STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CONNIE HUSEBY, Complainant, vs. CLOVER PARK SCHOOL DISTRICT, Respondent.	)	CASE 8894-U-90-1954 DECISION 3829 - PECB
CONNIE HUSEBY, Complainant, vs. CLOVER PARK ASSOCIATION OF CLASSIFIED EMPLOYEES (CPACE), Respondent.	)	CASE 8895-U-90-1955 ORDER OF DISMISSAL

On November 8, 1990, Connie Huseby filed two complaints charging unfair labor practices with the Public Employment Relations Commission, alleging that her employer (the Clover Park School District)[1] and her exclusive bargaining representative (the Clover Park Association of Classified Employees),[2] had committed unfair labor practices in violation of RCW 41.56.140 and .150, respectively. Both complaints deal with events surrounding the addition of life insurance coverage and long term disability insurance coverage to the benefit package negotiated by the employer and union in the autumn of 1990 as part of their collective bargaining agreement.

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[1] Case 8894-U-90-1954.

[2] Case 8895-U-90-1955.

The complaints were reviewed by the Executive Director pursuant to WAC 391-45-110, and a letter directed to the complainant on December 14, 1990, outlined several difficulties with the complaints as filed. The complainant was given 14 days in which to file and serve amended complaints. The complainant was notified that, in the absence of amended complaints which stated a cause of action, the cases would be dismissed.

On January 2, 1991, the complainant filed additional materials with the Commission. The complainant supplied correspondence from the local union president to the superintendent of the Clover Park School District as part of those additional materials, and noted that she believed they contained evidence of the connection sought to show collusion between the parties. The cases are again before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, it is presumed that all of the facts alleged are true and provable. The question at hand is whether the complaints (or either of them) state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

The Complaint Against the Union

In the case filed against her exclusive bargaining representative, the complainant alleged that the union failed to follow its constitution and bylaws in denying the union membership an opportunity to vote on adding the new benefit coverage before that coverage was made part of the insurance package.

It was noted in the preliminary ruling letter that the Public Employment Relations Commission lacks jurisdiction to become involved with the internal affairs of a union. The complainant was informed that complaints concerning the union's failure to follow its own procedures should be directed to a court of law as a

"breach of contract" cause of action. Nothing in the materials filed on January 2, 1991 suggests any different theory of the case.

The complaint contains the barest hint of an allegation that the exclusive bargaining representative has violated its duty of fair representation by its decision concerning the benefit package. The Commission has historically delineated two different types of "fair representation" situations, and has limited assertion of its jurisdiction to situations where a union is alleged to have engaged in invidious discrimination in its negotiation or administration of a collective bargaining agreement. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). No claim is advanced here that the union has taken arbitrary actions against members of the bargaining unit that it represents.

The Complaint Against the Employer

In the case filed against the employer, the complainant alleged that the employer was in collusion with the union because it "went along" with the union and agreed to the disputed insurance coverage. The preliminary ruling letter noted that the complaint filed against the employer could not stand alone, if the underlying complaint against the union failed to state a cause of action. It was further noted in that letter that no information had been supplied which actually connected the employer's acceptance of the new insurance plans to the union's internal ratification procedures.

From the additional documents supplied by the complainant, it would appear that the union acted without a vote of its membership in the face of what the union believed to be a contract violation by the employer. The letter filed on January 2, 1991 includes an allegation that the employer's negotiator avoided notifying the union of the employer's intention until decision concerning the

benefits would have to be made by a few union representatives, rather than by the membership. It appears from a reading of the letter, however, that this action was more in the nature of a unilateral action by the employer, than an act of collusion between the employer and the exclusive bargaining representative. If the union believed that the employer's actions either violated the contract or the statute, it could have filed a contractual grievance or an unfair labor practice complaint. No such unfair labor practice complaint has been filed by the union, and the complainant, as an individual member of the bargaining unit, lacks standing to file or pursue such a complaint. Grant County, Decision 3703 (PECB, 1987).

NOW, THEREFORE, it is

ORDERED

1. The complaint charging unfair labor practices filed against the Clover Park School District in Case 8894-U-90-1954 is DISMISSED for failure to state a cause of action.

2. The complaint charging unfair labor practices filed against the Clover Park Association of Classified Employees in Case 8895-U-90-1955 is DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 29th day of July, 1991.

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.