

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	)	
	)	
Employer.	)	
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ROBERT C. ELSLIP,	)	
	)	
Complainant,	)	CASE 11838-U-95-2786
	)	
vs.	)	
	)	DECISION 5368 - PECB
INTERNATIONAL FEDERATION OF	)	
PROFESSIONAL AND TECHNICAL	)	
ENGINEERS, LOCAL 17,	)	ORDER OF DISMISSAL
Respondent.	)	
	)	
	)	

On June 12, 1995, Robert C. Elslip filed a complaint charging unfair labor practices with the Public Employment Relations Commission under RCW 41.56.150 and Chapter 391-45 WAC, alleging that International Federation of Professional and Technical Employees, Local 17, had committed a number of unfair labor practices against him. The allegations made by the complainant fell into three general categories. A preliminary ruling letter issued on July 18, 1995, pursuant to WAC 391-45-110,<sup>1</sup> noted that several problems existed with the complaint as filed.

Allegations characterized in the preliminary ruling letter as "false statements attributed to [the] union" included that one of Elslip's subordinates, a shop steward for Local 17, made false

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<sup>1</sup> At that 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.

allegations against Elslip on January 17, 1995, in retaliation for Elslip's having "withdrawn" from membership in Local 17. Elslip alleged that the allegations were made "under the consultation of Local 17 management". The preliminary ruling letter noted that, while discriminatory actions taken in reprisal for the exercise of the statutory right of non-association could be a basis for finding a cause of action, this complaint did not contain sufficient information for the Executive Director to form a conclusion that a cause of action existed with respect to these allegations.

The second general category of allegations concerned "union pressure on [a] supervisor". Specifically, it was alleged that the union had attempted to intimidate the manager who was conducting an investigation into the allegations made by the shop steward, by publishing a seniority list which placed the manager's career at risk. The complaint alleged that the union's action gave rise to a conflict of interest for supervisors. This dispute arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, which provides "supervisors" a right to organize and be represented for the purposes of collective bargaining.<sup>2</sup> The preliminary ruling letter noted that it has been the Commission's policy to exclude supervisors from bargaining units containing their subordinates, due to the potential for conflicts of interest.<sup>3</sup> That policy reduces the potential for domination of rank-and-file bargaining units by supervisory personnel, and avoids the inherent prejudice to rank-and-file employees which a mixed bargaining unit composition might cause. The complainant was informed that this allegation suffered from deficiencies in two areas: First, the complainant lacked legal standing to assert rights on behalf of another supervisor; and second, the facts were insufficiently

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<sup>2</sup> Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977).

<sup>3</sup> See, City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 95 Wn.2d 1004 (1981).

detailed for the Executive Director to conclude that a cause of action existed for any indirect harm to Elslip.

The third general area of the complaint concerned "union actions inconsistent with [the] contract". Elslip appeared to allege that the shop steward and the union failed to abide by certain provisions of the collective bargaining agreement. The preliminary ruling letter noted that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.<sup>4</sup> Similarly, it was noted that the Commission does not involve itself in the enforcement of the agreement to arbitrate contained in a collective bargaining agreement or to enforce arbitration awards issued under a contractual grievance procedure.<sup>5</sup> Finally, the letter noted that the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances.<sup>6</sup> The complainant was informed that these allegations would not state a cause of action.

The complainant was given a period of 14 days in which to file and serve an amended complaint stating a cause of action, or face dismissal of the complaint. By letter dated July 31, 1995, the complainant requested copies of the cited decisions and an additional two weeks in which to file an amended complaint. The requested extension was granted, and the requested copies were provided. Nothing further has been heard or received from the complainant, however.

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<sup>4</sup> City of Walla Walla, Decision 104 (PECB, 1976).

<sup>5</sup> Thurston County Communications Board, Decision 103 (PECB, 1976).

<sup>6</sup> Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 17th day of November, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.