

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MATTHEW MYHRE,)	
)	
Complainant,)	CASE 16532-U-02-4280
)	
vs.)	DECISION 7930 - PSRA
)	
WASHINGTON STATE DEPARTMENT)	
OF TRANSPORTATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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MATTHEW MYHRE,)	
)	
Complainant,)	CASE 16554-U-02-4301
)	
vs.)	DECISION 7931 - PSRA
)	
WASHINGTON FEDERATION OF)	
STATE EMPLOYEES,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
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On December 24, 2001, Matthew Myhre (Myhre) filed a complaint charging unfair labor practices with the Washington State Department of Personnel naming the Washington State Department of Transportation (employer) and the Washington Federation of State Employees (union) as respondents. The complaint was docketed by the Department of Personnel as ULP-522. On June 13, 2002, the Public Employment Relations Commission acquired jurisdiction over the complaint. Consistent with the Commission's docketing procedures, two separate cases were docketed: Case 16532-U-02-4280

for the allegations against the employer; and Case 16554-U-02-4301 for the allegations against the union.

The complaint in Case 16532-U-02-4280 alleges that the employer interfered with employee rights in violation of RCW 41.56.140(1), and dominated or assisted a union in violation of RCW 41.56.140(2), by failing to include a grievance procedure for probationary employees in its collective bargaining agreement with the union, and by terminating Myhre for exercising his collective bargaining rights.

The complaint in Case 16554-U-02-4301 alleges that the union interfered with employee rights in violation of RCW 41.56.150(1), by refusing to represent Myhre in a grievance concerning his dismissal and by denying Myhre's rights under Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act.

The complaints were reviewed under WAC 391-45-110.¹ A deficiency notice was issued on September 16, 2002, indicating that it was not possible to conclude that a cause of action existed at that time for several reasons. First, 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

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.

not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. . . .

The complaints indicate that Myhre was terminated by the employer on April 27, 2001. In order for the complaints to be timely under RCW 41.56.160, the complaints must contain allegations of employer or union misconduct occurring on or after June 24, 2001.

Second, 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).

Third, in relation to the allegations of employer domination or assistance of a union in violation of RCW 41.56.140(2), none of the facts alleged in the complaint against the employer suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a "company union." See *City of Anacortes*, Decision 6863 (PECB, 1999).

Fourth, in relation to the allegations of union interference with employee rights in violation of RCW 41.56.150(1) by refusing to represent Myhre in a grievance concerning his dismissal, 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.

The deficiency notice advised Myhre 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 Myhre that in the absence of a timely amendment stating a cause of action, the complaints would be dismissed. Nothing further has been received from Myhre.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above captioned matters are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 9th day of December, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in dark ink, appearing to read 'M.S. Downing', is written over the printed name.

MARK S. DOWNING, Director of Administration

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.