Seattle School District (Seattle Education Association), Decision 5774 (EDUC, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT, Employer,	)	
NORMA J. WEBSTER, Complainant,	)	CASE 12606-U-96-3000
vs.	)	DECISION 5774 - EDUC
SEATTLE EDUCATION ASSOCIATION, Respondent.	)	ORDER OF DISMISSAL

On July 18, 1996, Norma J. Webster filed a complaint charging unfair labor practices with the Public Employment Relations Commission, under Chapter 391-45 WAC. Webster identified herself as a certificated employee of the Seattle School District (employer), and named the Seattle Education Association (union) as the respondent. The allegations of the complaint concern union actions or inaction in its capacity as exclusive bargaining representative of certificated employees of the Seattle School District under the Educational Employment Relations Act, Chapter 41.59 RCW.

The complaint was considered for the purpose of making a preliminary ruling under WAC 391-45-110.[1] There was no formal statement of facts with the complaint form, but a letter filed with the complaint indicates dissatisfaction with the union's processing of

[1] 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 has stated a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

a grievance protesting the termination of Webster's employment. Also considered at that time were a handwritten letter addressed to the Commission which Webster had filed on June 7, 1996, and an attached typewritten letter addressed to an employer official, a union official, a judge of the United States District Court, the clerk of the Supreme Court of the State of Washington, an official of the Office of Superintendent of Public Instruction, and the Washington State Department of Employment Security.[2] On September 23, 1996, Webster filed a copy of a letter she sent to the employer, in which she requested a hearing on her grievance and made further accusations against the union.

A deficiency notice issued on October 8, 1996, pointed out certain defects with the complaint, as filed. Webster was given 14 days in which to file and serve an amended complaint that stated a cause of action, or face dismissal of the case.

On October 23, 1996, Webster filed a letter and a number of attachments, which are being treated as an amended complaint.[3] The first paragraph reiterates that Webster is "asking action on an unprofessional conduct charge (UPC) complaint. Filed April 19, 1996". The fourth paragraph states, "Complainant filed this complaint to prod SEA [Executive Director Roger] Erskine into investigating. ..." The basic thrust of the intervening and immediately following paragraphs continues to be that Webster is unhappy with the union's actions or inaction on her grievance

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[2] The multi-addressee letter appears to relate to legal proceedings which Webster has pending in forums other than the Public Employment Relations Commission. It describes classroom incidents which occurred on June 28, 1995, October 4, 1995, and January 16, 1996. The latter two incidents involved physical contact with students.

[3] Although the response to the deficiency notice was filed one day beyond the period allowed in the deficiency notice, this dismissal order is not based on the failure to file a timely amendment to her original complaint.

and/or that she is unhappy with delays in the disposition of a UPC that the employer filed against Webster with the Office of Superintendent of Public Instruction (SPI). Webster goes on to allege "employer interference with employee rights for failing to schedule a hearing", "'employer discrimination and 'union discrimination' for unknown reasons to allow removal from employment roster without conducting an investigation", "employer discrimination for filing charge", and "union discrimination for filing charges", all in relation to the UPC filed with SPI. The attachments include a cover letter and notice of official complaint issued by SPI, a copy of what appears to be the employer's complaint filed with SPI (concerning Webster "striking" a student on January 17, 1996), a copy of a March 29, 1996 letter from the employer to Webster, and copies of a decision and accompanying documents issued on behalf of the Employment Security Department.

The Complainant's Legal Standing

In the space provided on the complaint form for a title of the complainant, Webster wrote: "President, Seattle Substitute Assn.". In the space provided for the number of employees involved, Webster wrote: "63 (UPC complaints) 850 substitute employees SEA". The documents on file are thus subject to the interpretation that Webster was attempting to file a complaint on behalf of both herself and other employees of the Seattle School District.

While an employee organization which is seeking or has won status as exclusive bargaining representative of a bargaining unit under Chapter 41.59 RCW has legal standing to pursue rights on behalf of the employees within the bargaining unit, individual employees have legal standing only to file and pursue complaints asserting their own rights. Webster thus lacks legal standing to file or prosecute unfair labor practice charges on behalf of "850 substitute employee complainees" or the "other[s] similarly situated".

The "Refusal to Bargain" Allegations

In the amended complaint, Webster alleges that the union (by its representative, Roger Erskine) "has done nothing to enforce his bargaining right", and Webster requests to bargain for herself and "other[s] similarly situated". Elsewhere in the documents, Webster makes references to the "AFT", which is interpreted to mean the American Federation of Teachers, AFL-CIO.

Only an organization holding the privileged status of "exclusive bargaining representative" under RCW 41.59.090 is entitled to represent the members of that bargaining unit in collective bargaining with the employer, and the employer must deal with that organization to the exclusion of all others.[4] Only the employer and exclusive bargaining representative can pursue "refusal to bargain" charges. Grant County, Decision 2703 (PECB, 1987).

The Seattle Education Association has not filed any "refusal to bargain" charges related to the matters raised by Webster. Nor has either the employer or union indicated that it is prepared to substitute itself as complainant on a claim of refusal to bargain between the employer and union. The allegations thus fail to state a cause of action.

Duty of Fair Representation

A union owes a duty of fair representation to the employees it represents, but that does not vest the Public Employment Relations Commission with jurisdiction in all such matters.

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[4] Webster seemed to be cognizant of the exclusivity concept, if not the reasons behind it. At one point in her October 23, 1996 letter, she wrote: "AFT refused to hear the matter because SEA is the exclusive bargaining agent."

Fair Representation on Contract Claims -

An employee who has been denied access to arbitration due to a union's failure to make a good faith investigation of a grievance, or due to union conduct which is arbitrary, discriminatory or in bad faith, may have a cause of action in the courts, as a third-party beneficiary to the collective bargaining agreement.[5] The courts are equipped to rule on any "fair representation" and "exhaustion of contract remedies" issues as a condition precedent to determining and remedying any contract violation. Of even more importance, a court can assert jurisdiction to determine and remedy any underlying contract violation. By comparison, 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,[6] and does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

To the extent that Webster alleges that the Seattle Education Association has breached its duty of fair representation, it is by failing to properly represent the complainant in the processing of a contract grievance protesting the termination of her employment. The complaint thus fails to state a cause of action on a claim that falls squarely within the type described in Mukilteo, supra.

Even if the Mukilteo policy were otherwise, or if the Commission asserted jurisdiction over "fair representation" claims related to grievance processing, other problems exist with this case:

1. The complaint is untimely as to the incidents themselves. The letter that Webster sent to six addressees in May of 1996 describes the incidents which apparently led to the filing of the

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[5] Vaca v. Sipes, 386 U.S. 171 (1967).

[6] City of Walla Walla, Decision 104 (PECB, 1976).

unprofessional conduct charges against Webster, and to the eventual termination of her employment with the Seattle School District.[7] All of those incidents took place, however, more than six months prior to the filing of this case with the Commission. Like the National Labor Relations Act on which it is patterned, the Education Employment Relations Act imposes a six-month period of limitation on the filing of unfair labor practice complaints:

> RCW 41.59.150 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES--SCOPE. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That **a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.** ...
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> [Emphasis by **bold** supplied.]

That limitation has been in effect since 1983.[8] The period begins to run when the complainant knew or reasonably should have known of the misconduct alleged.[9] The Commission has strictly enforced the limitation, and has dismissed complaints in numerous cases where the complaint was not timely filed.[10] Thus, even if there were no other problems with this complaint, the incidents which took place on June 28, 1995, October 4, 1995, and January 16 or 17, 1996, could not be the subject of determinations or remedies by the Commission in this proceeding.

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[7] No specific explanation of or reference to that document was given in the complaint form or in other attachments to the complaint on July 18, 1996.

[8] Chapter 58, Laws of 1983, section 3.

[9] City of Pasco, Decision 4197-A (PECB, 1994).

[10] City of Seattle, Decision 4556-A (PECB, 1993); City of Seattle, Decision 4057-A (PECB, 1993); Port of Seattle, Decision 4106 (PECB, 1992); City of Tacoma, Decision 4053-B (PECB, 1992).

2. The complainant seeks remedies not available through unfair labor practice proceedings before the Commission. In the materials dating back to those filed on June 7, 1996, Webster indicates a desire to obtain a hearing on her grievance. The Commission does not assert jurisdiction to enforce the grievance and arbitration machinery of a collective bargaining agreement.[11]

3. The complainant seeks redress of issues that are properly raised in other forums (under statutes not within the jurisdiction of the Commission) and/or in the courts. The Seattle School District filed its unprofessional conduct charge with SPI under Chapter 28A.70 RCW and WAC 180-86-110. WAC 180-86-140 and -145 contain their own provisions for appeals. WAC 180-86-150 provides for a formal SPI review process, and WAC 180-86-155 provides for further appeals to the State Board of Education. RCW 28A.410.010 and 28A.410.100. In addition, RCW 34.05.570 provides for judicial review of such decisions. The Office of Superintendent of Public Instruction is established by the Constitution of the State of Washington.[12] Any issues concerning an improper or malicious complaint would have to be determined in proceedings before SPI or by judicial review.[13]

Fair Representation in Bargaining -

The Public Employment Relations Commission does police its certifications, and will assert jurisdiction where it is alleged that an exclusive bargaining representative has breached its duty of fair

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[11] Thurston County Communications Board, Decision 103 (PECB, 1976).

[12] Article III, Section 22.

[13] The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve all disputes that might arise in public employment.

representation by discriminatorily aligning itself in interest against employees within the bargaining unit it represents. There are, however, no allegations in this complaint that the union was motivated by invidious considerations such as race, creed, sex, national origin, etc., or on union membership or lack thereof.

Insufficient Facts for "Employer Interference" Allegation

Although the letter that Webster filed on October 23, 1996 makes reference to "employer interference with employee rights", a finding of a violation under RCW 41.59.140(1) would require proof of employer conduct which an employee reasonably perceived as a threat of reprisal or force, or a promise of benefit, related to the exercise of rights under the collective bargaining statute. There is no reference in any of the documents to any threat or promise relating to Webster's exercise of her rights under Chapter 41.59 RCW. Thus, the complaint fails to state cause of action for an "interference" theory.

Insufficient Facts for "Discrimination" Allegations

In her October 22 letter, Webster alleges "employer discrimination' and 'union discrimination' for unknown reasons", "possible employer discrimination for filing charge", and "possible union discrimination for filing charges". A finding of a "discrimination" violation under RCW 41.59.140(1)(d) or (2)(a) would require proof of intentional acts by the employer or union to deprive Webster of some ascertainable right or benefit because of her exercise of rights protected by the statute. There is no allegation in either the original or amended complaint that the employer had knowledge of whether Webster engaged in protected activity, that Webster suffered any adverse effect from her union activities, or that the union caused Webster to suffer any adverse effect from any exercise

of her rights under the statute. Thus, the complaint fails to state a cause of action for a "discrimination" theory.[14]

NOW, THEREFORE, it is

ORDERED

The complaint filed in the above-captioned matters is DISMISSED as failing to state a cause of action.

ISSUED at Olympia, Washington, the 11th day of December, 1996.

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.

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[14] The Executive Director must act on the basis of what is contained within the four corners of the statement of facts, and is not at liberty to fill in gaps or make leaps of logic.