STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE NO. 6135-U-85-1156 DECISION NO. 2364 - PECB PRELIMINARY RULING

On December 9, 1985, the International Federation of Professional and Technical Engineers, Local 17 filed a complaint charging unfair labor practices with the Public Employment Relations Commission, listing the City of Seattle as respondent.

This matter is now before the Executive Director for preliminary ruling pursuant to WAC 391-45-110. The question at hand is whether, assuming all the facts alleged to be true and provable, the complaint states claims for relief which can be granted through the unfair labor practice provisions of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

The allegations concern the employer's unilateral establishment of a condition of employment which may require an employee to submit to a specific course of treatment as recommended by the Seattle Employee Assistance Program. The allegations also state that an arbitrator recently ruled that the employer did not have such a right under the collective bargaining

agreement. [1] The employee who is the subject of the complaint failed to participate in the program specified by the employer and was discharged from employment. The union requests reinstatement of the employee and an order to bargain.

In effect, the complaint appears to seek the enforcement of an arbitration award under a collective bargaining agreement. Even if the arbitration award referred to in the complaint was based on the grievance of a different employee, that arbitration proceeding may have resulted in a final and binding interpretation of the collective bargaining agreement on the underlying point of law, such that the award might be regarded as res judicata on the more recent grievance. Defenses to such a claim might involve a change of the underlying contract language or distinctions between the facts of the situations. But all of this is academic in this forum. Such debate is for pursuit in the courts. RCW 41.56.140 does not make violation of a collective bargaining agreement an unfair labor practice. The Commission lacks jurisdiction to enforce collective bargaining agreements, including agreements to arbitrate grievances or accept arbitration awards as final and binding. See: City of Seattle, Decision 1989 (PECB, 1984); City of Walla Walla, Decision 104 (PECB, 1976); Thurston County, Decision 103 (PECB, 1976).

An alternative interpretation of the complaint which is suggested by the correspondence attached to the complaint is that the dispute may also (or only) involve an alleged failure of the employer to bargain a condition of re-employment for an employee other than the grievant in the arbitration case. If were the case, then the facts may allege matters within the

---

[1] The facts alleged are not clear as to whether the arbitration award concerned the same employee named in the complaint.

jurisdiction of the Commission but subject to the policies of the Commission concerning deferral to arbitration. There is reference to a pending grievance on a limited issue, without any explanation as to why the discharge itself (or the imposition of the conditions in dispute) could not be submitted to an arbitrator. The Commission's policies regarding the deferral of alleged violations of RCW 41.56.140 to arbitration are not dependent on the willingness of the complainant to pursue contractual dispute resolution procedures or on their actually having been initiated. See: King County, Decision 2193 (PECB, 1985).

With the direction herein provided, complainant may be better able to amend the complaint to focus attention on claims within the Commission's jurisdiction.

NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 23rd day of January, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director