

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

YELM SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
VICKIE ROLLAND,	)	
	)	
Complainant,	)	CASE 13055-U-97-3158
	)	
vs.	)	DECISION 5983 - PECB
	)	
PUBLIC SCHOOL EMPLOYEES	)	
OF WASHINGTON,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
<hr/> VICKIE ROLLAND,	)	
	)	
Complainant,	)	CASE 13054-U-97-3157
	)	
vs.	)	DECISION 5984 - PECB
	)	
YELM SCHOOL DISTRICT,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	

On March 25, 1997, Vickie Rolland filed unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that both her employer and her exclusive bargaining representative had violated RCW 41.56.140. Two case numbers were assigned, consistent with the Commission's docketing procedure:

- Case 13054-U-97-3157 was opened for allegations that the Yelm School District discriminated against Rolland in its selection of an employee to fill a temporary lead custodian position (by failing to interview her or to consider her for the vacancy,

in spite of the fact that she had the same seniority date as two other custodians who were offered the position) and acted in collusion with the union to prevent Rolland from pursuing a grievance on the matter under the provisions of the collective bargaining agreement applicable to her employment.

- Case 13055-U-97-3158 was opened for allegations that the union breached its duty of fair representation by failing to pursue a grievance on Rolland's behalf, and acted in collusion with the employer on the grievance issue.

A deficiency notice issued on June 6, 1997, pursuant to WAC 391-45-110,<sup>1</sup> pointed out problems which prevented finding that a cause of action existed concerning either of the complaints. The complainant was given a period of 14 days in which to file and serve amended complaints with additional information, or face dismissal of the complaints for failure to state a cause of action. Nothing further has been heard or received from the complainant.

#### Discrimination Allegation is Vague

While the complaints in these matters used the term "discrimination", the deficiency notice pointed out that the Public Employment Relations Commission only has jurisdiction in discrimination claims related to union activity. An inference or racial motivation was available only from a broad inference from the allegations of this complaint, and that would be a matter appropriate for resolution

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<sup>1</sup> At that stage of the proceedings, all of the facts alleged in the complaints are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaints state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

before the Human Rights Commission, rather than before the Public Employment Relations Commission.

#### Violation of Contract Claim

While the complaints in these matters used asserted "seniority" rights, the deficiency notice pointed out that seniority rights are created and regulated by collective bargaining agreements, rather than by the statute. 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. City of Walla Walla, Decision 104 (PECB, 1976).

#### Duty of Fair Representation

With respect to any allegation that the union breached its duty of fair representation by failing to pursue a grievance on Rolland's behalf, the deficiency notice pointed out that such matters must be pursued in the courts, which can determine and remedy any underlying contract violation. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

#### Collusion Allegations Vague

While these complaints also alleged collusion between the employer and union, the deficiency notice pointed out that additional information would be necessary before a cause of action could be found to exist. Unions and employers are prohibited from bringing the collective bargaining process to bear in a discriminatory manner, and unions are prohibited from aligning themselves in interest against employees within the bargaining units they represent, but there was insufficient information in these complaints to conclude that such an allegation was being made.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-captioned matters are hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 15<sup>th</sup> day of July, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Marvin L. Schurke".

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.