

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY POLICE OFFICERS)	
GUILD,)	
)	CASE 9885-U-92-2256
Complainant,)	
)	
vs.)	DECISION 4258 - PECB
)	
KING COUNTY,)	
)	ORDER OF DISMISSAL
Respondent.)	
)	
)	

This proceeding was commenced on the basis of an amended complaint filed with the Public Employment Relations Commission in an earlier case, wherein the King County Police Officers Guild (union) alleged that King County (employer) had committed certain unfair labor practices.¹ The amended complaint, which was filed on April 8, 1992, concerned an alleged failure by the employer to follow its own departmental policies. It appeared that the amendment raised legal theories different from those raised by the original complaint, and would be subject to different processing than the original complaint,² so the "amended" complaint was treated as a new complaint, and an additional case docketed under the above-captioned case number.

¹ Case 9493-U-91-2116. In a complaint filed on November 18, 1991, the union alleged that the employer committed an "interference" violation by limiting the participation of a union representative in an interview which the employee involved believed could result in disciplinary action against him. By letter dated December 12, 1991, a cause of action was found to exist in that matter.

² The parties stipulated to various facts concerning the original complaint, and were proceeding with the "interference" charge under those stipulations.

A preliminary ruling letter issued on May 8, 1992, concluded that the allegations filed on April 8, 1992 did not state a cause of action. The union was given a period of 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the above-captioned matter.

In a letter filed on May 18, 1992, the union moved for reconsideration of the preliminary ruling, and expanded its theory of the above-captioned case to allege a "unilateral change". Based on that theory, an inquiry was directed to the parties on June 11, 1992, requesting information concerning the propriety of deferral of the "unilateral change" allegation to arbitration under procedures contained in the parties' collective bargaining agreement. Both parties agreed that deferral of those allegations would not be appropriate, because the collective bargaining agreement between the parties had expired.

DISCUSSION

The complainant's theory behind the allegations in this matter is that the employer deviated from its established procedures (as contained in a departmental manual) in conducting the investigatory interviews at issue in Case 9493-U-91-2116. It follows, according to the union, that the employer was guilty of a "refusal to bargain" violation for effecting a unilateral change, when it deviated from its own unilaterally adopted procedure.

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, confers and protects a right of public employees to organize and engage in collective bargaining. The unfair labor practice provisions of that statute, RCW 41.56.140 and 41.56.150, regulate and protect the **process** of collective bargaining. Collective bargaining is never "from scratch", but always from "status quo". Numerous Commission decisions establish that an employer is obliged

to give notice and provide opportunity for bargaining, upon request, prior to implementation of changes of its policies. That duty to bargain extends to policies and practices which predate a collective bargaining relationship, and which are not reflected in any collective bargaining agreement.

The Public Employment Relations Commission is charged with responsibility for the enforcement of Chapter 41.56 RCW, but is not thereby empowered to resolve each and every dispute arising between public employers and their employees. Clearly, the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.³ The statutes authorize,⁴ endorse,⁵ and even make the Commission's staff available for⁶ the arbitration of grievance disputes concerning interpretation and application of collective bargaining agreements. The Commission also "defers" the processing of unfair labor practice cases in situations where the employer conduct at issue in a "unilateral change" case is arguably protected or prohibited by an existing collective bargaining agreement that provides for final and binding arbitration, but rather defers to the expertise of arbitrators in such matters.⁷ Important for the purposes of this case, none of those statutes make the Commission the interpreter, arbiter or enforcer of an employer's unilaterally adopted personnel policies.

³ City of Walla Walla, Decision 104 (PECB, 1976).

⁴ RCW 41.56.122(2).

⁵ RCW 41.58.020(4).

⁶ RCW 41.56.125.

⁷ The Commission's "deferral" policies were reviewed and restated in City of Yakima, Decision 3564-A (PECB, 1991). If the arbitrator finds that the employer conduct was protected or prohibited by a contract, then the duty to bargain will have been fulfilled, and the unfair labor practice charge will be dismissed.

The allegations filed on April 8, 1992 fall short of asserting that the employer has announced and/or unilaterally implemented any blanket change of the policies it had previously announced and published in its departmental manual. Rather, it appears that the union merely asks the Commission to hold the employer to the terms of its own previously announced manual. Under those circumstances, no cause of action is found to exist for unfair labor practice proceedings before the Public Employment Relations Commission.

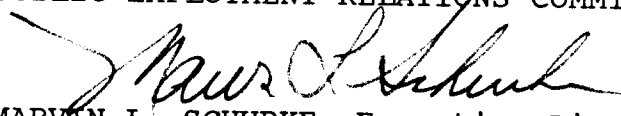
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED.

DATED at Olympia, Washington, this 21st day of December, 1992.

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.