STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GARY D. KUNKEL, Complainant, vs. MORTON GENERAL HOSPITAL (LEWIS COUNTY PUBLIC HOSPITAL DISTRICT 1), Respondent.	)	CASE 8836-U-90-1936 DECISION 3836 - PECB ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-captioned matter on October 17, 1990. A preliminary ruling letter issued on December 14, 1990, pursuant to WAC 391-45-110, pointed out several defects with the complaint and allowed the complainant a period of time to file and serve an amended complaint. Additional documents submitted on January 2, 1991, consisted of a two-page handwritten letter and an unidentified newspaper clipping which reports on a meeting of the employer's governing board. The matter is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage in the proceedings, it is assumed that all of the facts alleged by the complainant are true and provable. The question remains whether the complaint states a cause of action for unfair labor practice proceedings before the Commission.

The Nature of the Allegations

The complainant was an employee of Morton General Hospital until he was laid off on May 1, 1990. The complaint describes a series of problems that the complainant encountered with management officials during his employment, but does not relate any of those difficulties to participation in union activities: A question of vacation

hours accumulation in February of 1989 appears to have been an individual action, even though it ultimately resulted in benefit to other employees; changes in duties and job descriptions in July and August of 1989 appear to have been negotiated directly between the complainant and the employer; conflicts that developed between the complainant and other employees beginning in August, 1989, resulted in a transfer and/or a reprimand by October, 1989; a recurrence in March of 1990 was the subject of a memo authored by the complainant as an individual; a wage claim filed with the Washington State Department of Labor and Industries in September of 1989, was initiated by the complainant as an individual; the complainant joined the "Washington State Central Supply Association" in March of 1990, but there is no indication of that being a labor organization within the meaning of RCW 41.56.030(3); an April 4, 1990 memo concerning paid time off appears to have been authored by the complainant as an individual; and a memo concerning an unsafe condition appears to have been authored by the complainant as an individual. The complaint then described several conversations with management officials up to and immediately following the effective date of the complainant's layoff.

The documents filed on January 2, 1991 claim that the "employees filed for union status" in September of 1989,[1] but there is no claim that the complainant had any role in, or was even a supporter of, that union activity. The complainant affirmatively indicates that the union was not mentioned in two of his meetings with employer officials. Management directives that he not talk to other employees, or that they not talk to the him, were not tied to any union activity. The actual references to the union are limited to a union official's comments on the "paid time off" subject that the complainant had addressed as an individual, and a claim that

---

[1] Notice is taken of the docket records of the Commission for Case 8282-E-89-1404, a representation case filed by the Western Council of Industrial Workers on November 7, 1989.

payment of "back overtime" was delayed because of union negotiations. The newspaper clipping indicates that payment of overtime was delayed in connection with the union negotiations.

Sufficiency of the Complainant's Response

The document filed with the Commission on January 2, 1991 does not contain any indication that a copy was provided to the employer. WAC 391-08-120 clearly requires that all pleadings and other papers filed with the Commission be served on other parties to a case. The employer was, and is, entitled to service of any charges against it. Even if the complaint was otherwise in good order, timely service of the January 2 documents on the employer would have to be established before the case could be processed further.

Jurisdiction of the Commission

It is clear from the documents on file that the complainant desires to have the Public Employment Relations Commission decide the merits of his discharge and other grievances. Morton General Hospital is a "public employer" subject to the Public Employees' Collective Bargaining Act administered by the Commission (Chapter 41.56 RCW), but that statute does not empower the Commission to determine or resolve all disputes arising in "public employment".

The unfair labor practice provisions of Chapter 41.56 RCW protect the process of collective bargaining. The preliminary ruling letter advised the complainant that the Commission does not regulate relationships between public employers and non-union employees, and that he would need to prove that the employer's actions were, at least in part, motivated by an anti-union feeling against him. The complainant's assertion of rights as an individual is not a "collective" activity protected by Chapter 41.56 RCW. City of Seattle, Decision 489 (PECB, 1978). The supplemental documents still fail to allege that the employer has discriminated

against the complainant for engaging in union activity protected by Chapter 41.56 RCW.

The job security rights of unionized employees, such as "seniority" and the right to be disciplined or discharged only for "just cause", are contractual matters negotiated by the employer and union. Even if the complainant's employment had been covered by such contractual rights, Chapter 41.56 RCW does not make "violation of a collective bargaining agreement" an unfair labor practice subject to the jurisdiction of the Commission. City of Walla Walla, Decision 104 (PECB, 1976). Such contractual job security rights would be enforceable only through grievance and arbitration mechanisms of the contract, or by means of a lawsuit in the courts.

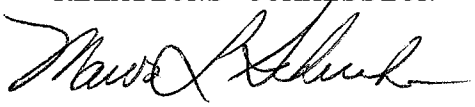
NOW, THEREFORE, it is

ORDERED

For all of the reasons stated above, the complaint charging unfair labor practices filed in this case must be, and is, DISMISSED.

Dated at Olympia, Washington, on the 6th day of August, 1991.

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.