STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COMMUNITY TRANSIT,	)	
	)	
Complainant,	)	CASE 13327-U-97-3250
	)	
vs.	)	DECISION 6057 - PECB
	)	
AMALGAMATED TRANSIT UNION, LOCAL 1576,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	

On July 31, 1997, Community Transit (employer) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, asserting that Amalgamated Transit Union, Local 1576 (union), had violated RCW 41.56.150. The complaint was reviewed by the Executive Director for the purpose of making a preliminary ruling under WAC 391-45-110.[1] In a deficiency notice issued on September 8, 1997, the employer was informed that the allegations of the complaint were inadequate, on their face, to state a cause of action. The employer was given a period of 14 days in which to file and serve an amended complaint, or face

[1] At this 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 practice proceedings before the Public Employment Relations Commission.

dismissal of the case. An amended complaint filed on September 22, 1997, is now before the Executive Director for a preliminary ruling under WAC 391-45-110.

This controversy arises in the context of the parties' negotiations to replace an expired collective bargaining agreement. The employer accuses the union of attempting to exert pressure upon the employer in those negotiations, by inducing its own members, as well as employees represented by another union, to boycott certain employer-sponsored activities, to refrain from working overtime, or to call in sick on short notice when they were expected to work. The employer thus seeks remedies against the union for those alleged concerted activities and/or for the union's failure or refusal to disavow a withholding of services by bargaining unit employees. The amended complaint did not set forth any additional relevant facts, but merely restated legal arguments as to the sufficiency of the facts previously alleged.

DISCUSSION:

Some of the conduct alleged by the employer arguably constitutes a work stoppage (or stoppages). RCW 41.56.120 was enacted in 1967 as part of the original provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. While that section expressly states that Chapter 41.56 RCW does not grant a right to strike, it does not expressly prohibit strikes. Rather, that section merely left in place a pre-existing common law prohibition against public

employee strikes. Port of Seattle v. International Longshoremen's and Warehousemen's Union, 52 Wn.2d 317 (1958). Unfair labor practice provisions were not added to Chapter 41.56 RCW until 1969, and no provision of RCW 41.56.150 creates an administrative remedy before the Commission for an employer (or members of the public) faced with an unprotected strike. RCW 41.56.492, enacted in 1993, imposes "interest arbitration" as a dispute resolution mechanism for bargaining units of employees of public passenger transportation systems, and embraces the somewhat clearer strike prohibition found in RCW 41.56.490, but those sections still do not make strikes an unfair labor practice. The employer would need to advance its "work stoppage" claims in a court, which could enjoin conduct it viewed as an unlawful strike, without need for concern about exhaustion of administrative remedies.

Some of the conduct alleged by the employer may arguably constitute a basis for discipline of participating employees. Rather than initiating disciplinary action against its employees for their refusal to work overtime, false claims of illness, or other unprotected misconduct, however, the employer has sought relief from the Commission. Concurrent with its long-standing refusal to intrude into the jurisdiction of the courts with respect to the regulation or prohibition of strikes, the Commission has long held that strikes and other forms of work stoppages are not "protected" activities of employees under the collective bargaining laws administered by the Commission. Thus, a complaint filed by a union was dismissed in Concrete School District, Decision 1059 (EDUC, 1980), where the employer was accused of threatening employees with

loss of employment or other sanctions if they participated in a work stoppage; a complaint filed by a union was dismissed on the merits in Green River Community College, Decision 4008-A (CCOL, 1993), where an employer confronted with a rolling partial strike demanded verification of sickness claims. There is no basis in statute or precedent, however, for the Commission to impose sanctions on employees for their participation in unprotected activities.

Some of the conduct alleged by the employer with respect to influencing persons outside of the bargaining unit may arguably constitute informational picketing. Apart from questions of the free speech rights of the union and its adherents, the absence of any right to strike within Chapter 41.56 RCW is accompanied by an absence of provisions outlawing the types of strikes which are prohibited by the federal law. These allegations thus fail to state a cause of action for unfair labor practice proceedings before the Commission.

Some of the conduct alleged by the employer is characterized as a "refusal to bargain" by the failure or refusal of the union to comply with the no-strike clause of the parties' collective bargaining agreement. It is well established, however, that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

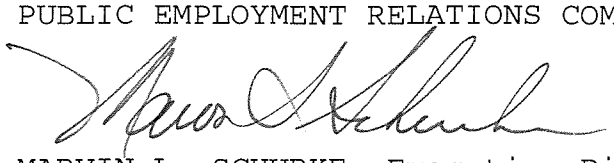
NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, this 8th day of October, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.