

State - Ecology (Washington Federation of State Employees),
Decision 9179 (PSRA, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE - ECOLOGY,)	
)	
Employer.)	CASE 19827-U-05-5031
-----)	
GEORGE THOMAS CLARK,)	DECISION 9179 - PSRA
)	
Complainant,)	
)	
vs.)	
)	
WASHINGTON FEDERATION OF STATE)	
EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

On October 3, 2005, George Thomas Clark (Clark) 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. Clark is employed by the Washington State Department of Ecology (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on November 3, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. Clark was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On November 23, 2005, Clark filed an amended complaint and a petition for ruling on nonassociation claim. The nonassociation petition was docketed by the Commission as Case 19960-N-05-45. A preliminary ruling is being issued for that case indicating that a cause of action exists for processing by the Commission concerning

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.

the issues of: 1) Eligibility of Clark to assert a right of nonassociation based on a) personal religious beliefs and b) teachings of a church or religious body; and 2) Designation of programs of the union to receive any alternative payments from Clark. In relation to Case 19827-U-05-5031, the Unfair Labor Practice Manager dismisses the amended complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern an "other unfair labor practice" by the union through "forcing me [Clark] to pay money against my will to support the union's political activities," in violation of RCW 41.06.250.

The deficiency notice indicated that the complaint contained several defects. One, 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.

(3) A statement of the remedy sought by the complainant.

(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

The deficiency notice stated that the complaint did not conform to the requirements of WAC 391-45-050.

Two, the Commission does not have jurisdiction over challenges to a labor organization's use of dues and/or agency fees based on non-religious grounds. *Local 2916, IAFF v. PERC*, 128 Wn.2d 375 (1995). Claims concerning an employee's constitutional rights under *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977), and/or *Chicago*

Teachers Union v. Hudson, 475 U.S. 292 (1986) must be pursued before a court.

Three, the Commission does not have jurisdiction over alleged violations of Chapter 41.06 RCW.

Four, Clark asserted in the complaint that he has religious objections to union membership. Disputes involving the union security obligations of an employee who has asserted a religious-based right of nonassociation are controlled by the following provisions of Chapter 41.80 RCW:

RCW 41.80.100 UNION SECURITY--FEES AND DUTIES--
RIGHT OF NONASSOCIATION.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

The deficiency notice advised Clark that if he wished to pursue a right of nonassociation, he should review Form N-1 (Petition for Ruling on Nonassociation Claim) and administrative rules at Chapter 391-95 WAC. The nonassociation petition filed by Clark in Case 19960-N-05-45 will be assigned to an Examiner for further proceedings under Chapter 391-95 WAC.

Amended Complaint

The amended complaint claims union interference with employee rights in violation of RCW 41.80.110(2)(a), by conduct in violation

of RCW 41.06.250 and article 40 of the collective bargaining agreement. Although the amended complaint conforms to the requirements of WAC 391-45-050, the amended complaint is defective and fails to state a cause of action. One, as indicated in the deficiency notice, the Commission does not have jurisdiction over alleged violations of Chapter 41.06 RCW.

Two, 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).

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 30th day of November, 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.