STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION DIVISION NO. 587, Complainant, vs. MUNICIPALITY OF METROPOLITAN SEATTLE (METRO), Respondent.	)	CASE NO. 3537-U-81-524 DECISION NO. 1356 - PECB ORDER PARTIALLY DISMISSING COMPLAINT CHARGING UNFAIR LABOR PRACTICES

The complaint charging unfair labor practices was filed in the above entitled matter on July 20, 1981 and was supplemented with an additional document filed on July 30, 1981. The matter came before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110 and, by letter dated October 26, 1981, the allegations of paragraph 4.a) of the complaint (concerning threats made to an employee because of filing and pursuit of a grievance) were found to state a cause of action. The allegations of paragraph 4.b) are:

"1) On and after July 13, 1979, the Respondent, acting through personnel manager Sue Pavlou and others, engaged in a unilateral mid-term modification of terms and conditions of employment by refusing to credit full-time operators with hours worked as part-time operators or trippers, notwithstanding Respondent's agreement to the contrary.

2) As part of its conduct described in paragraph 1) above, Respondent failed and refused to credit employee Elree Beatty with part-time hours on and after July 7, 1980, when Beatty was transferred to full-time operator status. Consistent with the foregoing sentence, Respondent compelled Beatty to commence serving a probationary period.

3) Respondent terminated Beatty's employment before the end of the probationary period described in the preceding paragraph. Said termination was without recourse to the grievance and arbitration provisions of the collective bargaining agreement.

4) If Beatty had been credited with past service, he would not have been terminated. In the alternative, he would have been terminated with recourse to arbitration and possible reinstatement.

5) Employee Betty Wedvik was not credited with part-time hours after her transfer to full-time status, and was made to serve a probationary period on and after November 28, 1980.

6) On April 27, 1981, Respondent terminated Wedvik during the probationary period referred to above without recourse to the grievance and arbitration procedure.

7) If Respondent had credited Wedvik with her part-time hours, she would not have been terminated. In the alternative, she would have been terminated with recourse to arbitration, and possible reinstatement.

8) Because of Respondent's position that employees Beatty and Wedvik were probationary employees at the time of their respective terminations, the contractual grievance and arbitration procedures have not been, and are not not available to these employees for the purpose of protesting their respective terminations."

A preliminary ruling on the allegations contained in paragraph 4.b) of the complaint was withheld pending receipt of comments requested from the parties as to the applicability of RCW 4.16.130 and the propriety of deferral of the matter to contractual dispute resolution procedures. Both the union and the employer filed written responses on December 23, 1981.

The parties have supplied the Commission with a copy of their collective bargaining agreement signed February 6, 1978 and effective for the period from November 1, 1977 to October 31, 1980. Article V of that agreement contains a grievance and arbitration procedure which begins with presentation of an employee grievance to "the immediate supervisor and/or Base Supervisor" and concludes with final and binding arbitration. As recited by the complainant in its response filed on December 23, 1981, the origins of this case date back to April 12, 1979, when a Base Operations Manager wrote a letter to a union official setting forth the terms of a grievance settlement under which time worked prior to full time employment as a transit operator would be credited towards completion of a probationary period. By letter dated July 13, 1979, the Personnel Manager of METRO asserted that the grievance settlement was invalid and beyond the authority of the Base Operations Manager. While later correspondence indicates that the parties reached an "impasse" concerning the validity of the April 12, 1979 settlement, there is no indication that the grievance which gave rise to that settlement was ever pursued or arbitrated. By application of the rule which evidently existed prior to April 12, 1979 and which was reinstated to effect on July 13, 1979, METRO discharged two employees in separate incidents in 1980 and 1981.

DISCUSSION:

The union argues that the Commission does not, and should not, apply the six month statute of limitations found in the National Labor Relations Act in the absence of a specific statute of limitations within RCW 41.56. The argument

misses the point. We are looking here at a complaint filed more than two years after the July 13, 1979 letter put the union on notice that the employer was repudiating the grievance settlement. RCW 4.16.030 contains a "catch-all" two year limitation on causes of action for which no other statute of limitations exists. Contrary to the argument of the union, Chapter 4.16 is not expressly limited to actions commenced in the Courts, nor does it expressly exclude administrative litigation under state statutes. See: U.S. Oil and Refining Company v. Washington Department of Ecology, 27 Wn. App. 102, 615 p.2d 1340 (1980). What is different between general civil procedure and the procedures of the Public Employment Relations Commission is that the Executive Director, without waiting for filing of affirmative defenses, has an affirmative obligation under WAC 391-45-110 to assure that the limited resources of the agency will be expended only in cases where the complainant has stated a cause of action. The doctrine of laches has been applied in Seattle School District, Decision 629, 629-A (EDUC, 1979), and its application would be even more appropriate in this setting, where more than two years had passed and the collective bargaining agreement involved had long since expired by the time the complaint was filed.

The union indicated that it did not oppose deferral of these allegations to arbitration if the employer was willing to waive defenses based on the failure of Local 587 to file grievances within the time limitations of the collective bargaining agreement, if PERC retained jurisdiction, and if certain procedural aspects could be worked out. The employer asserts the time limitations of the grievance procedure, suggests that there is no contractual process to which PERC could defer, and contends that it would not be appropriate for PERC to defer because the major issue in the case is the statute of limitations issue. In a long line of cases beginning with City of Richland, Decision 246 (PECB, 1977), the unfair labor practice jurisdiction of the Commission has been deferred to contractual dispute resolution machinery, implementing the statutory preference for the use of contractual procedures. See: RCW 41.58.020(4). The concurrence of both parties has seldom been present, and cases have been deferred even where both parties opposed deferral. Tumwater School District, Decision 936 (PECB, 1980). This case appears to arise out of the unraveling of a grievance settlement. Had the case been filed in July, 1979, when the "unilateral change" is alleged to have occurred, or even in November, 1979, when the "impasse" was reached, it would almost certainly have been referred back to the contractual dispute resolution machinery for completion of the grievance processing truncated by the now-repudiated April 12, 1979 settlement. Additionally, although grievances were evidently precluded directly on the merits of the discharges of Beatty and Wedvik, contractual interpretations are involved in determining whether they were in fact probationary employees. There are no allegations that the Beatty and Wedvik discharges involved discrimination for the exercise of rights protected by RCW 41.56. Were these allegations not being dismissed due to their untimely filing, deferral would be appropriate.

NOW, THEREFORE, it is

ORDERED

The allegations contained in paragraph 4.b) of the complaint charging unfair labor practices are dismissed. Examiner Kenneth J. Latsch will proceed only with the allegations of paragraph 4.a) of the complaint.

DATED at Olympia, Washington this 25th day of January, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director