STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

The complaint charging unfair labor practices filed in the above-captioned matter on April 25, 1989, alleges 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 case was reviewed by the Executive Director for the purpose of making a preliminary ruling pursuant to WAC 391-45-110, and a letter was directed to the union on August 17, 1989, indicating that the complaint failed to state a cause of action. The union was allowed a period of 14 days in which to file and serve an amended complaint.

The union responded with a letter filed on August 31, 1989, in which it continues to maintain that an unfair labor practice was committed, and requests a hearing on the complaint. The matter is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it is assumed that all of the facts alleged in the complaint are true and provable. The question at hand is whether an unfair labor practice violation could be found.

Paragraphs I. and II. of the statement of facts describe the collective bargaining relationship between the parties and the existence of a collective bargaining agreement between them. Those materials are taken to be merely background to what follows.

The first two sub-paragraphs of Paragraph III. of the statement of facts filed with the complaint allege that the employee involved was asked to meet with employer officials at a particular time and place. These allegations do not state a cause of action, since nothing in Chapter 41.56 RCW precludes an employer from calling its employees in for meetings, or obligates an employer to give any particular type of notice for such meetings. City of Seattle, Decision 2773 (PECB, 1987) [allegations concerning DeFreitas].

The third, fourth and fifth sub-paragraphs of Paragraph 3 allege that the employee asked for union representation, that the request was denied with reference to the employer's personnel rules, and that the employer proceeded, "at the outset of the meeting" to provide the employee "a formal letter of reprimand". An employee is entitled under NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975) and Okanogan County, Decision 2252-A (PECB, 1986) to union representation in an "investigatory" interview where the employee reasonably believes that discipline may result against him or her, but that right to representation does not extend to meetings which are not of an "investigatory" nature. Pierce County Fire District No. 9, Decision 3334 (PECB, November 2, 1989). Decisions by the federal circuit courts and the National Labor Relations Board are to the same effect. Mt. Vernon Tanker Co., 218 NLRB 1423 (1975), enf. denied, 549 F.2d 571 (9th Circ., 1977). The complaint indicates, on its face, that the discipline letter was already prepared, and that its issuance to the employee was the first order of business at the meeting. There is no indication that the employer subsequently turned the meeting at issue into an "investigatory" format. Under these circumstances, it does not appear

that the employee would have been entitled to union representation under the collective bargaining statute. The employer's citation to its own personnel rules was apt in this context, and was not an incomplete or misleading statement of the employee's rights. City of Seattle, Decision 2773 (PECB, 1987) [allegations concerning Shockley and Hedley]. The complaint thus fails to state a cause of action.

The union's August 31, 1989, letter adds little to the claim of a right to representation under Weingarten and its progeny. The letter merely alleges that the employee believed that he could have, with the presence of a union representative, persuaded the employer to modify or withdraw the disciplinary action. Such a belief on the part of the employee does not entitle an employee to either a meeting with the employer or to union representation at such a meeting. In fact, one of the options available to an employer faced with a request for union representation at an "investigatory" interview under the Weingarten doctrine is to dispense with holding any "investigatory" meeting with the employee. The discipline actually imposed is subject to review under the grievance procedure of the collective bargaining agreement, and that forum provides the opportunity for the employee and/or union to persuade the employer to modify or withdraw the discipline imposed.

Paragraphs 4 and 6 of the complaint concern the employer's omission of a "pre-determination" hearing, with citation to Cleveland Board of Education v. Loudermill. The Public Employment Relations 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 state constitutions.

Paragraph 5 of the complaint concerns the employer's denial of the grievance. The remedy for the union and employee is through

pursuit of the grievance and arbitration machinery of the collective bargaining agreement. Even if the employee has particular rights under that collective bargaining agreement, such rights are not enforceable through unfair labor practice proceedings before the Public Employment Relations Commission. City of Walla Walla, Decision 104 (PECB, 1976).

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in this matter is DISMISSED for failure to state a cause of action.

Dated at Olympia, Washington, the 15th day of November, 1989.

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.