STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, AFSCME, AFL-CIO, Complainant, vs. THURSTON COUNTY COMMUNICATIONS BOARD, Respondent.	CASE NO. U-76-41 (39) ORDER OF DISMISSAL DECISION NO. 103 PECB

The Washington State Council of County and City Employees, AFSCME, AFL-CIO, having, on July 23, 1976, filed a charge with the Washington Public Employment Relations Commission alleging that the Thurston County Communications Board had engaged in unfair labor practices within the meaning of Chapter 41.56 RCW by refusing to proceed to arbitration on a grievance arising under a collective bargaining agreement existing between the parties; and the Executive Director having reviewed the Charge Against Employer and accompanying documents filed by the Complainant, and being satisfied that the facts alleged do not, as a matter of law, constitute a violation of RCW 41.56.140;

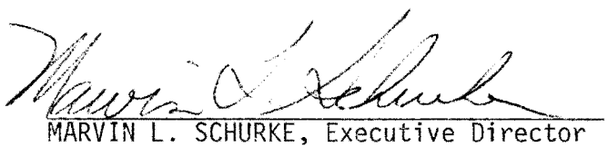
NOW, THEREFORE, It is

ORDERED

That the Charge Against Employer filed to initiate the above-entitled matter be, and the same hereby is, dismissed for lack of jurisdiction.

DATED at Olympia, Washington, this 2nd day of September, 1976.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, AFSCME, AFL-CIO, Complainant, vs. THURSTON COUNTY COMMUNICATIONS BOARD, Respondent.	CASE NO. U-76-41 MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On July 16, 1976, the Washington Public Employment Relations Commission adopted revisions to its procedural rules under which an initial review of unfair labor practice charges for sufficiency is made by the Executive Director of the Commission. The instant Charge was filed on July 23, 1976. In relevant part, the Charge document states:

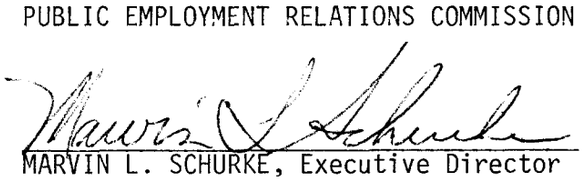
> "The . . . employer has engaged in and is engaging in unfair labor practices within the meaning of Chapter 41.56 RCW. Basis of the Charge . . .
>
> > "The charge against the Employer is brought for his failure to negotiate a grievance according to the contract, which calls for arbitration at the last step of the grievance procedure.'
>
> By these acts the above-named employer has interfered with, restrained and coerced employees in the exercise of the rights guaranteed by Chapter 41.56 RCW."

The accompanying documents include a letter dated March 2, 1976 from the Staff Representative of the Complainant to a representative of the Respondent in which a contractual grievance was asserted concerning the payment of an incorrect rate of pay to two employees. That letter makes reference to the possibility of a charge of breach of contract. A second document is a letter dated March 8, 1976, in which the existence of a dispute is recognized and a reference is made to the potential need for referral of the dispute to an appropriate agency for a hearing and a determination. A third attachment, dated May 21, 1976 references a dispute concerning salary increases for two employees. A fourth attachment is a letter dated June 2, 1976, written by the attorney for the Complainant to the representative of the Respondent, in which the subject of the selection of the third member of a tri-partite arbitration panel was taken up.

From a review of the foregoing documents, it is evident that the Complainant is engaged in an attempt to enforce its collective bargaining agreement, and particularly the agreement to arbitrate apparently contained therein. Arbitration of disputes concerning the interpretation and application of a collective bargaining agreement is a process preferred by both federal and state labor policy,[1/] and our legislature has given further incentive to the use of the arbitration process by making arbitration available to parties under Chapter 41.56 RCW without cost to them.[2/] The federal law provides, in Section 301 of the Labor-Management Relations Act of 1947, as amended, for the litigation of breach of contract claims in the courts. Indeed, the "Steelworkers Trilogy" and other significant court cases endorsing and extending the use of grievance arbitration in labor relations have come up through the courts as cases under Section 301 rather than through the National Labor Relations Board in cases under the unfair labor practice proscriptions to be found in Section 8 of the National Labor Relations Act.[3/] In turn, the National Labor Relations Board recognizes that the Congress rejected the idea of making violation of a collective bargaining agreement an unfair labor practice, and it will normally not process cases having a violation of contract aspect.[4/] While our legislature has not included provisions in Chapter 41.56 RCW precisely comparable to Section 301 of the Taft-Hartley Act, such a provision may not be necessary to make a violation of contract claim justiciable in the courts of this state due to their broad jurisdiction. Our legislature has not delegated to the Commission authority to determine violation of contract allegations as unfair labor practices under Chapter 41.56 RCW, and the undersigned is therefore obligated to conclude that the Public Employment Relations Commission lacks jurisdiction to hear and decide the instant matter.

DATED at Olympia, Washington, this 2nd day of September, 1976

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

1/ See §203(d) of the LMRA; RCW 41.58.020(4).
2/ RCW 41.56.125
3/ See: Steelworkers v. American Mfg. Co., 363 U.S. 564; Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574; Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).
4/ See: BNA Labor Relations Expediter, "Collective Bargaining Contracts", Sec. 32.