## STATE OF WASHINGTON

BOBBY WOOD,		)
	Complainant,	)
VS.		) CASE NO. 5541-U-84-1006
AMALGAMATED LOCAL 587,	TRANSIT UNION	
	Respondent.	
BOBBY WOOD,		) CASE NO. 5542-U-84-1007
	Complainant,	)
VS.		) DECISION NO. 2147 - PECB
METRO,	Respondent.	) PRELIMINARY RULING ) )

## BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

On November 13, 1984, the complainant filed separate complaints with the Public Employment Relations Commission naming the Amalgamated Transit Union Local 587 and Metro separately as respondents. In a brief statement of facts, Wood claimed the employer and the union were interfering with his rights by refusing to process his grievance and refusing to take the steps necessary to have him reinstated and "made whole for all loss of income and other benefits". It appears from correspondence accompanying the complaints that the union sent a certified letter to Wood on June 22, 1984, notifying him that his termination hearing was scheduled for June 29, 1984. The letter also stated:

Please contact the union office upon receipt of this letter. Failure to do so may result in forfeiture of your grievance.

Apparently, Wood did not attend the hearing. The correspondence filed with the complaint indicates that the employer denied the union's request to reschedule the hearing based on its past practice of considering a grievance closed when the grievant fails to appear. The correspondence also indicates that the union thereafter advised Wood that it would not pursue the termination further "based on the information of the circumstances surrounding your termination".

The matters are presently before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. The question at hand is whether, assuming all of the facts alleged to be true and provable, the complaints

state claims for relief which can be granted through the unfair labor practice procedures of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of RCW 41.56 to enforce collective bargaining agreements, see: <u>City of Walla Walla</u>, Decision 104 (PECB, 1976). Nor does it enforce the agreement to arbitrate, see: <u>Thurston County</u>, Decision 103 (PECB, 1976). To the extent that the complainant claims a contractual right to arbitrate his grievance, that right is beyond the authority of the Commission to enforce.

Nothing in the Public Employees Collective Bargaining Act, Chapter 41.56 RCW guarantees an individual employee the right to arbitration of a grievance independent of his or her union and its contract. In fact, any attempt by the employer to give individual employees the right to arbitrate grievances independently would bear a substantial potential for conflict with the principle of exclusive representation set forth in RCW 41.56.080. An arbitrator in a proceeding between only one of the contracting parties (the employer) and a third-party beneficiary to the contract (the employee proceeding independently) could interpret the contract in a manner conflicting with the interpretation intended by both of the signatory parties or establish conflicting wages, hours or working conditions, thereby undermining the union's status as exclusive bargaining representative of the bargaining unit. A similar quest for arbitration was ended, for similar reasons, in <u>City of Seattle</u>, Decision 1226 (PECB, 1981).

One view of the allegations against the union would be to take them as asserting that the union had breached its duty of fair representation in connection with its handling of the complainant's grievance. It is well established that the exclusive bargaining representative owes bargaining unit employees a duty to consider and act on their grievances in a manner which is neither arbitrary, discriminatory nor lacking in good faith. However, when these allegations are compared against that legal standard, they fail to disclose facts sufficient to suggest an absence or insufficiency of union representation. Further, the Public Employment Relations Commission has declined to assert its unfair labor practice jurisdiction to determine "duty of fair representation" claims arising exclusively out of the processing of grievances. See: Mukilteo School District, Decision 1381 (PECB, 1982). The reason for that policy is that, although the Commission might have jurisdiction over the relationship between the employee and the exclusive bargaining representative, the Commission lacks jurisdiction over the employer for enforcement of the collective bargaining agreement. Such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer.

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For the reasons stated above, the complaints fail to state claims on which relief can be granted. With the direction provided here as to what is not available to the complainant through the unfair labor practice procedures of the Commission, he may be better able to focus attention on any claims which are within the jurisdiction of the Commission.

NOW, THEREFORE, it is

## ORDERED

The complianant will be allowed a period of fourteen (14) days following the date of this order to amend the complaints. In the absence of an amendment, the complaints will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 22nd day of January, 1985.

\_PUBLIC EMPLOYMENT BELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director