STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,	
Complainant,	CASE 10185-U-92-2332
vs.	DECISION 4851 - PECB
CITY OF SEATTLE,	ORDER DENYING MOTION TO DISMISS
Respondent.	

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

Mark H. Sidran, Seattle City Attorney, by Sandra L. Cohen and Leigh Ann Tift, Assistant City Attorneys, appeared on behalf of the respondent.

On December 23, 1992, the complainant International Federation of Professional and Technical Engineers, Local 17 (IFPTE) filed a complainant charging unfair labor practices against the City of Seattle. The matter came before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At that time, several problems with the complaint were noted and the complainant was allowed 14 days to file an amended complaint or have the case dismissed for failure to state a cause of action.

The union did file an amended complaint. Subsequently, the Commission had occasion to review an Examiner's decision on a case which bore certain similarities to the instant complaint. The processing of this complaint was thus held in abeyance for an additional time, pending the outcome of the Commission's deliberations.

The amended complaint alleged that the employer had interfered with both the exclusive bargaining representative and a bargaining unit employee, by its actions in bringing the employee before a disciplinary forum outside of that established by the collective bargaining agreement. The employee had already been through the discipline procedures agreed upon by the parties in the collective bargaining process and had not been disciplined. The union asserted that the clear intent of the collective bargaining agreement between the parties was to establish a single method by which disciplinary action could be imposed on employees covered by that agreement, and that the actions taken by the employer constituted a deliberate attempt to circumvent the contract, the exclusive bargaining representative and the collective bargaining process. It further asserts that if the employer agreed to an exclusive discipline and grievance process in the contract, while at the same time failing to disclose that it intended that another forum have concurrent jurisdiction, then the employer bargained in bad faith.

In City of Pasco, Decision 4197-A and 4198-A (PECB, 1994), the employer established a "management review" procedure in place of its prior "point value" and "board of review" system. Noting that the employer's actions in that case clearly affected a mandatory subject of bargaining (i.e., discipline), the Commission found that a bargaining obligation arose. The alleged establishment, in the instant case, of a parallel discipline procedure outside of the collective bargaining agreement would appear to be a similar situation.

The amended complaint was found to state a cause of action, and was referred to an Examiner for further proceedings. The matter was scheduled to be heard August 24, 1994.

On July 25, 1994, the city filed a motion to dismiss based on three theories. First, the complaint of unfair labor practices was

untimely filed. Second, the amended compliant did not state a claim under RCW 41.56.140(2). Third, the city did not make a unilateral change or by-pass any bargained for "exclusive" disciplinary process. The union was granted an opportunity to answer the motion and the hearing date was rescheduled. The city also filed an additional reply memorandum in support of its motion to dismiss.

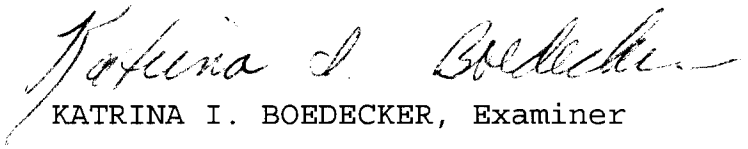
The allegation that the matter is untimely needs to be judged after a sworn factual record is developed on the matter. The amended complaint has already been found to state a cause of action; see the April 4, 1994 letter to the parties from the Executive Director. The time to appeal that determination is after the issuance of the Examiner's decision, WAC 391-45-350. The defense that the city did not make any unilateral change or by-pass any bargained for process also needs to be judged after a sworn factual record is developed.

ORDER

The respondent's motion to dismiss is denied at this time, without prejudice.

ISSUED at Olympia, Washington, this 23rd day of September, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATRINA I. BOEDECKER, Examiner