

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION, LOCAL 1015,)	CASE NO. 6288-U-86-1213
)	
Complainant)	DECISION NO. 2597 - PECB
)	
vs.)	
)	
SPOKANE TRANSIT AUTHORITY,)	PRELIMINARY RULING
)	
Respondent.)	

The complaint charging unfair labor practices was filed in the above-entitled matter on March 17, 1986. The complaint makes reference to a collective bargaining agreement in effect between the parties through September 30, 1987 and alleges that the employer modified or violated the collective bargaining agreement by its adoption of changes of policy concerning sick leave usage.

The employer volunteered an answer on April 2, 1986, in which it alleged, inter alia, that the employer had a right under the collective bargaining agreement to make the changes at issue.

When the matter initially came up for consideration under the preliminary ruling procedures of WAC 391-45-110, the parties were invited to comment on the propriety of deferral to arbitration. The employer responded, by letter, favoring deferral. The union did not respond. The Executive Director issued a letter on June 23, 1986, noting that the employer's conduct was "arguably protected or prohibited by the collective bargaining agreement" and deferring the unfair labor practice allegations pending the completion of grievance and arbitration proceedings under that contract.

On February 9, 1987, the employer filed with the Commission a copy of an arbitration award issued on December 30, 1986 by Arbitrator Janet L. Gaunt. That award provided:

1. The employer did violate the Collective Bargaining Agreement by promulgating rules and regulations that subject drivers, who are credited with a miss-out for reporting to work late, to additional penalties beyond those set forth in Article XV, Section 3 of the contract.
2. As an appropriate remedy, the Employer shall cease and desist from applying its attendance standards and associated progressive discipline to such miss-outs and shall revise attendance records of members of the bargaining unit accordingly.

Nothing suggests that the employer claims or would claim that deferral should be withheld under standards enunciated in Spielberg Mfg. Co., 112 NLRB 1080 (1955) or its progeny.

The Public Employment Relations Commission recently reviewed its "deferral to arbitration" policies in Stevens County, Decision 2602 (PECB, 1987), where it reiterated the long-established principle that the Commission does not exercise the authority of an arbitrator in an unfair labor practice case. The Commission noted, further, in Stevens County:

If the arbitrator determines that the employer's conduct was either protected or prohibited by the contract, our deferral to the arbitration award will generally dispose of the unfair labor practice allegations. (emphasis supplied)

Where, as here, the arbitrator finds that the employer's conduct was in violation of an existing contract, then it

follows that the bargaining obligations of the parties had been met on the subject matter. Since the Commission does not remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, enforcement of the parties' agreement on this subject matter was properly in the hands of the arbitrator. The arbitrator has fashioned a remedy, as set forth in quotation, above.

Assuming all of the facts alleged to be true and provable, it appears that the unilateral change at issue in the unfair labor practice case was a violation of the collective bargaining agreement and that no duty to bargain existed during the term of that agreement. Accordingly, no unfair labor practice violation could be found.

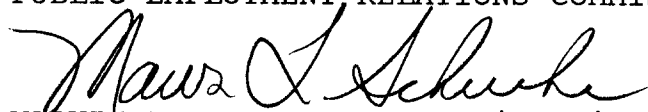
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 4th day of March, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.