

Seattle School District (Washington Education Association),
Decision 9736 (EDUC, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
SUSAN LICHTENBERG,)	
)	
Complainant,)	CASE 20533-U-06-5230
)	
vs.)	DECISION 9736 - EDUC
)	
WASHINGTON EDUCATION ASSOCIATION,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	

On July 19, 2006, Susan Lichtenberg (Lichtenberg) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Education Association (union) as respondent. Lichtenberg is a certificated employee of the Seattle School District (employer). The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on October 23, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Lichtenberg 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 9, 2006, Lichtenberg 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 41.59.140(2)(a), inducement of employer to commit an unfair labor practice in violation of RCW 41.59.140(2)(b), and an "other unfair labor practice" through breach of its duty to provide fair representation, by failing to represent Susan Lichtenberg in the processing of a grievance concerning staffing of Flight II schools.

The deficiency notice pointed out several defects. One, RCW 41.59.140(2)(a) 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 41.59.140(2)(a).

Two, the complaint indicates that Lichtenberg was one of several employees who were denied support from the union for pursuit of a class action grievance. 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.

The complaint alleges that the union violated its duty of fair representation by aligning itself against certain union members on a discriminatory basis, that is, employees working in schools that serve students from low income and high minority communities. The Commission declined to assert jurisdiction over duty of fair representation allegations in *Mukilteo School District*, where the Executive Director wrote as follows:

The allegations in this case arise exclusively out of the complainant's efforts to secure rights she claims under the collective bargaining agreement covering her employment. There is no allegation of arbitrary, discriminatory or bad faith conduct on the part of the union in negotiating that collective bargaining agreement or in the representation of the complainant or others in collective bargaining on matters not set forth in the collective bargaining agreement.

Lichtenberg is seeking to secure rights she claims under the parties' collective bargaining agreement. There is no allegation that she was treated any differently than other employees involved in pursuit of the class action grievance. Any remedies for her claims must be pursued before a court.

Three, the complaint objects to proceedings held by the union's grievance review committee. The process used by a union to decide whether to pursue a grievance for an employee 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, alleged violations of a union's duty of fair representation are processed under the interference provisions of RCW 41.59.140(2)(a). A union's duty of fair representation obligations do not constitute a separate "other unfair labor practice" violation under Chapter 41.59 RCW.

Five, the complaint alleges that the employer violated provisions 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).

Six, as the complaint fails to state a cause of action against the employer under RCW 41.59.140(1), 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 41.59.140(2)(b).

Amended Complaint

The amended complaint addressed defects four, five, and six by withdrawing allegations of "other unfair labor practice," employer violation of the collective bargaining agreement, and union inducement of the employer to commit a violation. However, the amended complaint does not allege facts sufficient to conclude that either the employer or union violated Lichtenberg's rights under Chapter 41.59 RCW. The amended complaint fails to cure defects one, two, and three.

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 13th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.