STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| CLOVER PARK TECHNICAL COLLEGE,<br><br>Employer. | ) | |
| LINDA E. LUNKES,<br><br>Complainant,<br><br>vs.<br><br>WASHINGTON FEDERATION OF TEACHERS, LOCAL 4789,<br><br>Respondent. | ) | CASE 13645-U-98-3339<br><br>DECISION 6256 - PECB<br><br><br><br><br>ORDER OF DISMISSAL |

On March 5, 1998, Linda Lunkes, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Washington Federation of Teachers, Local 4789, had committed unfair labor practices in violation of RCW 41.56.150. The complainant generally concerns the implementation of a union security clause, the quality of representation provided by the union, and the union's failure to provide the complainant with copies of its constitution and by-laws.

The complaint was reviewed under WAC 391-45-110.[1] A deficiency notice was issued on February 25, 1998, notifying Lunkes that the

[1] 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.

complaint did not state a cause of action, as filed. The complainant was given 14 days to file and serve an amended complaint which stated a cause of action, or face dismissal of the case.

On March 4, 1998, the complainant filed a response to the deficiency notice which generally raised concerns regarding an "agency shop" provision negotiated between the union and the employer:

> I would think the question of a Union placing a section in its Bargaining Agreement taking away the right to belong or not to a body (agency shop) should be put to the vote of all those affected by the change, rather than being voted upon by a very limited minority who had previously selected to be union members. If this practice is condoned by our state government, a grandfather clause should be automatically included to cover those employees gainfully employed prior to the effective date of the Bargaining Agreement change. This would be fair to one and all.

Those materials did not, however, address the previously-noted deficiencies.

DISCUSSION:

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment. The collective bargaining rights and obligations of "classified" employees of state technical colleges

are regulated by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

Commission Does Not Regulate Internal Union Affairs -
Allegations that the union violated its own constitution or bylaws with respect to its nominating committee and/or its failure to follow "Robert's Rules of Order" call upon the Commission to scrutinize internal union affairs. The Commission has no such authority, however. In adopting that statute in 1967 and amending it subsequently, our Legislature has replicated many of the provisions of the National Labor Relations Act as originally enacted by the Wagner Act of 1935 and as amended by the Taft-Hartley (Labor-Management Relations) Act of 1947, but has not replicated the provisions of the Landrum-Griffin (Labor-Management Reporting and Disclosure) Act of 1959. A union's constitution and bylaws are the contracts among the members for how their organization is to be operated, and any claims of violation must be pursued through the procedures set forth in those documents or through the courts.

To the extent the complaint alleges that the union has excluded non-members from voting on ratification of the collective bargaining agreement in general, it does not state a cause of action. As a private organization, a union has a right to limit political rights within the organization to those who have become union members. See, Lewis County, Decision 556 (PECB, 1978).

Implementation of Union Security Obligations -
RCW 41.56.122(1) was added to Chapter 41.56 RCW by an amendment adopted in 1973. It explicitly permits public employers and the unions representing their employees to negotiate collective bargaining agreements containing "union security provisions [but

not] a closed shop provision". Thus, a right and duty to bargain exist concerning arrangements of the "union shop" and/or "agency shop" varieties.[2] While those lawful arrangements each impose an ongoing financial obligation on bargaining unit employees, they are different at their outset from the illegal "closed shop" form.[3] As was noted in the deficiency notice issued in this case:

> In International Association of Fire Fighters, Local 1789 v. Public Employment Relations Commission, 128 Wn.2d 375 (1995), the Supreme

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[2] The *Roberts' Dictionary of Industrial Relations* (BNA Books, 1996) contains the following definitions:

> **Agency shop** - A union security provision to eliminate "free riders." All employees in the bargaining unit are required to pay dues or service charges to the collective bargaining agent. Non-union employees, however, are not required to join the union as a condition of employment. Payment of dues is to defray the expenses of the bargaining agent in negotiations, contract administration, etc. ...
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> ...
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> **Union shop** - A form of union security which lets the employer hire whomever he pleases but requires all new employees to become members of the union within a specified period of time, usually 30 days. It also requires the individual to remain a member or pay union dues for the duration of the collective bargaining agreement. ...

[3] The *Roberts' Dictionary of Industrial Relations* also contains the following definition:

> **Closed shop** - A union security arrangement where the employer is required to hire only employees who are members of the union. Membership in the union is also a condition of continued employment. The closed shop is illegal under federal labor statutes. ...

> Court of the State of Washington gave a very narrow interpretation to RCW 41.56.140, with respect to the Commission's jurisdiction in "union security" matters. ... the Supreme Court has seemingly left only the doors of the courts open to individual employees in such situations. Thus, an Examiner dismissed an employee's complaint in Pasco School District, Decision 5418 (PECB, 1995).

Moreover, unlike the civil service system established for state employees under Chapter 41.06 RCW, where union security obligations are imposed and removed only by vote of the affected employees (and are not a subject for bargaining between the employer and union), there is no requirement in Chapter 41.56 RCW for a vote of all employees in a bargaining unit to bring them under the coverage of a union security provision. See, Mukilteo School District, Decision 1323-A (PECB, 1984).

NOW, THEREFORE, it is

ORDERED

The petition filed in the above-captioned matter is DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington, this 15th day of April, 1998.

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 391-45-590.