

Samaritan Hospital, Decision 6429 (PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SAMARITAN HOSPITAL,	)	
	)	
Employer.	)	
-----	)	
BEATRICE MONCADA,	)	CASE 13820-U-98-3385
	)	
Complainant,	)	
	)	DECISION 6429 - PECB
vs.	)	
	)	
OFFICE AND PROFESSIONAL	)	
EMPLOYEES INTERNATIONAL	)	ORDER OF DISMISSAL
UNION, LOCAL 23,	)	
	)	
Respondent.	)	
_____	)	

On April 1, 1998, Beatrice Moncada filed unfair labor practice complaints with the Public Employment Relations Commission under Chapter 391-45 WAC, naming her union and her employer as respondents. Consistent with long-standing Commission procedure, a separate case was docketed for each respondent:

- The complaint against Samaritan Hospital was docketed as Case 13819-U-98-3383;¹
- The complaint against Office and Professional Employees International Union, Local 23, was docketed as Case 13820-U-98-3384.

¹ That complaint is the subject of a separate order being issued today.

Both cases were reviewed by the Executive Director for the purpose of making a preliminary ruling, and a deficiency notice was issued on June 30, 1998, under WAC 391-45-110.² The complainant was informed that certain problems with this complaint, as filed, which prevented finding that a cause of action exists. Moncada was given a period of 14 days following the date of the deficiency notice in which to file and serve amended complaints which stated a cause of action, or face dismissal of the complaints. Nothing further has been heard or received from the complainant.

The controversy leading to the filing of the complaints arose out of Moncada's absence from work due to the critical illness and impending death of her brother in Texas. The alleged facts are summarized as follows:

- Moncada reported to work in an upset condition on November 16, 1997, after learning of her brother's situation. She explained the reason for her distress to the "house supervisor". He told her to go home, and said he would contact Moncada's supervisor on her behalf.
- Moncada went home, and soon thereafter received a telephone call from her own supervisor. Moncada explained what had happened, and apparently took the supervisor's response to mean that she had been denied any bereavement leave.

² 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.

- Moncada apparently returned to work after the conversation with her supervisor. At that time, she was advised to file a grievance and to give a limited power of attorney to another individual who has no role or status with the union. Moncada submitted a request for bereavement leave to the employer, and apparently also filed a grievance with the employer.
- Moncada went to Texas on November 17, 1997, and returned to Washington on November 23, 1997.
- Moncada went to work on November 24, 1997 and, accompanied by a union steward, attempted to talk to Moncada's supervisor. They were sent to the employer's personnel director, who was unavailable. The union steward informed Moncada that a meeting would probably take place within a few days, and indicated that she would inform Moncada when the meeting was to take place.
- The union steward left a telephone message for Moncada on November 24. Moncada's niece, who is eight years old, took the message but forgot to relay it.
- Moncada received a telephone call from a co-worker on November 25, 1997, asking why she had not appeared for the meeting, and informing her that she had been discharged because she failed to appear for that meeting.
- Moncada telephoned the union steward, who stated the telephone message had been left at Moncada's home the previous day.

- Moncada telephoned the employer's personnel director the next day, and was informed that she had been discharged because she did not attend the meeting.
- Moncada received a letter soon thereafter in which the personnel director listed failure to attend the meeting among the reasons for Moncada's discharge.

Moncada alleges, in essence, that the union failed to provide her with proper representation, both because of the way the union steward left the message for her and because the union failed to obtain a postponement of the meeting when she did not appear. The remedy request in the companion case against the employer includes reinstatement with back pay.

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). A closely related principle, as detailed in the deficiency notice, is that the Commission does not assert jurisdiction over "breach of duty of fair representation" claims concerning a union's failure to process a grievance. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). Such claims must be presented to a court, which would have jurisdiction to rule on and remedy any underlying contract violation.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled action is hereby DISMISSED for failure to state a cause of action.

Issued at Olympia, Washington, this 24th day of September, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marvin L. Schurke", written over a horizontal line.

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.