

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
NORMA J. WEBSTER,)	CASE 10879-U-94-2532
)	
Complainant,)	
)	
vs.)	DECISION 4917 - EDUC
)	
SEATTLE EDUCATION ASSOCIATION,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On January 11, 1994, Norma J. Webster filed a complaint charging unfair labor practices with the Public Employment Relations Commission, pursuant to Chapter 391-45 WAC. The complainant identified herself as a "business education teacher" employed by the Seattle School District, and identified the Seattle Education Association (SEA) as the exclusive bargaining representative of certificated employees of the Seattle School District under the Educational Employment Relations Act, Chapter 41.59 RCW. Wes Harris was named as respondent, in his capacity as an official of the Seattle Education Association.

The Executive Director reviewed the complaint for the purpose of making a preliminary ruling pursuant to WAC 391-45-110.¹ A letter directed to the parties on May 13, 1994, noted a number of problems which precluded processing of the complaint as filed. Ms. Webster

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.

was given a period of 14 days in which to file and serve an amended complaint or face dismissal of the case. That time period was extended by the Executive Director, on the request of Ms. Webster, and an amended complaint was filed on August 15, 1994. Additional documents filed by Ms. Webster on September 22, October 11, October 21 and October 25, 1994, have also been examined for materials which could be taken as amendatory to the complaint.² The case is again before the Executive Director for a preliminary ruling under WAC 391-45-110.

Applicable Legal Principles

Under RCW 41.59.080(1) and Commission precedent, bargaining units of non-supervisory certificated employees in school districts must include all non-supervisory educational employees of the employer. Such bargaining units are not limited to those who hold "continuing contracts" under Title 28A RCW, and even include employees who have worked as a "substitute" for a sufficient proportion of the full-time workload to demonstrate that they have an ongoing employment relationship with that employer. Columbia School District, et al., Decision 1189-A (PECB, 1981).

An employee organization which has the support of the majority of the employees in an appropriate bargaining unit is designated as the "exclusive bargaining representative" under RCW 41.59.090. Only an organization holding that privileged status is entitled to

² The document filed with the Commission on September 22 is a copy of a September 8, 1994 letter directed to Webster by an attorney representing Harris in a lawsuit filed by Webster. The document filed on October 11 is a copy of a draft of Webster's "answer to questions propounded in letter dated September 8". The document filed on October 21 is a copy of a letter addressed by Webster to the Equal Employment Opportunities Commission and to the Washington State Human Rights Commission. The document filed on October 25 is a copy of the completed answers, with attachments, to the September 8 letter.

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. At the same time, the fact of holding status as exclusive bargaining representative imposes on the organization a **duty of fair representation** towards all of the employees in that bargaining unit.

Some "breach of duty of fair representation" claims involve allegations that an exclusive bargaining representative has improperly aligned itself in interest against employees within the bargaining unit it represents. Examples would include discrimination against employees who are not union members,³ and discrimination on the basis of race,⁴ sex, creed, or other invidious grounds. The Commission asserts jurisdiction in such cases, to police its certifications and to assure that the privileges of the statute are not abused. An organization found guilty of such discrimination could risk forfeiture of its status as exclusive bargaining representative of the entire bargaining unit involved.

Other "duty of fair representation" claims arise out of differences of view concerning the processing and/or merits of contractual grievances. These cases typically involve an employee who seeks a remedy against his or her employer being dissatisfied with the steps taken (or not taken) by the exclusive bargaining representative to pursue a grievance on the matter. Bearing in mind that the Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through

³ See, e.g., Elma School District (Elma Teachers' Organization), Decision 1349 (EDUC, 1982), where allegations of discrimination based on union membership were processed, but were not proven.

⁴ See, e.g., Steele v. Louisville & Nashville Railroad, 323 U.S. 192 (1944), where a collective bargaining relationship was unlawfully structured in a manner which discriminated on the basis of race.

the unfair labor practice provisions of the statute,⁵ the Commission declines to assert jurisdiction in "duty of fair representation" cases which arise out of contractual grievances.⁶

Like the National Labor Relations Act on which it is patterned, the Educational Employment Relations Act imposes a six-month "statute of limitations" 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. ...

That limitation has been in effect since 1983.⁷ The period begins to run when the complainant knew or reasonably should have known of the misconduct alleged.⁸ The Commission has strictly enforced the limitation by dismissing complaints in numerous cases where the complaint was not timely filed. E.g., 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).

⁵ City of Walla Walla, Decision 104 (PECB, 1976).

⁶ In an employee lawsuit against the employer as a third-party beneficiary to the collective bargaining agreement, proof of breach of the duty of fair representation will overcome a "failure to exhaust contractual remedies" defense. For the Commission to assert jurisdiction only over one-half of that two-part process would be an expensive and time-consuming intrusion into a matter that was at all times within the province of the court.

⁷ Chapter 58, Laws of 1983, section 3.

⁸ City of Pasco, Decision 4197-A (PECB, 1994).

Application of Precedent

The complaint and amended complaint sufficiently allege that Ms. Webster is a member of the bargaining unit represented by the SEA under Chapter 41.59 RCW. The allegations in this case are that the SEA, through its staff representative Wes Harris, has failed or refused to act on behalf of Webster with respect to complaints concerning the terms and conditions of her employment with the Seattle School District.

Parallel Proceedings Before EEOC and Courts -

The statement of facts attached to the original complaint is in the form of a letter written by Webster to the Equal Employment Opportunity Commission (EEOC), dated December 30, 1993.⁹ The first paragraph asks the EEOC for action on a complaint she filed against the Seattle School District in September of 1993. Parts of the third and fourth paragraphs relate Webster's efforts to obtain assistance on the EEOC case from Harris and other SEA officials, and their failure or refusal to act.

The amended complaint filed on August 15, 1994, makes reference to a lawsuit filed in federal court on "diversity" and "due process" grounds. Although that amended complaint purports to incorporate the federal complaint, no copy of that document has been supplied to the Commission.

The amended complaint details that the "age discrimination" claim filed with the EEOC in September of 1993 was amended in July of 1994, to allege discrimination on the basis of "race". Further, it suggests that Webster was then alleging a failure on the part of the SEA to notify her of various teaching positions for which she might have qualified. Some of what is alleged in the amended

⁹ Although the format is not fatal to the complaint before the Public Employment Relations Commission, it provides a clue as to the author's focus and frame of reference.

complaint appears to take issue with the processing of the EEOC case by EEOC personnel.¹⁰ The document filed on October 21, 1994, specifically takes issue with the docketing of a new case by the EEOC as causing unnecessary delay.

The amended complaint further describes Webster's involvement in a lawsuit against a school district in Idaho, dating back to 1978. Actions by the SEA are then compared to the actions taken by the union which represented Webster in Idaho.¹¹ The amended complaint requests that the Idaho case be reopened and combined with the case now pending before the federal court.

The document filed on October 25, 1994, details a contractual basis for Webster's claim that Harris and/or the SEA were obligated to notify her of vacancies for which she might have qualified.

Employee rights originate from several different statutory sources. The name "Public Employment Relations Commission" is sometimes taken to indicate a broad authority over any and all disputes arising out of employment relationships between public employers and their employees, but the Commission's jurisdiction is, in actuality, limited to the administration of state collective bargaining statutes. The Commission does not have jurisdiction in "equal rights" matters properly raised before the EEOC, the Washington State Human Rights Commission, or similar agencies.¹² Any disputes concerning the procedural steps taken by the federal

¹⁰ The amended complaint "authorizes" the Public Employment Relations Commission to obtain materials and investigation done by the EEOC. This appears to misconstrue the complainant's obligation to investigate and prosecute her own case before the Commission. WAC 391-45-270.

¹¹ In what might be interpreted as a rhetorical question among several conclusionary statements, the amended complaint asks "Is this a violation of the Sherman Antitrust law?"

¹² City of Seattle, Decision 205 (PECB, 1977).

courts, by the EEOC, or by any other administrative agency, would have to be appealed under whatever procedures are prescribed for that body. The Commission has no jurisdiction over such matters.

The duty of fair representation imposed on an exclusive bargaining representative under the EERA relates to the negotiation of collective bargaining agreements and the processing of grievances within the collective bargaining process. In Pateros School District, Decision 3744 (EDUC, 1991), the Examiner considered and rejected a claim that an exclusive bargaining representative was obligated to provide legal representation to a bargaining unit member for a statutory proceeding outside of the collective bargaining process.¹³ Thus, even if Harris refused to process Webster's EEOC case, that would not be a basis for finding an unfair labor practice under Chapter 41.59 RCW.

The "Continuing Contract" -

The second paragraph of the original complaint alleges that a "continuing" contract offered to Webster by the employer and signed by her in April of 1992, was revoked by the employer two months later.¹⁴ The amended complaint explains that Webster had been working under a "long term" contract.¹⁵ Other references in the documents indicate there was a dispute about whether Webster was ever entitled to a "continuing" contract.

The issuance and enforcement of individual teacher contracts is regulated by Title 28A RCW, not by Chapter 41.59 RCW. Disputes about such contracts must be resolved through procedures specified

¹³ That case involved an assertion of "continuing contract" rights under Title 28A RCW.

¹⁴ A copy of that contract was attached to the materials filed by Webster on October 25, 1994.

¹⁵ An arbitration award found among the materials submitted by Webster describes this as a "one-year" contract.

within Title 28A RCW, through grievance arbitration under an applicable collective bargaining agreement, or in the courts. Such matters are not within the jurisdiction of the Public Employment Relations Commission.

Processing of Grievance -

The second paragraph of the original complaint goes on to allege that Webster took the "continuing contract" matter to Harris, whose delay in requesting arbitration violated applicable timelines. This allegation was unclear, however, inasmuch as the fourth paragraph of the original complaint indicated that a grievance was arbitrated, and an arbitration award attached to the original complaint indicates that the employer and SEA stipulated to the arbitrator's jurisdiction over a grievance concerning the revocation of the "continuing contract". No "timeliness" issue was framed, and the arbitrator ruled on the merits in that case.¹⁶

The amended complaint filed on August 15, 1994, appears to soften the "violated contractual time limits" claim, alleging instead that an "inexcusable delay" has affected Webster's subsequent employment opportunities with the employer.

Accepting these allegations as attempting to assert a breach of the duty of fair representation, this is nevertheless the type of "grievance processing" issue on which the Commission declines jurisdiction under Mukilteo, supra. Even if it were a matter over which the Commission would assert jurisdiction, the complaint was filed with the Commission more than a year after the events involved. Thus, this allegation would have to be dismissed as time-barred under RCW 41.59.150. The complainant's argument that the statutory timeline should be tolled because of Harris' failure to do his job is without merit. If failure to file a timely

¹⁶ The arbitrator denied Webster's grievance, finding that she was not entitled to a "continuing" contract, and that it had been issued to her by mistake.

grievance were to give rise to a cause of action, the same failure could not also be a basis for tolling the "statute of limitations".

The Filling of a Vacancy -

Paragraph three of the original complaint alleges that Webster's replacement (impliedly in 1992) was a black woman, and alleges that Webster was passed over for other vacancies which occurred thereafter. There is a reference to a race-related comment attributed to Webster, and to her efforts to contradict that situation. There was reference to a grievance having been set for arbitration in September of 1993, but no other details were provided.

The amended complaint indicates that an arbitration hearing that was canceled in "October 1993" was rescheduled and heard in April of 1994, but no further details are provided about the race-related comments or their effect on the grievant's situation.

The documents filed on October 25, 1994, make it clear that the SEA has processed a second grievance to arbitration on Webster's behalf. There is an allegation that the SEA failed to call two witnesses or introduce documentary evidence in that proceeding on the subject of Webster's racial views.

The preliminary ruling letter noted that the factual allegations were unclear, and that the Executive Director is not in a position to fill in gaps in a statement of facts, or to make leaps of logic in the preliminary ruling process. While an allegation that the union discriminated in its processing of Webster's grievance because of her race would be processed by the Commission as a breach of the duty of fair representation, these allegations are insufficient to frame such an issue. In particular, the precise nature of the grievance before the second arbitrator remains unclear, so that it is not possible to conclude that the evidence allegedly withheld would have had any bearing on the outcome of the case. Thus, these allegations fail to state a cause of action.

Irregularities in Arbitration -

The fifth paragraph of the original complaint asked for "reconsideration" of the arbitration award, citing alleged deviations from American Arbitration Association procedures. The documents filed on October 25, 1994, raise issues as to the procedures followed in selecting an arbitrator and processing the "continuing contract" grievance. Further, the documents filed on October 25, 1994, raise a question as to a delay in processing of the second grievance, due to the arbitrator's illness. All of those claims are based on the language of the grievance procedure contained in the collective bargaining agreement between the employer and the SEA.

Consistent with the absence of jurisdiction to determine "violation of contract" claims, under City of Walla Walla, supra, the Public Employment Relations Commission does not become involved in enforcement of contractual arbitration procedures.¹⁷ Further, the Commission does not sit in the role of an appellate or reviewing body with regard to arbitration awards issued under contractual procedures.¹⁸ The arbitration proceedings were conducted by the parties under contractual arrangements authorized by RCW 41.59.130 and encouraged by RCW 41.58.020(4), but that does not give the Commission any authority to intercede on the issues raised by the complainant. Any issues concerning the arbitration proceedings would have to be addressed in the courts.

Computer Training -

Paragraph six of the original complaint made reference to a lack of training on computers and new technology, but there were minimal factual details. The preliminary ruling letter noted that there

¹⁷ Thurston County Communications Board, Decision 103 (PECB, 1976).

¹⁸ Vancouver School District, Decision 197 (PECB, 1977).

was nothing which tied this allegation to either discrimination by the union or any protected union activity by Webster, so that it failed to state a cause of action.

Nothing further has been received from Webster on this issue. It will be deemed to have been abandoned by her, in the absence of an amended complaint.

Offer of Part-Time Job With Union -

Paragraph seven of the original complaint alleges that the Seattle Education Association offered Webster some sort of part-time employment with the Seattle Education Association itself. The preliminary ruling letter noted that it was not clear what the complainant claimed to be unlawful about that offer of employment, or about the tasks assigned.

Nothing further has been received from Webster directly on this issue.¹⁹ It will be deemed to have been abandoned by her in the absence of an amended complaint.

Offer of Representation -

Paragraph eight of the original complaint related a conversation with a union official in December of 1993, when Webster was facing an impending loss of employment. The preliminary ruling letter noted that it was not clear what the complainant claimed to be unlawful about that conversation.

Nothing further has been received from Webster on this issue. It will be deemed to have been abandoned by her in the absence of an amended complaint.

¹⁹ The later-filed materials relate Webster's efforts to apply for other jobs with the Seattle School District, but this is taken to be a separate matter.


NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED for failure to state claims for relief available from the Public Employment Relations Commission.

Issued at Olympia, Washington, on the 21st day of November, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.