STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY FIRE DISTRICT 2, Employer --- CYNTHIA L. HILL, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1488, Respondent.	CASE 9296-U-91-2066 DECISION 4064 - PECB ORDER OF DISMISSAL

On August 1, 1991, Cynthia L. Hill filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming International Association of Fire Fighters, Local 1488, as respondent in a dispute arising out of her employment with the "Lakewood Fire Department".[1] The case came before the Executive Director for processing pursuant to WAC 391-45-110, and a preliminary ruling letter issued on August 22, 1991 pointed out certain defects which precluded processing of the complaint, as filed. The complainant was given a period of time in which to file and serve an amended complaint.

The complainant made a supplemental filing on August 29, 1991, and the case is again before the Executive Director for processing pursuant to WAC 391-45-110. At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor

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[1] The formal name of the public employer is used by the Commission in its docket records.

practice proceedings before the Public Employment Relations Commission.

The complainant identifies herself as a shift supervisor in the employer's dispatching operation. She is represented in a separate bargaining unit from the employer's uniformed personnel,[2] although the contract is negotiated and administered by union officials who are uniformed personnel. The complaint goes on to describe three separate occasions where she believes the union neglected or refused to represent her interests, two of which were in 1987 and 1990.

The preliminary ruling letter issued on August 22, 1991 pointed out that RCW 41.56.160 specifies that no unfair labor practice complaint shall be processed as to conduct occurring more than six months prior to the filing of the complaint with the Commission. The complaint filed in this case on August 1, 1991 is timely only with respect to conduct occurring on and after February 1, 1991. The supplemental letter indicates that the references to earlier events were merely provided as background to allegations concerning events for which the complaint was timely.

The original complaint described a series of events in June and July of 1991, commencing with a grievance filed by Hill on June 24, 1991. Hill sought to challenge two new policies that had been instituted by the employer, and she left a package of materials on the subject in the union's mailbox. Hill believed the new policies to be in violation of the collective bargaining agreement and/or in

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[2] Such a separation of bargaining units is required by Commission precedent, due to the existence of "interest arbitration" procedures under RCW 41.56.430, et seq., only for persons who are "uniformed personnel" within the meaning of RCW 41.56.030(7). The latter definition is limited, in turn, to persons who are members of the "Law Enforcement Officers and Fire Fighters" retirement system created by Chapter 41.26 RCW. See, City of Yakima, Decision 837 (PECB, 1980).

violation of the statutory duty to bargain.[3] She complains that her materials were ignored, and that her requests for assistance were brushed off by union officials. After the employer rejected her grievance, the union is alleged to have agreed with the employer's position. The complainant appealed the grievance to the employer's elected board, and she presented her case without union presence or assistance. After the board denied her grievance, the union refused to pursue the matter to arbitration. While acknowledging that the "exclusive bargaining representative" of public employees has an obligation to provide fair representation to the employees in the bargaining unit, the preliminary ruling letter pointed out that the Commission does not assert jurisdiction on "duty of fair representation" claims arising exclusively out of disagreements concerning the merits of grievances.

The supplemental letter filed in this matter asks for "assistance" and "representation" from the Commission, and for explanation of the Commission's refusal to assert jurisdiction in certain "duty of fair representation" cases. Complainants are free to represent their own interests, or to obtain their own legal counsel for proceedings before the Commission. As the state agency charged with the impartial administration of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, the Commission and its staff are not in a position to act in an advocacy role on behalf of any party to proceedings before the Commission.

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[3] Hill initiated unfair labor practice charges against the employer in a separate case which is the subject of an order of dismissal in Pierce County Fire District 2, Decision _____ (PECB, 1992). In that proceeding, Hill sought to challenge the employer's adoption of new policies in June of 1991 concerning: "restricting visitation to the Center's employees (Policy 208-A) and Center Security Measures (Policy 2304). It was concluded there that the complaint failed to allege facts sufficient to conclude that RCW 41.56.040 conferred a right on Hill and her co-workers to have visitation at their work place by persons who were not present as agents of their exclusive bargaining representative.

The supplemental letter then goes on to allege that the union's absence from the board hearing on her grievance was the result of collusion between the employer and union, so that the employer could infer union support for its position on the grievance, and that the union's lack of interest in this case was due to the challenged policies having no effect on the "uniformed personnel" who comprise the union leadership.

The Commission's policy on "duty of fair representation" cases is rooted in a complex (and unusual) duality of jurisdiction. Both administrative agencies and the courts exercise some jurisdiction in cases involving breach of the duty of fair representation. The courts have jurisdiction to determine and remedy violations of contracts, however, while the Commission does not have such jurisdiction. City of Walla Walla, Decision 104 (PECB, 1976). To obtain a remedy against an employer for a contract violation, an employee would need to initiate a lawsuit in the courts as a third-party beneficiary to the contract. If the employer asserts a "failure to exhaust contractual remedies" defense, the employee would need to prove both the union's breach of the duty of fair representation and the employer's violation of the contract. In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), it was recognized that assertion of jurisdiction by the Commission in all "fair representation" matters could leave employees with empty victories in many cases. Even if a breach of the duty of fair representation were shown, there could be no remedy before the Commission for any underlying contract violation. Thus, the Commission has declined to involve itself in "fair representation" proceedings that seek an underlying remedy against the employer. On the basis of the facts alleged, this is such a case. Much of the material in the statement of facts concerns the union's failure to investigate grievances, its failure to obtain or receive grievance information, and its processing of grievances in an arbitrary or perfunctory manner. These may well be the types of allegations which would support access to the

courts against the employer under the decision of the Supreme Court of the United States in Vaca v. Sipes, 386 U.S. 171 (1967). They are, however, precisely the type of situation for which there is no relief available through the Commission.

The Commission does assert jurisdiction to police its certifications, where it is alleged that a union has discriminated on some invidious basis.[4] Paragraph 2 of the original statement of facts contained a reference to discrimination on the basis of sex, but no details were provided to explain how sex has been a factor in the union's actions or inactions. The supplemental letter contains no additional information to support a claim of discrimination on the basis of sex.

The Commission also asserts jurisdiction where it is alleged that a union has aligned itself in interest against employees within the bargaining unit that it is certified or recognized to represent. See, City of Seattle, Decision 3199-B (PECB, 1991). The original statement of facts described the two separate bargaining units represented by the union, but the preliminary ruling letter noted that the Executive Director is not at liberty to make leaps of logic or broad assumptions about facts or theories of a case. The supplemental letter reiterates the complainant's belief that union officials did not want to expend time for the needs of the bargaining unit of "civilian" employees, but that is still not sufficient to state a cause of action. A union can rarely provide all things desired by all of the employees it represents, and absolute equality of treatment is not the standard for measuring a union's compliance with the duty of fair representation. A union's actions are deemed "arbitrary" only if they are so far outside a "wide range of reasonableness" as to be irrational. The Supreme

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[4] An employee injured by such discrimination is entitled to question the right of the union to continued enjoyment of the benefits conferred by the statute on an "exclusive bargaining representative".

Court of the United States has described the wide range of discretion that a union is allowed:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

Ford Motor Co. v. Huffman, 345 U.S. 330 (1953), at 338.

The union leadership must often make hard decisions concerning priorities for its bargaining goals and strategies. The mere fact of agreeing with the employer is not sufficient to warrant a hearing in this case.

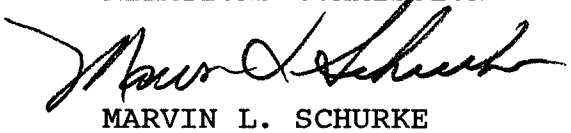
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed for failure to state a cause of action.

Entered at Olympia, Washington, on the 4th day of May, 1992.

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.