STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CATHY J. MASON, Complainant, vs. CITY OF PASCO, Respondent.	CASE NO. 5944-U-85-1104
CATHY J. MASON, Complainant, vs. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 11, Respondent.	CASE NO. 5945-U-85-1105 DECISION NO. 2327 - PECB PRELIMINARY RULING AND ORDER OF DISMISSAL

On August 20, 1985, Cathy J. Mason filed a document with the Public Employment Relations Commission. The document was on the form promulgated by the Commission for filing of unit clarification petitions under Chapter 391-35 WAC, but contained the following material:

> My complaint does not appear to be addressed within the law. I have a contract with the Area Agency on Aging which covers my salary and explains what my job functions are. For 1985 my contract states salary as $16,500. The City of Pasco has refused to honor that contract and my salary. I am still being paid at 1984 wages. I had an agreement, in writing, with the City for a grade change:

> They are not honoring that either. It is my position that my AAA contract has presidence (sic) over any secondary union contract. The Local 11 has not represented my grade change in their negotiations. I have provided written documents verifying my grade change to the Local 11. They have chose to ignore my request for representation. I am filing unfair labor practices against the City of Pasco and the Office & Professional Employees International Union, Local 11, under WAC 391-45-010.

The complaint did not cite a statutory violation, and did not provide any information about the union respondent other than its name. Separate unfair labor practice cases were nevertheless docketed against the employer and the union.

While it is not necessary to file unfair labor practice complaints on the forms supplied by the agency, use of the standard form is strongly suggested in order to avoid technical errors.[1] The complaints are now before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, it is assumed that all of the facts alleged are true and provable. The question at hand is whether the the complaints state claims for relief through the unfair labor practice provisions of Chapter 41.56 RCW. The Commission does not conduct any independent investigation of facts, so the preliminary ruling must be based on the matters

---

[1] During the period between August 6, 1985 and August 28, 1985, three other employees of the City of Pasco filed unit clarification petitions which were docketed and processed as such. In none of those cases did the individual employee expressly indicate intention to have the case processed under Chapter 391-45 WAC, which is applicable exclusively to unfair labor practice proceedings.

contained in the documents filed by the complainant. Assuming, for purposes of this analysis, that the complainant would amend the complaint to claim violations of the appropriate statute, there are further difficulties with the complaints.

It is inferred from the overall context that the complainant is a public employee within a bargaining unit of City of Pasco employees for which Office and Professional Employees International Union, Local 11, is the exclusive bargaining representative. The factual allegations recite a situation in which the City of Pasco has refused to honor an individual contract of employment, but the terms are not set forth and no copy has been supplied. Although the complainant states her "position" that the individual contract should control over a collective bargaining agreement, the law is otherwise. To the extent that any bargaining of individual contracts between an employer and its represented employees is lawful, the activity must be subordinate to the collective bargaining agreement negotiated by the employer with the exclusive bargaining representative. Ridgefield School District, Decision 102-B (EDUC, 1976). Furthermore, even if a lawful individual contract exists, the Public Employment Relations Commission is not authorized to enforce either individual employment contracts or collective bargaining agreements through the unfair labor practice proceedings. See: City of Walla Walla, Decision 104 (PECB, 1976). Such actions are remedied through civil litigation in the courts or grievance and arbitration provisions of the contract itself. Thus, there would appear to be no basis for concluding that the City of Pasco could be found guilty of an unfair labor practice in this case.

By a liberal reading of the complaint, one can attribute to the complainant an intention to charge the union with a breach of

its duty of fair representation. The complainant does not, however, allege that the union was in collusion with the employer, that the union discriminatorily aligned itself in interest against the complainant in its bargaining of contract provisions, or that a negotiated contract was applied in a discriminatory manner. The Public Employment Relations Commission has drawn a distinction between two types of fair representation issues, asserting jurisdiction over one type and declining jurisdiction over the other. In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), and in a number of more recent cases, jurisdiction has been declined with respect to breach of duty of fair representation claims arising exclusively from the processing of grievances arising under existing collective bargaining agreements. Such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer. By way of contrast, Elma School District (Elma Teachers Organization), Decision 1349 (PECB, 1982), involved allegations of discrimination against a grievant because of her previous support of another labor organization. A violation of the nature alleged in Elma would place in question the right of the organization involved to continue to enjoy the status and benefits conferred by the statute on an exclusive bargaining representative, and would be processed by the Public Employment Relations Commission as an adjunct to its authority to certify and decertify exclusive bargaining representatives.

In the absence of any allegation that the complainant has been discriminated against on any unlawful basis, this case appears to fall within the class governed by the Mukilteo case. There is no statutory requirement that guarantees each member of the bargaining unit that their individual goals will be accomplished, or even adopted by the union as its proposals, in

collective bargaining. Being involved in a collective process necessarily requires the individual to submit to the will of the majority. The complainant has not specifically alleged, and it cannot be inferred, that the decision against pursuit of her individual proposal was grounded in an unlawful discrimination, no violation of the union's duty of fair representation could be found.

The complainant will be allowed a period of fourteen (14) days following the date of this order to file and serve amended complaints in these matters. With the guidance provided here, it is anticipated that she may be better able to focus on any claims which are within the jurisdiction of the Public Employment Relations Commission.

NOW, THEREFORE, it is

ORDERED

The complainant is allowed fourteen (14) days following the date of this Order to file and serve amended complaints in the above-entitled matters. In the absence of an amended complaint, the matter will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 9th day of December, 1985.

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.