
vs.)	DECISION 9339 - PECB
)	
KING COUNTY,)	
)	ORDER OF DISMISSAL
Respondent.)	
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MICHAEL ROCHON,)	
)	
Complainant,)	CASE 20298-U-06-5168
)	
vs.)	DECISION 9340 - PECB
)	
AMALGAMATED TRANSIT UNION,)	
LOCAL 587,)	ORDER OF DISMISSAL
Respondent.)	
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On March 24, 2006, Michael Rochon (Rochon) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, concerning allegations against King County (employer) and Amalgamated Transit Union, Local 587 (union). While the complaint form listed the union as the respondent, boxes were checked on the form indicating alleged statutory violations by the employer and the union. The Commission docketed the complaint as two case numbers. Case 20297-U-06-5167 concerns allegations of the complaint against the employer, while Case 20298-U-06-5168 involves allegations of the complaint against the union.

The complaints were reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 2, 2006, 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. Rochon was 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 Rochon. 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 20297-U-06-5167 concern employer domination or assistance of a union in violation of RCW 41.56.140(2), by unspecified actions related to its intent not to renew a memorandum of agreement concerning lead transit parts specialist and lead purchasing specialist classifications.

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 September 24, 2005, will be considered merely as background information. The complaint is limited to allegations of employer misconduct occurring on or after September 24, 2005.

Two, it is not possible to conclude that a cause of action exists for 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." *City of Anacortes*, Decision 6863 (PECB, 1999).

Complaint against Union

The allegations of the complaint in Case 20298-U-06-5168 concern union interference with employee rights in violation of RCW 41.56.150(1), by failing to respond when notified of management's intent not to renew a memorandum of agreement concerning lead transit parts specialist and lead purchasing specialist classifications.

The deficiency notice pointed out several defects with the complaint. One, as for the complaint against the employer, the complaint is limited to allegations of union misconduct occurring on or after September 24, 2005.

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, the process used by a union to decide what proposals to present to a public employer in collective bargaining negotiations, or what proposals to accept in negotiations, 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 a 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).

Four, 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).

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 2nd day of June, 2006.

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G. MOONEY, COMMISSIONER
MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/02/2006

The attached document identified as: **DECISION 9339 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY:/S/ ROBBIE DUFFIELD

CASE NUMBER: 20297-U-06-05167 FILED: 03/24/2006 FILED BY: PARTY 2
DISPUTE: ER DOMINATION
BAR UNIT: TRANSIT BUS
DETAILS: -
COMMENTS:

EMPLOYER: KING COUNTY
ATTN: RON SIMS
701 5TH AVE STE 3210
SEATTLE, WA 98104-7055
Ph1: 206-296-1737

REP BY: NORM MALENG
KING COUNTY PROSECUTORS OFFICE
W554 KING CO COURTHOUSE
516 3RD AVE RM 554
SEATTLE, WA 98104
Ph1: 206-296-9067 Ph2: 206-296-9000

REP BY: DAVID LEVIN
KING COUNTY
500 4TH AVE RM 450
MS ADM-ES-0450
SEATTLE, WA 98104-2372
Ph1: 206-296-8585

PARTY 2: MICHAEL ROCHON
ATTN:
7353 29TH AVE SW
SEATTLE, WA 98126
Ph1: 206-938-2348

PARTY 3: ATU LOCAL 587
ATTN: LANCE NORTON
2815 2ND AVE STE 230
SEATTLE, WA 98121-1261
Ph1: 206-448-8588 Ph2: 800-847-4696

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MARVIN L. SCHURKE, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 06/02/2006

The attached document identified as: **DECISION 9340 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 20298-U-06-05168 FILED: 03/24/2006 FILED BY: PARTY 2
DISPUTE: UN INTERFERENCE
BAR UNIT: TRANSIT BUS
DETAILS: Union Interference
COMMENTS:

EMPLOYER: KING COUNTY
ATTN: RON SIMS
701 5TH AVE STE 3210
SEATTLE, WA 98104-7055
Ph1: 206-296-1737

REP BY: NORM MALENG
KING COUNTY PROSECUTORS OFFICE
W554 KING CO COURTHOUSE
516 3RD AVE RM 554
SEATTLE, WA 98104
Ph1: 206-296-9067 Ph2: 206-296-9000

REP BY: DAVID LEVIN
KING COUNTY
500 4TH AVE RM 450
MS ADM-ES-0450
SEATTLE, WA 98104-2372
Ph1: 206-296-8585

PARTY 2:
ATTN: MICHAEL ROCHON
7353 29TH AVE SW
SEATTLE, WA 98126
Ph1: 206-938-2348

PARTY 3:
ATTN: ATU LOCAL 587
LANCE NORTON
2815 2ND AVE STE 230
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Ph1: 206-448-8588 Ph2: 800-847-4696