

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WILLIAM GLOVER,)	
)	
Complainant,)	CASE 16079-U-01-4104
)	
vs.)	DECISION 7603 - PECB
)	
PORT OF SEATTLE,)	PRELIMINARY RULING AND
)	ORDER FOR FURTHER
Respondent.)	PROCEEDINGS
)	
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WILLIAM GLOVER,)	
)	
Complainant,)	CASE 16080-U-01-4105
)	
vs.)	DECISION 7604 - PECB
)	
IBEW, LOCAL 46,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	
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On October 29, 2001, William Glover (Glover) filed two complaints charging unfair labor practices in the above-referenced matters with the Public Employment Relations Commission. Glover is employed by the Port of Seattle (employer). He is represented for purposes of collective bargaining by IBEW, Local 46 (union).

The complaint in Case 16079-U-01-4104 alleged that the employer interfered with employee rights in violation of RCW 41.56.140(1), and discriminated against Glover for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by terminating Glover for failure to pay union dues and for contacting the Washington State Human Rights Commission. The complaint in Case 16080-U-01-4105 alleged that the union interfered with employee

rights in violation of RCW 41.56.150(1), and refused to bargain in violation of 41.56.150(4), by failing to pursue a grievance filed by Glover on October 2, 2001.

The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice was issued on December 18, 2001, indicating that it was not possible to conclude that a cause of action existed at that time for the allegations contained in the complaints. In relation to the allegations against the employer in Case 16079-U-01-4104, the deficiency notice stated that the question of whether Glover is required to pay union dues is controlled by the collective bargaining agreement between the employer and union. The Public Employment Relations 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).

In relation to the allegations in Case 16079-U-01-4104 concerning termination of Glover by the employer for contacting the Washington State Human Rights Commission, the deficiency notice indicated that those allegations must be addressed under the provisions of Chapter 49.60 RCW, Discrimination - Human Rights Commission. The Public Employment Relations Commission does not have jurisdiction over and does not administer the provisions of Chapter 49.60 RCW.

In relation to the allegations in Case 16079-U-01-4104 of employer discrimination for filing an unfair labor practice charge in

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.

violation of RCW 41.56.140(3), the deficiency notice indicated that the statement of facts attached to the complaint did not contain any factual allegation of employer misconduct for the filing of an unfair labor practice complaint under Chapter 41.56 RCW.

In relation to the allegations against the union in Case 16080-U-01-4105, the deficiency notice indicated that the Public Employment Relations 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.

In relation to the allegations in Case 16080-U-01-4105 of union refusal to bargain in violation of 41.56.150(4), the deficiency notice stated that the refusal to bargain provisions of Chapter 41.56 RCW can only be enforced by an employee organization or an employer, and individual employees do not have standing to process such allegations.

The deficiency notice advised Glover that amended complaints could be filed and served within 21 days following such notice, and that any materials filed as an amended complaint would be reviewed under WAC 391-45-110 to determine if they stated a cause of action. The deficiency notice further advised Glover that in the absence of a timely amendment stating a cause of action, the complaints would be dismissed.

On January 7, 2002, Glover filed an amended complaint in both cases. In relation to allegations concerning the employer, the amended complaint alleged that Glover had been "singled out, harassed, and finally terminated" by the employer "since my complaint against my employer to PERC." Commission docket records confirm that Glover filed unfair labor practice complaints against the employer (Case 15654-U-01-3968) and the union (Case 15655-U-01-3969) on February 20, 2001. Both of those complaints were dismissed by the Commission on May 16, 2001. *Port of Seattle*, Decision 7405 (PECB, 2001). The amended complaint in Case 16079-U-01-4104 does contain factual allegations of employer misconduct for the filing of an unfair labor practice complaint under Chapter 41.56 RCW, and those allegations will be the subject of further proceedings under Chapter 391-45 WAC.

In relation to allegations concerning the union, the amended complaint alleged that Glover has filed five grievances with the union "with no response/action taken." Those allegations are similar to the "breach of duty of fair representation" claims made by Glover in his original complaint against the union in Case 16080-U-01-4105. As the deficiency notice indicated, the Commission does not assert jurisdiction over such claims. *Mukilteo School District (Public School Employees of Washington)*, *supra*.

NOW, THEREFORE, it is

ORDERED

1. Assuming all of the facts alleged to be true and provable, the amended complaint in Case 16079-U-01-4104 states a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.56.140(1), and discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), by terminating William Glover in reprisal for his union activities protected by Chapter 41.56 RCW.

The amended complaint will be the subject of further proceedings under Chapter 391-45 WAC.

2. The Port of Seattle shall:

File and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

- a. Specifically admit, deny or explain each fact alleged in the amended complaint, except if a respondent states it is without knowledge of the fact, that statement will operate as a denial; and
- b. Assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the amended complaint, will be deemed to be an

admission that the fact is true as alleged in the amended complaint, and as a waiver of a hearing as to the facts so admitted. See WAC 391-45-210.

3. The allegations of the complaint in Case 16079-U-01-4104 concerning termination of Glover for failure to pay union dues and for contacting the Washington State Human Rights Commission are DISMISSED for failure to state a cause of action.
4. The allegations of the complaint in Case 16080-U-01-4105 are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 17th day of January, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Director of Administration

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.

Paragraph 4 of 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.