STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DONALD J. WAKENIGHT, Complainant, vs. CITY OF SEATTLE and INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, AFL-CIO, Respondents.	CASE NO. 3476-U-81-509 DECISON NO. 1226 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-entitled matter on June 3, 1981. The material allegations of the complaint are:

> "1. That the City of Seattle and the union entered into an agreement, within the collective bargaining agreement article #17 which limits and restrains my ability to adjust my grievance.
>
> 2. On May 26, 1981, I was notified by memorandum that since I had filed the grievance rather than the union I could not have the grievance settled by arbitration. (see attached memo)
>
> 3. I have filed an unfair labor practice charge for lack of representation for refusing to file grievances for me, case # 03458-U-81-00499."

Although paragraph 4.1 of the complaint makes reference to "Article #17" of the collective bargaining agreement, the memorandum attached to the complaint identifies the grievance procedure of the agreement as "Article VI". A copy of the collective bargaining agreement was requested and supplied. Article XVII of that agreement deals with hours of work and overtime.

PERTINENT STATUTORY PROVISIONS:

> 41.56.030(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages,

> hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.
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> 41.56.080 Certification of bargaining representative--Scope of representation. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: Provided, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.
>
> 41.56.122 Collective bargaining agreements--Authorized provisions. A collective bargaining agreement may:
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> * * *
>
> (2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.
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> 41.58.020 Powers and duties of commission.
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> * * *
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> 41.58.020(4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The commission is directed to make its mediation and fact-finding services available in the settlement of such grievance disputes only as a last resort.

DISCUSSION:

The complainant's assertion of a right to access to grievance arbitration cannot be founded on the proviso to RCW 41.56.080 or on any other provision of RCW 41.56. Contractual grievance procedures are a mandatory subject of collective bargaining between employers and unions exclusively representing employees. Arbitration procedures are permitted by RCW 41.56.122(2) and encouraged by RCW 41.58.020(4), but only in context of the relationship between the employer and the union. No provision of RCW 41.56 guarantees any particular type of procedure to employees asserting their rights under the proviso to RCW 41.56.080. Examination of the collective bargaining agreement involved in this matter discloses that the employer and the union have given individual grievants proceeding under the RCW 41.56.080 proviso a

guarantee of the same pre-arbitration procedures and steps as are followed by the parties to the contract for the resolution short of arbitration of their disputes concerning interpretation and application of the collective bargaining agreement. It was not necessary that the employer and the union open to individual employees an arbitration procedure under which they could obtain an authoritative interpretation of the collective agreement. In fact, any such process would bear the potential for conflict with the "not inconsistent terms of (the agreement)" proviso found within the RCW 41.56.080 proviso, as an arbitrator could interpret the contract in a manner conflicting with the interpretation intended by both of its signatory parties, thereby undermining the union's status as exclusive bargaining representative of the bargaining unit in its dealings with the employer. Therefore, it is concluded that the complaint fails to allege facts on which an unfair labor practice violation could be found.

The complainant's fair representation allegations against the union have been reviewed separately pursuant to WAC 391-45-110 and have been assigned to an Examiner for further proceedings. Allegation 4.3 of the complaint is interpreted to be only a cross-reference to those proceedings.

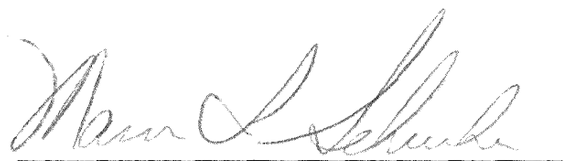
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington this 13th day of August, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director