STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY HEALTH DISTRICT, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	)	CASE NO. 6301-U-86-1218 DECISION 2445-A - PECB DECISION OF COMMISSION

Edward J. Parry, Attorney at Law, appeared on behalf of the employer.

Pamela G. Bradburn, Attorney at Law, appeared on behalf of the union.

In this case, we are called upon to review a preliminary ruling made by the Executive Director pursuant to WAC 391-45-110, dismissing portions of an employer's unfair labor practice complaint against a union.

It is undisputed that the Spokane County Health District (the employer), a health district created under the authority of Chapter 70.45 RCW, is a public employer under Chapter 41.56 RCW and that the Washington State Council of County and City Employees (the union) is the exclusive bargaining representative of a bargaining unit consisting of all of the employer's permanent full-time and permanent part-time public health nurses and registered nurses, excluding supervisors and all other employees of the district.

It is alleged that in April, 1981, the employer created, by resolution, a merit system personnel board and a merit system governing, inter alia, wages for all of its employees. In July, 1981, the employer and the union entered into a collective bargaining agreement that expired December 31, 1982. On June 9, 1983, the same parties entered into an agreement which expired on December 31, 1985. Both agreements contained provisions expressly stating that the employer need not bargain collectively with the union on any issue covered by the Merit Program (such as wages). Several times since January 29, 1985, Randy Withrow, the union's agent, requested bargaining on the subject of wages.

The employer contends that the union's insistence upon bargaining the subject of wages (which the employer maintains is non-bargainable) constitutes a violation of the unfair labor practice provisions at RCW 41.56.150(1) and (4).

In his preliminary ruling, the Executive Director noted that paragraphs 1, 2 and 9 of the employer's amended complaint provided background facts. He did not dismiss those allegations, and their content is not before us.

The executive director ruled that paragraphs 4 through 7 of the amended complaint in part stated a cause of action for violation of RCW 41.56.140(4) (refusal to bargain), but that the employer had no standing to assert rights of employees arising from the employee-union relationship. With regard to paragraph 3 of the amended complaint, the executive director held that the employer had no standing to assert rights of employees arising under the merit system or the collective bargaining agreement. Accordingly, the executive director dismissed those allegations wherein the employer was trying (when it had no standing to do so) to assert employee rights, but referred the

balance of the allegations of the amended complaint to an examiner for hearing.

Essentially, we believe the dismissed allegations boil down to a contention by the employer that bargaining unit (and non-unit) employees are entitled to rely upon rights emanating from the merit system program and the contract between the health district and the personnel board. The collective bargaining agreements have not actually created any new rights for those employees pertaining to wages, since the agreements merely defer to the merit system provisions.

There are three possibilities within the realm of the collective bargaining law: First, wages might be a mandatory topic of bargaining, so that the union's insistence upon bargaining (even to impasse) could hardly be deemed an unfair labor practice. Second, wages might be a permissive topic by operation of an existing contract or a statute such as RCW 41.56.100, so that the union's attempts to bargain would not be an unfair labor practice unless pursued to impasse. Third, although no statutory basis for such an argument is set forth in this case,[1] wages might be non-bargainable, so that any proposal by the union on wages would be unlawful. The executive director has ordered hearing on the collective bargaining issues, while the employer desires to litigate a broader range of issues.

We do not believe the employer asserts rights arising from the employee-union relationship. Nor do we think it actually

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[1] The employer appears to contend that wages are outside the scope of bargaining due to the supremacy of the Merit System, adopted by resolution. We do not so rule here. RCW 41.56.100 appears to make some matters "permissive", but not "unlawful", subjects of bargaining.

asserts rights arising under the labor agreement. To the extent that it asserts rights under the merit system program, we think there is a demonstrable lack of standing on the part of the employer to bring such claims in this forum. Even if the legal upshot of these facts is that the union's efforts are entirely outside of the scope of collective bargaining (i.e., the third possibility delineated above), there would still be no cause of action stated as an unfair labor practice under Chapter 41.56 RCW and Chapter 391-45 WAC beyond that already sent to hearing by the executive director. Indeed, "political" activities of the union would be outside of the jurisdiction of this Commission.

Therefore, we believe that the executive director properly dismissed those allegations of the amended complaint which are the subject of this petition for review.

ISSUED at Olympia, Washington, this 3rd day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner