STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FORT VANCOUVER REGIONAL LIBRARY, Complainant,	)	CASE NO. 6051-U-85-1134
vs.	)	DECISION NO. 2350 - PECB
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	)	PRELIMINARY RULING

The complaint charging unfair labor practices was filed with the Public Employment Relations Commission in the above-entitled matter on October 24, 1985. The respondent in this case had previously filed "refusal to bargain" unfair labor practice charges against the Fort Vancouver Regional Library, which are docketed separately as Case No. 5938-U-85-1103. The complaint in the above-entitled matter is before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.

Certain of the allegations were referred to an Examiner by letter dated November 25, 1985. Those are:

- Paragraphs 1, 2, 3, 4 and 5 of the complaint, which identify the parties and their representatives in collective bargaining. While not often contested issues of fact, those items will need to be admitted or proven.

- The last phrase of paragraph 6 of the complaint, which alleges that the union "attempted to have [the employer's] bargaining team removed". Although conclusionary here, additional facts supporting this allegation are alleged in the last clause of paragraph 6.a. (threat of action against library administration, actually directed in the attached letter against the "employer team"), in paragraph 6.c. (to the extent that it specifically makes reference to employer

bargaining team members Conable and Venturini), in paragraph 6.k (the reference to a specific incident of an attempt to have the library "administration" removed is liberally construed in favor of the complainant, in light of earlier specific references to the members of the management negotiating team), and in paragraph 6.l. (to the extent that the threat of a "no confidence" vote is specifically tied therein to a refusal to circumvent the designated management negotiators. Assuming all of the facts alleged in these paragraphs to be true and provable, it appears that an unfair labor practice violation could be found against the union for threats of reprisal against and refusal to bargain with the employer's designated negotiators.

- Paragraph 6.g. of the complaint alleges that a letter which, on its face, would merely be a free speech communication of a proposal simultaneously made to the employer's bargaining team in fact became a circumvention of the bargaining team by reason of its delivery to the trustees a week prior to its delivery to the named addressee. Paragraph 6.j. of the complaint deals with a subsequent incident of similar nature. Assuming all of the facts alleged to be true and provable, it appears that an unfair labor practice violation could be found against the union for making proposals to the trustees prior to their delivery to the designated employer negotiators.

Those matters will be the subject of a consolidated hearing with the union charges aagainst the employer. The remaining allegations fail to state a cause of action.

Paragraph 6 of the complaint begins with an allegation that the employer's bargaining team asked at the outset of negotiations that the union refrain from contacting library trustees, and that the union has repeatedly violated that request. Oregon has prohibited such contacts by statute. See: ORS 243.267(1)(i). Washington has not. See: Sultan School District, Decision 1930 (PECB, 1984). To the contrary, the Commission has recognized a right of free speech, which includes lobbying of public officials and communication of the political ramifications of their action or inaction. See: Sultan School District, Decision 1930-A (PECB, 1984). In the same sense that an employer may lawfully communicate the proposals it has made in bargaining to the employees, there is no basis to preclude a union from communicating its proposals to the public officials behind the management bargaining team.

These same principles dictate dismissal of a number of the other allegations of this complaint.

Paragraph 6.b. of the complaint deals with a "no confidence" vote directed against the library director, who is not identified as a member of the employer's bargaining team. Careful review of the attached letter indicates that all of the action threatened therein is in the nature of an exercise of free speech, seeking to sway public opinion about the employer and its administration.

Paragraph 6.c. of the complaint primarily deals with the results of a "no confidence" vote against the library director. Although the attached letter makes specific reference, as noted above, to two of the members of the employer's bargaining team, it is otherwise viewed as an effort to sway public opinion about the management as a whole.

Paragraph 6.e. of the complaint deals with a letter addressed to unspecified "local government elected officials", the nature of which is to solicit public opinion and support.

Paragraph 6.f of the complaint deals with a letter directed to members of the board of trustees of the employer which, in substance, is similar to the information contained in the letter discussed in paragraph 6.e., above. Nothing is identified as a new proposal which was being put forth in circumvention of the established employer bargaining team. On the contrary, the letter disclaims any desire to bargain with the trustees and it makes specific reference to the proposals being exchanged through the designated negotiators.

Paragraph 6.h. of the complaint deals with a letter inviting the employer to a hearing before union officials on a question of whether the employer should be placed on an "unfair to labor" list and subjected to political sanctions. The maintenance of "unfair" lists is a free speech activity of unions.

Paragraph 6.i. of the complaint concerns a letter addressed to various public officials, soliciting their support and/or intervention. This appears to be follow-through on the communication identified in paragraph 6.e. of the complaint, as an exercise of free speech.

Other allegations fail for other reasons.

Paragraph 6.d. of the complaint deals with a letter addressed to the mediator concerning non-delivery of an expected proposal from the employer. Discussion of the possibility of filing unfair labor practice charges is not, of itself, an unfair labor practice.

Paragraph 6.m. of the complaint deals with requests made by union officials at public meetings of the employer. The right of citizens to address public officials at a public meeting is constitutional. Sultan School District, supra, citing Madison School District v. Wisconsin Employment Relations Commission, 429 U.S. 167 (1976). Accordingly, no unfair labor practice violation could be found.

Paragraph 7 of the complaint is a conclusionary allegation broadly alleging a failure to bargain in good faith. The only facts cited are (without subdivision) references back to the specifics detailed in the various sub-parts of paragraph 6 of the complaint. While the employer will be entitled to argue a course of conduct from the items which have been referred to the Examiner for hearing, this conclusionary paragraph is neither an independent allegation nor a basis for sweeping in allegations described above as failing to state a cause of action.

Paragraphs 8, 9 and 10 of the complaint deal with "secondary" activities engaged in by the union, including the previously mentioned "unfair" list, certain picketing conduct, a union effort to harass the employer's operation, and a threat of picketing against another (unnamed) organization because of its relationships with the complainant employer. All of these allegations deal with types of concerted activity which may be beyond the protections of

the applicable collective bargaining statute. Our legislature has not chosen to regulate any form of strike or picketing activity, whether "primary" or "secondary", through the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. The Public Employment Relations Commission has previously indicated that it does not regard the possibility of a (potentially unlawful under common law) strike as a basis for making a unit determination. Clark County, Decision 290-A (PECB, 1977). Similarly, the Commission has declined to regulate strikes or related activities through the unfair labor practice provisions of the statutes. See: Spokane School District, Decision 310-B (PECB, 1978). The employer's remedies, if any, are in the courts under common law. Accordingly, those allegations fail to state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

NOW, THEREFORE, it is

ORDERED

Except for the matters identified above as having been referred to an Examiner for hearing, the complaint charging unfair labor practices filed in the above-entitled matter is dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 9th day of December, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director