STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

A. LAVERNE PHILLIPS, Complainant, vs. BELLEVUE COMMUNITY COLLEGE, Respondent.	CASE 9413-U-91-2089 DECISION 4067 - CCOL PRELIMINARY RULING
A. LAVERNE PHILLIPS, Complainant, vs. BELLEVUE COMMUNITY COLLEGE, Respondent.	CASE 9415-U-91-2090 DECISION 4068 - CCOL ORDER OF DISMISSAL
BELLEVUE COMMUNITY COLLEGE, Employer	
A. LAVERNE PHILLIPS, Complainant, vs. BELLEVUE COMMUNITY COLLEGE ASSOCIATION FOR HIGHER EDUCATION, Respondent.	CASE 9430-U-91-2099 DECISION 4069 - CCOL ORDER OF DISMISSAL

The complaints charging unfair labor practices were filed in the above-captioned matters on October 14, 16 and 23, 1991. All three cases arise out of the same set of facts, and they were considered together for the purposes of WAC 391-45-110. A preliminary ruling letter directed to the complainant on April 7, 1992 pointed out certain defects with the complaints, as filed, and permitted the

complainant a period of time in which to amend the complaints. Nothing further has been received from the complainant.

These complaints all involve actions of the president of Bellevue Community College, B. Jean Floten, and the former president of the Bellevue Community College Association of Higher Education (AHE), Gary McGlocklin. The AHE is the exclusive bargaining representative of the academic employees of Bellevue Community College for collective bargaining under Chapter 28B.52 RCW.

It is alleged that, at a meeting held early in August of 1991, Floten informed McGlocklin that the executive dean of the college would soon be resigning, and offered McGlocklin the position of interim executive dean. It is further alleged that McGlocklin continued to participate on the AHE's side of the bargaining table after accepting the offered deanship, until August 16, 1991, when he informed other members of the AHE bargaining team of his actions and resigned his positions with the union.

Case 9413-U-91-2089

This complaint alleges that the employer's actions in appointing McGlocklin to an executive position while he was a participant on the AHE bargaining team violated RCW 28B.52.073(1)(a), (b), and (c), as well as violating "Article 1, Section 3 - Due Process", WAC 131-16-080(2), WAC 131-16-091(6), and RCW 42.18.230(2)(b).

The statutes administered by the Commission, including Chapter 28B.52 RCW, regulate the conduct of labor-management relations. While the offer of a promotion is not inherently illegal, it would appear to have made McGlocklin an agent of the employer or at least beholden to the employer, so that McGlocklin's subsequent actions in the guise of being a union official must be subjected to close scrutiny. The allegations concerning interference and domination made under Chapter 28B.52 RCW are found to state a cause of action

for further proceedings, and will be referred to an Examiner in due course.

The Commission does not assert jurisdiction with respect to Chapter 42.18 RCW, which regulates executive branch conflicts of interest, or with respect to Chapter 131-16 WAC, which deals with faculty personnel matters administered by community college district boards of trustees. Any allegations concerning such statutes and rules do not state a cause of action for proceedings before the Commission.

The complaint does not identify the document of which "Article 1, Section 3" is a part. If the cited article is a component of a collective bargaining agreement between the employer and the AHE, allegations that the contract has been violated would need to be pursued through the procedures specified in the contract or through the courts. The Commission does not assert jurisdiction to determine or remedy "breach of contract" through the unfair labor practice provisions of the collective bargaining statutes. City of Walla Walla, Decision 104 (PECB, 1976).

Case 9415-U-91-2090

This complaint names McGlocklin individually as respondent, and alleges that he violated several sections of Chapter 42.18 RCW, the executive branch conflict of interest act, in connection with his acceptance of the appointment as executive dean. As noted above, the Commission has no jurisdiction with respect to Chapter 42.18 RCW, and allegations regarding violation of that statute do not state a cause of action for further proceedings before the Public Employment Relations Commission.

Case 9430-U-91-2099

This complaint names the AHE as respondent, and alleges several breaches of good faith and "atrocities" were committed in the

course of bargaining for a 1991-93 collective bargaining agreement. The complainant alleges that the AHE's actions were in violation of Title 62A RCW, the uniform commercial code, in violation of Chapter 251-14 WAC,[1] and in violation of the state appropriations act provisions concerning community colleges.

An organization designated as exclusive bargaining representative of employees under a collective bargaining statute has a duty of fair representation towards all of the employees it represents. That duty would be breached if the union acted in a manner that was arbitrary, discriminatory or in bad faith, but the allegations of this complaint fall short of that level. The duty of fair representation does not require that all members of a bargaining unit benefit equally from the provisions negotiated in a collective bargaining agreement. Ford Motor Company v. Huffman, 345 U.S. 330 (1953). In the absence of any facts indicating that such actions were made for discriminatory reasons, the mere fact that certain faculty members were the recipients of "corrected" salary placement while others were not, or the fact that workload indicators were changed for certain faculty teaching laboratory classes, do not state a cause of action under Chapter 28B.52 RCW.

It is well settled precedent that a union may exclude non-members from voting concerning ratification of a collective bargaining agreement. Lewis County, Decision 464-A (PECB, 1978). Thus, the mere fact of exclusion of a non-member from membership rights is not sufficient to state a cause of action.

The Commission has no jurisdiction with respect to any of the other statutes or rules cited by the complainant in this case. The alleged violations of such statutes or rules do not state a cause of action for further proceedings before the Commission.

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[1] Those rules relate to institutions of higher education regulated by the Higher Education Personnel Board.

NOW, THEREFORE, it is

ORDERED

1. Case 9413-U-91-2089 - Decision 4067 (CCOL).

   a. This complaint charging unfair labor practices will be assigned in due course to an Examiner for further proceedings, on a cause of action limited to:

      > The employer's actions in having made Gary McGlocklin its agent, or at least beholden to the employer, so that McGlocklin's subsequent actions in the guise of being a union official constitute employer interference and domination under RCW 28B.52.073(1)(a) and (b).

   b. All other allegations of the complaint are DISMISSED as failing to state a cause of action.

2. Case 9415-U-91-2090 - Decision 4068 (CCOL). The complaint charging unfair labor practices is DISMISSED as failing to state a cause of action.

3. Case 9430-U-91-2099 - Decision 4069 (CCOL). The complaint charging unfair labor practices is DISMISSED as failing to state a cause of action.

Entered at Olympia, Washington on the 6th day of May, 1992.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

MARVIN L. SCHURKE
Executive Director

Paragraphs 1(b), 2 and 3 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.