

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KEN PALMER,)	
)	
Complainant)	CASE NO. 2749-U-80-402
)	
vs)	DECISION NO. 921-PECB
)	
CITY OF LONGVIEW,)	ORDER OF DISMISSAL
)	
Respondent)	

The complaint charging unfair labor practices was filed in the captioned matter on May 5, 1980. The material allegations of the complaint are:

- "1. The shift personnel of the Longview Fire Department are working a 51.33 hour work week on a 24 and 48 hr. shift. In order to accomplish this we receive a Kelly day every twelfth shift.
2. Ken Palmer was placed on six months disability leave. The management has refused to allow Ken to take these Kelly days during this period of time. On Ken's final check he was short three days pay.
3. The State of Washington specifically allows people under the LEOFF system to take six months disability leave without suffering any loss of benefits.
4. Ken retired on disability leave July 10, 1979.
5. Ken officially retired on half pay Jan. 10, 1980.
6. During this period of time Ken was scheduled to take three Kelly days which he did not get paid for. The dates of these Kelly days were August 25, 1979, Sept. 30, 1979, and November 5, 1979.
7. We feel that Ken Palmer and any other Fire Fighter who is placed on disability leave is entitled to all benefits given him by contract which includes sick leave, Kelly days, vacation or any other benefit that a regular Fire Fighter is entitled to."

The complaint seeks relief under RCW 41.56.122(2), which permits parties to enter into collective bargaining agreements containing grievance arbitration provisions.

The unfair labor practice jurisdiction of the Public Employment Relations Commission under RCW 41.56 extends only to violations of RCW 41.56.140 and 41.56.150. Violation of a collective bargaining agreement is justiciable in the courts and under contractual grievance and arbitration machinery. Where particular conduct is alleged to violate both a collective bargaining agreement and RCW 41.56.140 or 41.56.150, "deferral" must be considered. See: City of Richland, Decision 246 (PECB, 1977); City of Kennewick, Decision 334 (PECB, 1977). However, where, as here, the conduct alleged is only a violation of the collective bargaining agreement, the Commission

does not assert any jurisdiction under its unfair labor practice authority. See: City of Walla Walla, Decision 104 (PECB, 1976). Assuming all of the facts alleged to be true and provable, the complaint does not state a cause of action under RCW 41.56.140.

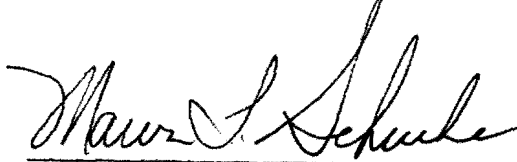
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is dismissed.

DATED at Olympia, Washington, this 27th day of June, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

cc: Walter Barham
Jack L. Smith, Jr.
Ken Palmer