STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT, Employer.	)	
GAIL CRANDELL, Complainant,	)	CASE 20655-U-06-5262
vs.	)	DECISION 9739 - PECB
WASHINGTON EDUCATION ASSOCIATION, Respondent.	)	ORDER OF DISMISSAL

On September 19, 2006, Gail Crandell (Crandell) 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. Crandell is a classified employee of the Seattle School District (employer). The complaint was reviewed under WAC 391-45-110,[1] and a deficiency notice issued on November 9, 2006, indicated that it was not possible to conclude that a cause of action existed at that time. Crandell was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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[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 29, 2006, Crandell 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 an "other unfair labor practice" violation of RCW 41.56.080 through breach of its duty to provide fair representation, by inclusion of non-ratified clauses and provisions not allowing access to the grievance procedure for some issues, in the parties' collective bargaining agreement.

The deficiency notice pointed out several defects with the complaint. One, while ratification of a tentative agreement reached in collective bargaining negotiations by a vote of union members is customary, and may even be required by a union's constitution and bylaws, it is not a requirement imposed by state law. In *Western Washington University (Washington Public Employees Association)*, Decision 8849-B (PSRA, 2006), the Commission stated as follows:

> No statute compels employee ratification votes on tentative agreements reached by unions and employers in collective bargaining. *Naches School District*, Decision 2516-A (EDUC, 1987); *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 [1958].

Inclusion of language in a collective bargaining agreement that has not been ratified by union members is not an unfair labor practice.

The process used by a union to decide what proposals to accept in collective bargaining 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).

Two, the complaint alleges a breach of the union's duty of fair representation by inclusion of provisions in the parties' agreement not allowing access to the grievance procedure for some issues. A union is not required under state collective bargaining laws to negotiate provisions in a collective bargaining agreement providing the same level of benefits or rights to all union-represented employees. There is no requirement under state law that a collective bargaining agreement provide access to a grievance procedure for all contractual disputes.

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, alleged violations of a union's duty of fair representation are processed under the interference provisions of RCW 41.56.150(1). A union's duty of fair representation obligations do

not constitute a separate "other unfair labor practice" violation under Chapter 41.56 RCW.

Five, 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).

Six, Chapter 41.56 RCW contains the following provisions:

> RCW 41.56.080 CERTIFICATION OF BARGAINING REPRESENTATIVE--SCOPE OF REPRESENTATION. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

The obligations of an exclusive bargaining representative under RCW 41.56.080 may give rise to a "breach of duty of fair representation" claim by an employee. 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. Crandell must pursue her alleged violation of RCW 41.56.080 claims before a court.

Amended Complaint

The amended complaint addressed defect five by withdrawing the allegation that the union induced the employer to commit an unfair labor practice. The remainder of the amended complaint substantially repeated the allegations of the original complaint, and failed to cure the other defects noted in the deficiency notice. The amended complaint does not allege facts sufficient to conclude that the union violated Crandell's rights under Chapter 41.56 RCW.

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

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