

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WHATCOM COUNTY,)	
)	
Employer.)	
-----)	
LINDA STERLING,)	
)	
Complainant,)	CASE 20220-U-06-5155
)	
vs.)	DECISION 9347 - PECB
)	
TEAMSTERS LOCAL 231,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	

On February 28, 2006, Linda Sterling (Sterling) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Teamsters Local 231 (union) as respondent. Sterling is a former employee of Whatcom County (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on April 25, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Sterling 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.

Although a continuance request was granted extending the deadline for filing of an amended complaint, Sterling indicated in a May 26, 2006, filing that she would not be amending the complaint. The Unfair Labor Practice Manager dismisses the 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), union inducement of employer to commit an unfair labor practice in violation of RCW 41.56.150(2), and an unspecified "other unfair labor practice," by actions interfering with Linda Sterling's collective bargaining rights in retaliation for her support of Whatcom County Employees for Wage Equity, a union that filed a representation petition to replace the incumbent exclusive bargaining representative, Teamsters Local 231.

The complaint has several defects. 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 August 28, 2005, will be considered merely as background information. The complaint fails to meet the requirements of RCW

41.56.160. In order for the complaint to be timely under RCW 41.56.160, the complaint must contain allegations of union misconduct occurring on or after August 28, 2005.

Two, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

The complaint does not conform to the requirements of WAC 391-45-050. The complaint fails to include "times, dates, places and participants in occurrences" concerning the alleged unfair labor practices.

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

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, paragraph 18 of the statement of facts alleges that the union breached its duty of fair representation. 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.

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 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.