STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MUNICIPALITY OF METROPOLITAN SEATTLE (METRO) Employer ********** DIANE ROLFE, Complainant, vs. AMALGAMATED TRANSIT UNION LOCAL 587, Respondent.	CASE NO. 5986-U-85-1119 DECISION NO. 2320 - PECB PRELIMINARY RULING

On September 16, 1985, Diane Rolfe filed a complaint charging unfair labor practices with the Public Employment Relations Commission, listing Amalgamated Transit Union, Local 587, as respondent. The allegations recite a failure of the union to represent the complainant adequately when it bargained with the Municipality of Metropolitan Seattle (METRO) concerning combining two classifications. There is no companion case against the employer. This matter is now before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. The question at hand is whether, assuming all the facts alleged to be true and provable, the complaint states a claim for relief which can be granted through the unfair labor practice provisions of the Public Employment Collective Bargaining Act, Chapter 41.56 RCW.

The statement of facts sets forth the following:

> Approximately 1 year ago Local 587 of the Amalgamated Transit Union bargained with METRO over, among other things, combining two job classifications: utility laborer and general laborer. In doing this the union failed to provide for the seniority of the charging party or other similar employees thereby causing her and the others to not receive proper credit for time spent in relevant job classifications. During the time since the bargaining the Charging Party has attempted to work with Local 587 to have the problem remedied. She has been told, among other things, that there is no reason for her to go to the International Union because they would simply agree with the Local. Local 587 also failed to advise the Charging Party that she had the right to bring her issue to a vote of the Union membership. By not informing her of this option the Charging Party waived her right to such a vote and was thereby not properly represented.

Importantly, there is no allegation that the union was in collusion with the employer or otherwise aligned in interest against the complainant in bargaining the combination of classifications, there is no allegation that the union's actions were discriminatory against the complainant, and there is no allegation that the agreement negotiated by the union and employer was applied in a discriminatory manner.

RCW 41.56.190 requires that unfair labor practice charges be filed within six months of the events or acts complained of. The only reference to timing of events in this complaint is "approximately 1 year ago". There is nothing from which to infer that the situation was concealed from the complainant for some portion of that time, let alone to infer that any of the conduct occurred after the March 16, 1985 date critical for purposes of application of the statute of limitations on a complaint filed September 16, 1985.

The allegations against the union involve a charge of breach of the union's "duty of fair representation". The Public Employment Relations Commission has drawn a distinction between two types of fair representation issues, asserting jurisdiction over one type and declining jurisdiction over the other.

In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982) and a number of subsequent cases, the Commission has declined to assert jurisdiction with respect to breach of duty of fair representation claims arising exclusively from the processing of grievances arising under existing collective bargaining agreements. Since the Commission lacks "violation of contract" jurisdiction as to the employer, such cases would be empty victories for complainants even if successfully prosecuted before the Commission. Therefore, such matters must be pursued through a civil suit filed in a Superior Court having jurisdiction over the employer.

By way of contrast, Elma School District (Elma Teachers Organization), Decision 1349 (PECB, 1982), involved allegations of discrimination against a grievant because of her previous support of another labor organization. A discrimination violation of the nature alleged in Elma would place into question the right of the organization involved to continue to enjoy the status and benefits conferred by the statute on an exclusive bargaining representative. Cases of that type are processed by the Commission as an adjunct to its authority to certify and decertify representatives.

From the timing of events as recited in the complaint, the original bargaining concerning the combination of classifications is now beyond the reach of the statute of limitations, and any later activities which might be brought within the

statute of limitations are in the nature of a grievance dispute interpreting or applying the given of combined classifications. This case thus appears to fall within the class governed by the Mukilteo decision.

NOW, THEREFORE, it is

ORDERED

The complainant charging unfair labor practices filed in the above-entitled matter is dismissed as failing to state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

DATED at Olympia, Washington, this 9th day of December, 1985.

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.