STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, Complainant,	)	CASE NO. 6784-U-87-1365
vs.	)	DECISION 2810 - PECB
KING COUNTY, Respondent.	)	ORDER OF DISMISSAL

The complaint charging unfair labor practices was filed in the above-captioned matter on February 27, 1987. The case arises out of collective bargaining between the employer and the union concerning "judicial conference days" and/or circumvention of the union by the employer in dealing directly with employees in a bargaining unit of court reporters. As originally filed, the material allegations of the complaint were:

> III. On August 21 and August 26, 1986, the King County Superior Court Administrator convened meetings with court reporters concerning changes in the Fall, 1986 judicial conference assignments and proposed giving court reporters hired after November, 1984, an extra week of vacation, in violation of RCW 41.56.140(1) and (2).
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> IV. On August 25-27, 1986, the schedule of assignments to the judicial conference for court reporters was unilaterally changed by the Court Administrator from those implemented earlier in 1986, and in 1985, the three other judicial conferences during the terms of the contract, in violation of RCW 41.56.140(1) and (2).
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> V. Local 17 proposed the granting of an extra vacation to those court reporters

hired since the signing of the first contract, to resolve the judicial conference issue. King County and King County Superior Court refused to agree to that proposal.

VI. In discussions with court reporters in December, 1986, the Court Administrator again asserted that he supported the granting of a third week of vacation to court reporters hired by the Superior Court since the signing of the last contract, in violation of RCW 41.56.140(1) and (2).

VII. By proposal of January, 1987, Local 17 again proposed a third week of vacation for newly-hired court reporters.

VIII. By proposal received by Local 17 on February 26, 1987, King County again refused to agree to a third week of vacation, contrary to the Court Administrator's statements of August 26 and December, 1986, in violation of RCW 41.56.140(1) and (2).

A preliminary ruling was issued on April 30, 1987, noting that the complaint appeared to be untimely under RCW 41.56.160 as to the alleged conduct occurring on and before August 26, 1986.

The union responded with a letter filed on May 14, 1987. The union therein alleged that the judicial conference at issue was a continuous three-day activity which ended within the period for which the complaint was timely, so that the complaint should be considered timely for that entire period. The union pointed out that the complaint was timely as to conduct which occurred on and after August 27, 1987. The matter was assigned to an Examiner, with reference to the August 27th date, by a letter dated July 28, 1987.

On August 5, 1987, the employer filed a letter with the Commission which pointed out the existence of arbitration

proceedings pending between the parties under the grievance and arbitration provisions of their collective bargaining agreement and asking for deferral of the instant unfair labor practice case to arbitration.

The union filed a letter on August 19, 1987, enclosing a copy of the applicable collective bargaining agreement. The union asserted that specific issues raised in the unfair labor practice case were not addressed in the grievance arbitration proceedings, pointing to:

> . . . the interference by the Employer during the collective bargaining process wherein the Union alleges that the Employer met with employees stating support for a position which the Union had requested during negotiations and yet the Employer later refused to grant this same proposal during the course of negotiations.

The union went on to offer deletion of paragraph IV. of the statement of facts filed in this unfair labor practice case in order to focus on the "interference" claims.

On August 24, 1987, the employer filed a letter setting forth its position favoring deferral to arbitration and asserting that the court administrator is not a "public employer" under the rule of Zylstra v. Piva, 85 Wn.2d 743 (1975).

On October 14, 1987, the Executive Director notified the parties that the processing of the unfair labor practice case would be deferred pending the completion of the arbitration proceedings. The union responded with a letter filed on October 16, 1986, asking for specific direction to the arbitrator on the nature of the unfair labor practice charge. The Examiner responded on October 27, 1987, reiterating that the arbitrator is only called upon to interpret the contract.

Arbitrator Janet L. Gaunt issued an arbitration award on the related grievance on October 27, 1987. A copy of that award was provided to the Commission by the union on November 2, 1987. The arbitrator found that the collective bargaining agreement established two separate classes of employees (depending on whether they were hired before or after the November, 1984 effective date of the contract), and that the contract protected the employer's action of requiring those employees hired since the effective date of the contract to report for work during judicial conferences. Although the union does not otherwise challenge the validity of the arbitration award, the union's letter covering transmittal of the arbitration award again asserts that issues remain concerning employer interference with employees and the exclusive bargaining representative.

The matter is again before the Executive Director for processing pursuant to WAC 391-45-110. Deference is accorded to the arbitration award as establishing the employer's contractual right to schedule the employees involved as it did during the August 25-27, 1986 period. It is otherwise assumed that all of the facts contained in the complaint are true and provable. The question remaining is whether any portion of the complaint states a cause of action.

The complaint was untimely as to the allegation of "circumvention" occurring on August 21, 1986 and the "unilateral changes" implemented on August 25 and 26, 1986. The complaint must be dismissed as to those allegations.

To the extent that it has not already been withdrawn, the allegation of a "unilateral change" occurring on August 27, 1986 must be dismissed. The arbitration award requires a conclusion that the union had waived its bargaining rights on

the matter by contract, and that the employer was acting within the terms of the contract.

An employer is precluded from "bargaining" with individual employees or groups of employees who are within a bargaining unit for which an exclusive bargaining representative has been recognized or certified. At least two difficulties are noted with the "circumvention" and "interference" allegations of this complaint, either of which is sufficient to preclude further processing of the case. The first is the characterization of the court administrator as an "employer;" the second is the characterization of what has happened as "bargaining."

The union itself recognizes a distinction between King County, which is a public employer covered by the Public Employees Collective Bargaining Act, and the King County Superior Court, which is a state entity excluded from the coverage of Chapter 41.56 RCW by Zylstra v. Piva, supra. As with district court employees under Grant County, Decision 2233-A (PECB, 1986) and other employees of superior courts, the members of the court reporter unit at issue in this case are "dual status" employees who are covered by the collective bargaining law only with respect to the portions of their employment relationship (wages and wage-related matters) governed by King County. All of the "interference" and "circumvention" allegations made in this case relate to conduct of the court administrator, who is an official of the King County Superior Court rather than of King County, and so is not subject to the jurisdiction of the Public Employment Relations Commission.

Even if King County were chargeable with the conduct (or misconduct) of the court administrator, the allegations fall short of suggesting that any threat of reprisal or force, promise of benefit or negotiations took place. For either an "inter-

ference" or "circumvention" to take place, the employee receiving the communication must have reasonable cause to believe that the person making the communication has the capacity to follow through on the statements made. In Grant County, Decision 1638 (PECB, 1983), "circumvention" unfair labor practice charges and derivative "interference" charges were dismissed where it was concluded that employees should have known that a county sheriff was acting beyond the scope of his authority when he made promises on "wage" issues controlled by the county commissioners. Given the well-established state of the law concerning their dual status and employers, the court administrator's expression of his personal view (or even of a view of the King County Superior Court) should not have been understood by the employees to be the view of their "other" employer, King County.

NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 1st day of December, 1987.

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 391-45-350.