

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNIVERSITY PLACE SCHOOL DISTRICT,	)	
	)	
Employer.	)	
-----	)	
INGEBORG RUIZ,	)	CASE 13489-U-97-3292
	)	
Complainant,	)	DECISION 6165 - PECB
	)	
vs.	)	
	)	
CPEA/WEA OF UNIVERSITY PLACE,	)	
	)	
INGEBORG RUIZ,	)	
	)	
Complainant,	)	CASE 13490-U-97-3293
	)	
vs.	)	DECISION 6166 - PECB
	)	
UNIVERSITY PLACE SCHOOL DISTRICT,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	

On October 20, 1997, Ingeborg Ruiz filed unfair labor practice charges with the Public Employment Relations Commission. Consistent with the Commission's procedures, two cases were docketed:

Allegations of "union interference with employee rights" made against the CPEA/WEA of University Place (union) have been processed in Case 13489-U-97-3292.

Allegations of "employer interference with employee rights" and "employer domination or assistance of a union" made against the University Place School District (employer) have been processed in Case 13490-U-97-3293.

The complainant alleged, generally, that a union official failed to represent the complainant in two transactions with the employer, and thereby permitted the employer to violate the collective

bargaining agreement applicable to the complainant's employment as a classified employee.

The complaint was considered by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110.<sup>1</sup> A deficiency notice issued on November 18, 1997, pointed out several problems with the complaint. The complainant was given a period of 14 days in which to file and serve an amended complaint or face dismissal of the cases. The complainant has failed to amend the complaint in the allotted time, and the matter is again before the Executive Director under WAC 391-45-110.

#### Complaint is Untimely

RCW 41.56.160 authorizes the Commission to determine and remedy unfair labor practice violations, but limits the filing of unfair labor practice claims to the six months after the acts or events complained of. The period is computed from the time the injured party knew or reasonably should have known of the violation.

In this case, the complaint filed on October 20, 1997 is timely, on its face, only as to acts or events occurring on or after April 20, 1997. In that light:

- The complaint alleges that the employer used material from 1990 and 1991 against the complainant in March of 1996, in violation of time limits imposed by the collective bargaining agreement. The complainant indicates she was present at the disputed meeting.

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<sup>1</sup> 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 alleges that the union official allowed a reprimand to be placed in the complainant's official file on or about May 3, 1996. Nothing in the complaint alleges, or even suggests, that the actions of either the union official or the employer were concealed from the complainant.

In the absence of any basis to delay the start of the six month period, the allegations described above must be dismissed as untimely.

#### Violation of Contract Allegations

It has long been established that 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). The main thrust of any allegations against the employer herein seems to be that the employer has violated the collective bargaining agreement. The allegations of this complaint thus fail to state a cause of action against the employer.

#### Fair Representation Allegations

Closely related to the absence of Commission jurisdiction to remedy contract violations, 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). An employee who seeks a remedy against an employer for a contract violation would have to proceed in a court, which could assert jurisdiction over the contractual issue and could determine whether a breach of the duty of fair representation excuses the employee from failing to exhaust contract remedies. The allegations of this complaint thus fail to state a cause of action against the union.

NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-entitled matters are hereby DISMISSED.

Issued at Olympia, Washington, on the 22<sup>nd</sup> day of December, 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.