

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LOCAL UNION NO. 77, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE NO. 888-U-77-110

DECISION NO. 359-PECB

ORDER OF DISMISSAL

This matter is before the Executive Director under the provisions of WAC 391-20-310. The complaint filed on May 4, 1977 states, in part:

"During negotiations, in November, 1976, the City sought to negotiate the right to conduct performance evaluations. The parties failed to agree and the matter was dropped. Now the City is in the process of unilaterally implementing the performance evaluations.

It is our contention, the City's action of introducing the subject in negotiations makes the issue bargainable and their unilateral action violates our rights as the exclusive bargaining representative."

Those pleadings were accompanied by copies of the City's proposals to the Union in negotiations, including the specific language proposed by the City specifying the right to conduct performance evaluations.

Copies of the current and previous collective bargaining agreements were requested of the parties by letter dated December 23, 1977, and those documents were received on January 3, 1978. Those agreements include the following language as Article I, Scope of Agreement, Section 1.3:

"1.3 The right to hire, promote, discharge for just cause (in accordance with Civil Service Rules), maintain efficiency, and determine the location of Department headquarters are examples of management prerogatives. It is also understood that the Department retains the right, in its discretion, to manage its affairs and to direct its working force, except as may be limited by provisions of this agreement."

The collective bargaining agreement for 1977-78 contains a grievance procedure which terminates in final and binding arbitration conducted under the voluntary labor arbitration rules of the American Arbitration Association. The City's response to the request for copies of the applicable contracts included indication that no grievance has been filed on the matter referenced in the complaint.

The second paragraph of the text of the complaint is directly contrary to the announced policies of the Commission. At a public meeting held on June 25, 1976, the Commission announced (and incorporated into its minutes) the following statement of policy:

"It is the policy of the Commission to promote bilateral collective bargaining negotiations between employers and the exclusive representatives of their employees. Such parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into dispute between them. The Commission deems the determination as to whether a particular subject is mandatory or non-mandatory to be a question of law and fact to be determined by the Commission, and which is not subject to waiver by the parties by their action or inaction. It is the policy of the Commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a non-mandatory subject."

The statement of policy has since been incorporated into WAC 391-30-550 and WAC 391-21-550 as administrative rules of the Commission, and the Union's contention in that regard cannot be accepted as alleging an unfair labor practice.

The "right to conduct performance evaluations" stems from deeply within the management function, and would appear to be both a permissive subject of bargaining under RCW 41.56 and a right reserved to management by the terms of Section 1.3 of the current collective bargaining agreement. The Commission policy set forth above encourages parties to bring matters to the bargaining table where there is a dispute (without regard to the mandatory or permissive nature of the matter), in the hope that the parties might come to an agreement. While agreements on permissive subjects can be enforced during the life of a contract into which they are incorporated, this agency does not have jurisdiction to enforce collective bargaining agreements through the unfair labor practice provisions of the statutes. See: Thurston County Communications Board, Decision No. 103, PECB; City of Walla Walla, Decision No. 104 (1976).

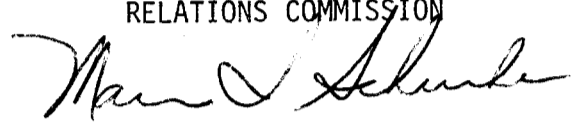
NOW, THEREFORE, it is

ORDERED

The Complaint filed in the above-entitled matter is dismissed.

Dated at Olympia, Washington this 31st day of January, 1978.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director