

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEN BOYARCHUK,)	
)	
Complainant,)	CASE NO. 7266-U-88-1491
)	
vs.)	DECISION 2967 - COL
)	
EDMONDS COMMUNITY COLLEGE,)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	
BEN BOYARCHUK,)	
)	
Complainant,)	CASE NO. 7288-U-88-1499
)	
vs.)	DECISION 2968 - COL
)	
AMERICAN FEDERATION OF)	
TEACHERS, LOCAL 4254,)	ORDER OF DISMISSAL
)	
Respondent.)	
_____)	

On February 19, 1988, Ben Boyarchuk filed two complaints charging unfair labor practices with the Public Employment Relations Commission. The allegations of both complaints are the same. Allegations against the Edmonds Community College were docketed as Case No. 7266-U-88-1491. Allegations against American Federation of Teachers, Local 4254, were docketed as Case No. 7288-U-88-1499.

The complaints allege that the employer and union committed unfair labor practices by instituting a union security provision. Reference is made in the complaints to contract provisions calling for the Public Employment Relations Commission to conduct a referendum on union security, and of failure of the employer and union to fulfill that procedure.

The complaints are currently before the Executive Director for initial processing pursuant to WAC 391-45-110. The complaints are being considered at the same time, recognizing that each contains a different legal theory and discrete elements of proof. It appears that both complaints contain deficiencies that preclude their further processing.

By way of background, it is noted that the 1985-88 collective bargaining agreement between the employer and union was signed at a time when the enabling statute, Chapter 28B.52 RCW, did not contain provisions allowing the enforcement of a union security obligation with respect to academic faculty employees of community college districts. That statute was amended by Chapter 314, Laws of 1987, to provide, effective in July, 1987, for union security provisions in collective bargaining agreements covering the academic faculty employees of community college districts. RCW 28B.52.045. No provision of the statute now requires, or has ever required, that union security agreements be made subject to a referendum vote among the employees. Under the current law, such agreements are subject to collective bargaining, like other contract provision.

By way of additional background, it is noted that the Public Employment Relations Commission discontinued providing "union security referendum" services in 1982. Although the Commission conducted some union security referenda prior to that time upon the agreement of both parties to a collective bargaining agreement, this was one of the types of services cut to accommodate budget cuts suffered by the agency during the 1981-83 biennium. The Commission has never regained all of the positions lost as the result of those budget cuts, and so has never restored this type of service. The agreement of the employer and union to have the Public Employment Relations Commission use its resources to conduct a union security

referendum could not obligate the agency to provide services of that type.

The complainant alleges that the employer violated the collective bargaining agreement by turning to a different procedure in the face of impossibility of performance of their contract as written. It has been consistently held that the Public Employment Relations Commission does not have jurisdiction to remedy "violation of contract" or to otherwise enforce a collective bargaining agreement through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). The appropriate forum for an employee claiming rights as a third-party "beneficiary" to the collective bargaining agreement would be in a civil action in Superior Court.

The complainant alleges that the union violated the law by the conduct of its own election. This appears to concern internal union affairs in its administration of the collective bargaining agreement, and fails to state a cause of action for unfair labor practice proceedings before the Commission. Indeed, the union and employer could have agreed to dispense altogether with the referendum vote. Any claim of breach of the duty of fair representation in the context of this "violation of contract" claim would have to be processed in court, as part of the litigation of any "violation of contract" claims against the employer. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

It follows that, even if the complainant were able to prove all that he alleges in these unfair labor practice complaints, they do not state a cause of action for proceedings before the Public Employment Relations Commission, and no unfair labor practice violations could be found.


NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 1st day of July, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This Order may be appealed
by filing a petition for
review with the Commission
pursuant to WAC 391-45-350.