City of Prosser, Decision 6028 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF PROSSER, Employer.	)	
SHAWN SANT, Complainant,	)	CASE 13116-U-97-3178
vs.	)	DECISION 6028 - PECB
OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 11, Respondent.	)	ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-entitled matter on April 25, 1997. The matter came before the Executive Director for processing pursuant to WAC 391-45-110,[1] and a deficiency notice issued on June 4, 1997, pointed out defects with the complaint as filed. The complainant was given 14 days in which to file and serve an amended complaint, or face dismissal of the case for failure to state a cause of action.

The complainant filed an amended statement of facts on June 16, 1997. That amendment is now before the Executive Director for a preliminary ruling under WAC 391-45-110.

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[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 states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

The complaint identifies Shawn Sant as a police officer employed by the City of Prosser (employer), and identifies Office and Professional Employees International Union, Local 11 (union), as the exclusive bargaining representative of all full-time and regular part-time employees of the employer. Thus, the parties and their bargaining relationship are clearly within the jurisdiction of the Commission under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.[2]

This controversy concerns the rate of pay made applicable to Sant under a collective bargaining agreement which, according to the complaint, was signed by the employer and union on July 15, 1996 for the period from 1996 through 1998. Sant was the probationary employee affected by the following language in Appendix A to that contract:

> Police officer placement is based on an Officer First Class. The existing officer currently on probation would move to a [salary three steps lower than listed for "Police Officer"], until completion of the probationary period. Upon completing probation, as per the salary matrix movement, he would move to [a salary two steps lower than "Police Officer"].

Sant now alleges that the union "interfered with, restrained, and coerced public employees in the exercise of their rights **in**

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[2] The amended statement of facts repeatedly makes reference to a "RCW 51.56.150" as a basis for the complaint. No such section exists in Title 51 of the Revised Code of Washington, which concerns industrial insurance. For the purposes of WAC 391-45-110, it is assumed that the complainant has made a typographical error, and that he intended to refer to RCW 41.56.150(1), which is part of the Public Employees' Collective Bargaining Act administered by the Commission.

entering into the labor agreement" [emphasis by **bold** supplied], in violation of RCW 41.56.150(1). However, certain problems still preclude finding that a cause of action exists.

The Statute of Limitations

RCW 41.56.160 imposes a six-month limitation on the filing of unfair labor practice complaints, stating in part:

> (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: 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. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

The period of limitation is computed from the time when a potential complainant knew or reasonably should have known of a violation of its/their rights.

The complaint filed in this case on April 25, 1997, is nominally timely only as to actions which occurred on or after October 25, 1996, and the evident untimeliness of the complaint was pointed out in the deficiency notice. Sant alleged in the amended statement of facts that:

> It would have been inappropriate for Officer Sant to file an unfair representation claim until such times as he was aware that he was not going to be treated equitably with other officers in the same of similar circumstances. If he had filed a complaint for unfair representation prior to the **exhaustion of his**

> **grievance procedures pursuant to his union agreement**, the complaint would have been dismissed as being untimely for failing to wait and see if his grievance was going to be processed so that he was treated equitably with other officers in the union.
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> [Emphasis by **bold** supplied.]

The complainant's prediction about the disposition of an earlier-filed complaint does not, however, accurately reflect the language of the statute or Commission precedent.

The unfair labor practice provisions of the statute exist and operate independent of the enforcement of collective bargaining agreements. RCW 41.56.160 expressly provides that the Commission's authority to determine and remedy unfair labor practices is not affected by other means of adjustment. Although the Commission appoints or assists in the appointment of arbitrators for grievance disputes under Chapter 391-65 WAC,[3] that activity is independent of unfair labor practice proceedings under Chapter 391-45 WAC. It follows that pursuit of a procedure to resolve a grievance dispute does not stop the statute of limitations clock from ticking as to a concurrent unfair labor practice cause of action. Under the Commission's practices and precedent, an unfair labor practice complaint would certainly not have been dismissed on the basis that parallel grievance processing remained incomplete.[4]

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[3] Final and binding arbitration of grievances is authorized by RCW 41.56.122 and encouraged by RCW 41.58.020(4), but not a required component of labor contracts.

[4] Under City of Yakima, Decision 3564-A (PECB, 1992), the Commission will "defer" the processing of some timely-filed unfair labor practice cases pending the outcome of a related grievance processes. Even then, however, the unfair labor practice case is kept open (and is not dismissed) during the "deferral" period.

The complaint alleges that bargaining unit members were presented with the employer's "last, best and final" dated April 29, 1996, and that they ratified it shortly thereafter. Under those facts, Sant could reasonably be presumed to have had notice of his situation nearly a year before this complaint was filed.

Proof that the union did not provide Sant with the proposed salary matrix at the time of the ratification vote could arguably be a basis for extending the period of limitations for a time when the existence of a violation was concealed from Sant, but the complaint indicates the contract was signed on July 15, 1996. Even if Sant did not have full information from April to July, that does not explain away the constructive notice which attaches to the period from July 15 to October 26, 1996. The complaint is untimely.

The Complainant's Grievance

The statement of facts describes a grievance which Sant filed under the collective bargaining agreement, alleging "inequitable treatment". That grievance was processed to mediation, which resulted in a written settlement agreement. That document, which was signed by a union business agent, by the city administrator, **and by Sant himself** on October 25, 1996, includes the following: "This settlement constitutes a full and complete settlement of this issue and/or any other related issue." Those facts could not be the basis for finding an unfair labor practice.

The deficiency notice pointed out that the 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). Apart from being at odds with the settlement document which he signed, the contract-based claim is not before the Commission.

Breach of Duty of Fair Representation

Although he does not use the terminology, it was inferred in the deficiency notice that Sant was attempting to allege that the union breached its duty of fair representation by accepting what Sant considered to be a poor settlement (or settlements) concerning his wages. The complainant notes that the grievance settlement did not guarantee Sant a salary increase. He then goes on to allege that when he did receive a salary increase, in February of 1997, he was able to determine that he would receive $5,100 less than other police officers over the life of the contract.[5]

The facts alleged would be insufficient to state a cause of action, even if the complaint were timely filed. Two distinct types of "duty of fair representation" situations are described in Commission precedents:

- Closely related to the absence of jurisdiction over "violation of contract" claims, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). This appears to be such a case. The complainant's remedy, if any, lies in a court which can assert jurisdiction over the employer and the underlying contract violation.

- The Commission does police its certifications, and will assert jurisdiction over "breach of duty of fair representation"

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[5] Sant seeks to recover that sum, plus interest and attorney's fees and costs, through the unfair labor practice provisions of Chapter 41.56.RCW.

allegations where an exclusive bargaining representative is alleged to have aligned itself in interest against one or more bargaining unit employees on invidious grounds, such as discrimination on the basis of race, creed, national origin, union membership, or lack of union membership. The complainant has made no allegations, however, of union action based on any unlawful consideration. Further, it is not a requirement of the bargaining process that a contract benefit equally all of the members of the bargaining unit. Ford Motor Co. v. Huffman, 345 U.S. 330 (1953).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above captioned matter is DISMISSED.

Issued at Olympia, Washington, on the 28th day of August, 1997.

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.