STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DEBRA C. JONES, Complainant, vs. BREWSTER SCHOOL DISTRICT and BREWSTER EDUCATION ASSOCIATION, Respondents.	CASE NOS. 6849-U-87-1380 6850-U-87-1381 DECISION 2779-A - EDUC ORDER OF DISMISSAL
DEBRA C. JONES, Complainant, vs. BREWSTER SCHOOL DISTRICT and BREWSTER EDUCATION ASSOCIATION, Respondents.	CASE NOS. 7354-U-88-1519 7355-U-88-1520 DECISION 2971 - EDUC PRELIMINARY RULINGS

The captioned matters are before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, it must be presumed that all of the facts alleged in the complaints are true and provable. The question at hand is whether the complaints state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

PROCEDURAL AND LEGAL BACKGROUND:

The complaints in Case Nos. 6849-U-87-1380 and 6850-U-87-1381 were among a group of eight similar cases docketed at the same

time in April of 1987. All eight cases were the subject of an earlier preliminary ruling in Brewster School District, Decisions 2779, 2780, 2781, 2782 (EDUC, September 30, 1987), wherein it was found that an unfair labor practice cause of action could exist for unlawful enforcement of an otherwise lawful union security agreement.

The Educational Employment Relations Act, Chapter 41.59 RCW, provides that collective bargaining agreements may include union security provisions:

> **RCW 41.59.100 UNION SECURITY PROVISIONS--SCOPE--AGENCY SHOP PROVISION, COLLECTION OF DUES OR FEES.** A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions must safeguard the right of non-association of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization.

As observed in Brewster School District, Decisions 2779, 2780, 2781, 2782 (EDUC, 1987):

> ... the words of RCW 41.59.100 may be subject to having the affirmative obligations set forth in Hudson[1] engrafted onto them, as follows:
>
> 1) Adequate explanation of the basis of the fee. The union must provide adequate information explaining the basis for the agency shop fee to the employee. This includes identifying the expenditures for collective bargaining, contract administration and grievance adjustment that were provided for the benefit of nonmembers as well as members, not just the money that had been expended for purposes that did not benefit non-members. The Union need not provide non-members with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. The employee has the burden of raising an objection, but the union bears the burden of proving the proportion of political to total union expenditures. [footnote omitted]
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> 2) Reasonably prompt opportunity to challenge the amount of fee before an impartial decisionmaker. The non-member's objections must be addressed in an expeditious, fair and objective manner. The procedure cannot be controlled by the union. Special judicial procedures are not necessary, nor is a full administrative hearing with evidentiary safeguards (as had been mandated by the Seventh Circuit in the Hudson case). An expeditious arbitration might satisfy the requirement so long as the arbitrator's selection did not represent the union's unrestricted choice.
>
> 3) Escrow for amounts reasonably in dispute while challenges are pending. The risk that non-member contributions might be temporarily used for impermissible purposes must be minimized. A rebate after the fact was held not sufficient. On the other hand, escrow of 100% of the dues amount was not required. If information initially

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1 Referring to Chicago Teachers Union v. Hudson, 475 U.S. 209 (1986).

> provided to the employee by the union includes a certified public accountant's verified breakdown of expenditures, including some categories that no dissenter could reasonably challenge, there would be no reason to escrow the portion of the nonmember's fees that would be represented by those categories. If the union chooses to escrow less than the entire amount, however, it must carefully justify the limited escrow on the basis of the independent audit, and the escrow figure must itself be independently verified.

Thus, while the Public Employment Relations Commission has not undertaken to become the arbiter of dues apportionment issues, the Commission may be called upon to review breaches of the procedural rights of employees through the unfair labor practice provisions of the act.

It was concluded, however, that all of the complaints under consideration in Brewster School District, Decisions 2779, 2780, 2781, 2782, contained defects which precluded their immediate processing. Specifically, it was noted that:

> There is no allegation here that any of the individual employees have previously notified the union of their objection, that the union has refused to supply information, that the union has failed to respond to an objection in the manner described in Hudson, or that the union has declined to escrow disputed dues amounts. Were the complaints the only documents on file, the complaints would be dismissed as insufficient to state a cause of action.

On the other hand, it was noted that documents volunteered in the case by the Brewster Education Association contained an admission, against interest, that the organization had actually refused to process a claim advanced by Complainant Jones. While the other employees who had filed unfair labor practice

complaints at the same time were also petitioners in "religious objection" proceedings before the Commission under Chapter 391-95 WAC, Complainant Jones was not. The preliminary ruling thus stated:

> It is clear that the union's motion to dismiss (and perhaps its conduct at earlier stages of the situation) have been based on an incorrect premise. It appears that a violation could be found in the case of the one individual (Jones) who has not had her agency shop fees held in escrow under Chapter 391-05 WAC. The requirements of Hudson for advance notice and prompt response to a stated objection may also have been violated. It should not be necessary, however, to glean the cause of action from admissions and bits and pieces in documents other than the complaint. With the direction provided here, the complainants will be required to amend their complaints.

The order provided:

> 1. [Decision 2779 - EDUC] The complaints filed by Debra C. Jones state a cause of action for failure of the organization (albeit possibly due to a mistake of fact) to escrow the amounts in dispute.
>
> a. Complainant Jones is directed to make her complaints in Case Nos. 6849-U-87-1380 and 6850-U-87-1381 more definite and certain, by fully setting forth the facts as required by WAC 391-45-050(3).
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> b. Upon the filing of an amended complaint as required by the preceding paragraph "a.", Complainant Jones may proceed with a request for temporary relief under WAC 391-45-430.

Nothing identified as an amended complaint in Case Nos. 6849-U-87-1380 and 6850-U-87-1381 has been received from or on behalf of complainant Jones.

The complaints in Case Nos. 7354-U-88-1519 and 7355-U-88-1520 were filed on behalf of Debra C. Jones on April 14, 1988. The same complaint makes allegations against both the Brewster School District and the Brewster Education Association for unlawful enforcement of a union security agreement as to the complainant. No reference is made therein to the earlier cases, or even to the 1986-87 school year evidently at issue in the earlier complaints.

DISCUSSION:

Case Nos. 6849-U-87-1380 and 6850-U-87-1381

RCW 41.59.150(1) imposes a six month statute of limitations on the filing of unfair labor practice charges, and a period of more than seven months has elapsed since the complainant was directed to file a more definite and certain complaint. The more recent charges do not purport to be, and cannot be inferred to be, amendatory of the original charges. Accordingly, Case Nos. 6849-U-87-1380 and 6850-U-87-1381 are deemed to have been abandoned and are dismissed herein.

Case Nos. 7354-U-88-1519 and 7355-U-88-1520

Filing and Docketing of the Cases -
Consistent with past practice in situations of this type, two separate cases were docketed from the single complaint filed on April 14, 1988, one being for the charges against the employer and the other being for the charges against the union.

The Request for "Class Action" Treatment -

The concluding paragraph of the April 14, 1988 complaints states:

> Complainant is similarly situated to employees of School Districts in Washington having collective agreements with the Union who are not members of the Union but are required to make payment of representation fees. That complement of employees is too large to be named individually. There are questions of law and fact common to the claims of the Complainant and class. Complainant will provide those employees with fair and adequate representation and requests that a class be certified.

The notion of a class action was raised by the complainants in the first set of unfair labor practices, and was rejected there. The preliminary ruling in Brewster School District, Decisions 2779, 2780, 2781, 2782 (EDUC, 1987) stated:

> The rules of the Public Employment Relations Commission make no provision for "class actions" or the like. The "on behalf of similarly situated employees" language of the complaint thus cannot be implemented. Any such employees would need to timely file and process their own unfair labor practice charges with the Commission. In the absence of any provision to create a class, it is not necessary to rule on the union's motion to strike a class action. On the other hand, the docketing of separate cases does not preclude the possibility that some or all of these and similar cases could be consolidated for the purposes of hearing and decision.

That ruling was made in the context of several employees who were making charges against the employer and exclusive bargaining representative which they shared in common. The instant situation is made more complex by the proposal here to

affect a multitude of employers and employee organizations. Even if it were to be assumed that the Brewster Education Association's state-wide affiliate, the Washington Education Association, could be called to account in this case for its conduct on a state-wide basis as the exclusive bargaining representative of many bargaining units of school district certificated employees, those collective bargaining relationships would involve well in excess of 200 separate and distinct employers. Each such employer is independent of the others, and would be entitled to notice and intervention in any such proceedings. Further, several employee organizations other than the Washington Education Association represent bargaining units of certificated employees under Chapter 41.59 RCW, and each such organization would be entitled to notice and intervention in any such proceedings. The request for creation of a class is denied.

The Factual Allegations -

The complaints filed on April 14, 1988, allege that the employer and union have violated their obligations under Hudson by waiting until November 2, 1987, to issue a document specifying procedures for dealing with disputed agency shop fees retroactive to the beginning of the 1987-88 school year. To the extent that they concern a period prior to October 14, 1987 (i.e., six months prior to the filing of the complaints) they are untimely under RCW 41.59.150.

As noted above, by quotation of the previous decision involving this complainant, the rules of the Commission require, at WAC 391-45-050(3), that the statement of facts accompanying a complaint be clear and concise, including times, places and participants in occurrences. The collective bargaining relationship and collection of agency shop fees are ongoing, not an annualized event. As before, there is no allegation

here that Jones has notified the union of her objection, that the union has refused to supply information, that the union has failed to respond to an objection in the manner described in Hudson, or that the union has declined to escrow disputed dues amounts. Neither is there any allegation that union security deductions were made from the complainant's pay during the October 14, 1987 to November 2, 1987 period relevant to the "late procedure" allegation. Some facts may be inferred from documents filed earlier in this course of litigation, but it should not be necessary to glean the cause of action from bits and pieces or other files. To the extent that they allege that the procedures set forth on November 2, 1987, were defective or insufficient, the complaints filed on April 14, 1988, are so lacking in detail as to preclude forming an opinion as to whether a cause of action exists for proceedings before the Commission.[2]

In view of the long period during which the earlier cases have lingered on the Commission's docket of pending cases, a time limit for a response is established herein.

NOW, THEREFORE, it is

ORDERED

1. (Decision 2779-A) The complaints charging unfair labor practices filed in Case Nos. 6849-U-87-1380 and 6850-U-87-1381 are dismissed for lack of prosecution.

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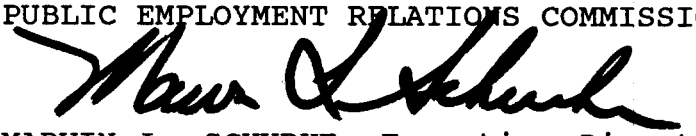
2 The complaints go on to state: "... even if that distribution were sufficient under Hudson ...", and thus may have been intended to allege the procedure itself was insufficient. But they do not detail how the offered procedures were insufficient. Neither has the complainant provided a copy of such procedures for the Commission's review.

2. (Decision 2971) The complaints charging unfair labor practices filed in Case Nos. 7354-U-88-1519 and 7355-U-88-1520 are dismissed as untimely to the extent that they complain of conduct occurring prior to October 14, 1987.

3. Within the limitation of paragraph 2 of this Order, the complainant is allowed a period of fourteen (14) days following the date of this Order to file and serve an amended complaint in Case Nos. 7354-U-88-1519 and 7355-U-88-1520 which sets forth definite and certain allegations of fact, as required by WAC 391-45-050.

Dated at Olympia, Washington, this 15th day of July, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and 2 of this Order may be appealed by filing a petition for review with the Commission as provided in WAC 391-45-350.