

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF)	
PROFESSIONAL AND TECHNICAL)	
ENGINEERS, LOCAL 17,)	CASE 7938-U-89-1715
)	
Complainant,)	DECISION 3346-A - PECB
)	
vs.)	
)	
CITY OF TACOMA,)	DECISION OF COMMISSION
)	
Respondent.)	
)	

Richard D. Eadie, Attorney at Law, appeared on behalf of the union.

Patricia Bosmans, Assistant City Attorney, appeared on behalf of the employer.

This case comes before the Public Employment Relations Commission on a timely petition of International Federation of Professional and Technical Engineers, Local 17, for review of an order of dismissal issued by Executive Director Marvin L. Schurke.

The union filed an unfair labor practice complaint on April 25, 1989, alleging that the employer violated RCW 41.56.140(1), by refusing to permit an employee union representation at a meeting where a disciplinary notice was issued to the employee. The union contended that: (1) by denying the employee union representation at the discipline meeting, the employee's Weingarten rights were violated,¹ and (2) by implementing discipline before holding a pre-determination hearing, the employer violated the employee's

¹ The United States Supreme Court held in NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), that an employee is entitled to union representation in an investigatory interview when the employee reasonably believes that discipline may result against him or her. See, also, Okanogan County, Decision 2252-A (PECB, 1986).

Loudermill rights.² Both violations were alleged to be inherently destructive of employee rights guaranteed by Chapter 41.56 RCW.

Pursuant to WAC 391-45-110, the Executive Director reviewed the complaint to determine if it stated a cause of action. By order dated November 15, 1989, the Executive Director dismissed the complaint, based upon the conclusion that the facts alleged did not give rise to violation of RCW 41.56.140(1).

The Executive Director assumed that all the union's factual allegations were true, but noted that the union alleged its bargaining unit member was presented with a formal letter of reprimand" at the outset of the meeting" with employer officials. Those facts, it was found, did not establish a Weingarten violation because the meeting was not "investigatory" in nature. As for the alleged Loudermill violation, the Executive Director noted that the Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to enforce "due process" rights emanating from the federal and/or state constitutions.

In its petition for review, the union did not take issue with the Executive Director's legal analysis. Instead, it asked that the matter be docketed for review by the Commission, and then held in abeyance until the employer unequivocally conceded that no pre-disciplinary conference was held with the employee.

The employer has subsequently objected to the matter being held in abeyance, or being closed with leave to reopen. It seeks a ruling on the merits of the order of dismissal.

²

In Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), the U.S. Supreme Court held that the due process clause of the Fourteenth Amendment requires a pre-determination hearing before a tenured public employee is deprived of any property interests.

DISCUSSION

Chapters 391-45 and 391-08 WAC do not contain any rules that address the type of delay requested by the union. Since the filing of its petition for review, the union has had an additional four months in which to determine through discovery in other forums, e.g., arbitration or litigation, whether the employer asserts that the employee meeting at issue was investigatory in nature. We have no indication that the union has pursued such avenues.

Absent amendment of the complaint, we concur with the Executive Director's order of dismissal. While the Commission's rules neither provide for nor preclude holding action on this case in abeyance, we find no compelling reason to do so.

NOW, THEREFORE, it is

ORDERED

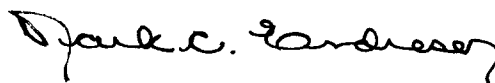
The petition for review filed by the International Federation of Professional and Technical Engineers, Local 17, is DENIED.

DATED at Olympia, Washington, this 4th day of May, 1990.

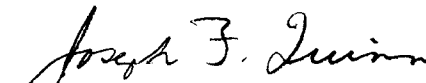
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner