

The matters came before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.² A preliminary ruling letter directed to the complainant on May 5, 1992 pointed out a number of problems with the complaint(s), as filed. The complainant was given 14 days in which to file and serve an amended complaint, or face dismissal of the cases for failure to state a cause of action. Nothing further has been heard or received from the complainant.

With limited exceptions, the "job security" rights of employees (i.e., the right to continue in a job unless discharged for "just cause") are created by collective bargaining agreements, rather than by any state or federal statute. The Public Employment Relations Commission would hear and determine allegations of "anti-union discrimination", but that is not alleged here. Various local, state and federal agencies may hear and determine cases involving discrimination on the basis of race, sex, creed, etc., but the Commission has no jurisdiction in such matters.

The Public Employment Relations Commission does not assert jurisdiction to determine or remedy "breach of contract" claims through the unfair labor practice provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. City of Walla Walla, Decision 104 (PECB, 1976). While an employee may have rights as a third-party beneficiary to a collective bargaining agreement, allegations involving "fairness" and "due process" would have to be pursued by means of a civil suit in the courts.

Status as the exclusive bargaining representative of a bargaining unit of employees imposes on a union a "duty of fair representation" towards all of the employees in the bargaining unit. Under

² 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.

case precedent dating back to the decision of the Supreme Court of the United States in Vaca v. Sipes, 386 U.S. 171 (1967), a union breaches that duty if it acts in a manner that is arbitrary, discriminatory or in bad faith. Where a breach of the duty of fair representation has been demonstrated, a court can overlook an employee's failure to exhaust contractual (arbitration) remedies, and proceed with determining the rights of the employee as a third-party beneficiary to the collective bargaining agreement. In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982) and numerous subsequent cases, the Public Employment Relations Commission has declined to assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances. To do otherwise will tend to leave the employee with an empty victory, as the Commission has no authority to remedy the underlying contract violation even if it finds a breach of the duty of fair representation. The complaint against the union here falls within the type covered by Mukilteø School District, supra.

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.

Entered at Olympia, Washington, on the 15th day of June, 1992.

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.