STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LAKE WASHINGTON TECHNICAL COLLEGE, Employer.	
LETICIA EVORA, SUE JORGENSEN, KIM BARR, VALORIE PERRY, Complainants, vs. WASHINGTON FEDERATION OF TEACHERS, Respondent.	CASE 14511-U-99-3609 DECISION 6742 - CCOL CASE 14512-U-99-3610 DECISION 6743 - CCOL CASE 14513-U-99-3611 DECISION 6744 - CCOL CASE 14514-U-99-3612 DECISION 6745 - CCOL ORDER OF DISMISSAL

On April 17, 1999, Leticia Evora, Sue Jorgensen, Kim Barr, and Valorie Perry filed complaints with the Public Employment Relations Commission under Chapter 391-45 WAC, charging that the Washington Federation of Teachers (union) committed unfair labor practices. The complainants are identified as office-clerical employees of Lake Washington Technical College (employer).[1] Separate cases were docketed for each individual complainant, as follows:

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[1] Although the employer is not named as a respondent or accused of any wrongdoing in these cases, its name will appear in documents and captions for the case. Each dispute resolved by the Commission must arise out of an employment relationship within the jurisdiction of the agency, and the Commission's docketing procedures require identification of the employer in each case.

Case 14511-U-99-3609 for claims of Leticia Evora
Case 14512-U-99-3610 for claims of Sue Jorgensen
Case 14513-U-99-3611 for claims of Kim Barr
Case 14514-U-99-3612 for claims of Valorie Perry

The docketing of separate cases for each individual complainant is required by the Commission's docketing procedure, and does not affect the substantive rights of any party.

The Allegations and Deficiency Notice

The complainants allege that the union has interfered with their rights by refusing to provide information concerning union security issues, including the steps necessary for them to become "agency fee payers". The complainants also allege that the union's actions (or inaction) on their "agency fee payer" claims are a form of retaliation against them for their leadership of a failed decertification effort.

A deficiency notice issued on May 25, 1999, under WAC 391-45-110,[2] advised the complainants that the complaints, as filed, did not state causes of action within the Commission's jurisdiction. In International Association of Firefighters, Local 2916 v. PERC, 128 Wn. 2d 375 (1995), the Supreme Court of the State of Washington narrowly construed the Commission's authority to deal with union security issues, limiting the Commission to those cases involving the religious-based right of non-association set forth in RCW 41.56.122. In doing so, the Supreme Court reversed a long line of Commission precedents in which the agency had ruled that the

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[2] At this stage of proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

failure of a union to minimally establish and implement an apportionment procedure complying with the decision of the Supreme Court of the United States in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) would constitute an "interference" and/or "discrimination" unfair labor practice under RCW 41.56.140(1). While the Commission's approach had engrafted requirements of the federal constitution onto the union security provisions of Chapter 41.56 RCW to assure that they would not be enforced in a manner which would bring state law to bear on an employee in an unconstitutional manner, the state Supreme Court reserved that function to the courts by ruling that the Commission has no jurisdiction in such matters. Accordingly, these complainants were allowed a fixed time to amend their allegations, or face dismissal of the complaints.

The Amendment(s)

The complainants filed timely amendments on June 7, 1999, and the cases are again before the Executive Director under WAC 391-45-110. The complaints, as amended, still fail to state a claim for relief available from the Commission.

In their amendment, the complainants stress that they are not challenging the amount of union dues or rebates that may be owed, but that is a distinction without a difference. Even when the Commission was asserting jurisdiction in such matters, it never took on the role of the accountants and arbitrators required by the Hudson decision.

In their amendment, the complainants assert that they are trying to determine whether the union has appropriate dues payment procedures in place. That is precisely the type of determination which was made by the Commission (on the basis of individual complaints)

during the period the agency was asserting jurisdiction in such matters, and is thus also the assertion of jurisdiction that was rejected in IAFF Local 2916 v. PERC, supra. Under that decision of the state Supreme Court, these complainants would need to pursue their claims by lawsuits against the union in a state or federal court, citing Hudson, supra.

In their amendment, the complainant's re-assert that the union's refusal to provide the requested information was in retaliation for the complainants' decertification efforts. While the amendment clarifies the complainants' position, the complaints are still inadequate for further processing. Under Section 8(a)(3) of the National Labor Relations Act, as amended, union security agreements are permitted as an exception to a general rule which makes it an unfair labor practice for employers to discriminate for or against union membership. Under the Public Employees' Collective Bargaining Act, RCW 41.56.140 enumerates unfair labor practices in terms which paraphrase the unfair labor practice provisions of the federal law, and union security agreements are authorized separately in RCW 41.56.122(1). Prior to IAFF Local 2916 v. PERC, supra, the Commission inferred a legislative intent that union security in the public sector should be administered in a manner similar to its administration in the private sector. In the cases which were before the Supreme Court in IAFF Local 2916 v. PERC, the Commission even found unfair labor practice violations based on discriminatory treatment of employees and attempted enforcement of union security obligations when there was no contract in effect. All of that was swept away, however, when the Supreme Court limited the Commission to administration of the religious-based right of non-association set forth in RCW 41.56.122(1). Even if the Supreme Court "threw the baby out with the bath water", that is the law as it now stands. The allegation does not state a cause of action.

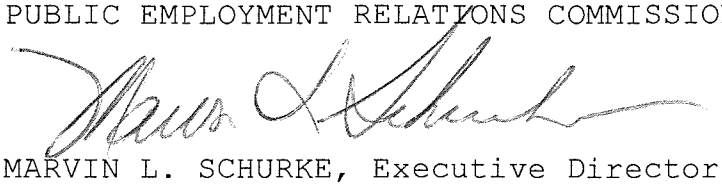
The complainants allege that the union is retaliating against them for making inquiries into union security procedures. Again, the Supreme Court's decision in IAFF Local 2916 v. PERC, supra, strictly limits the Commission's authority to deal with union security matters. The Supreme Court's decision may effectively mean that matters relating to union security are not statutorily protected under Chapter 41.56 RCW. The Commission cannot assert jurisdiction to process these complaints further.

ORDER

Based on the foregoing, the above-captioned unfair labor practice complaints are hereby DISMISSED.

DATED at Olympia, Washington, this 16th day of July, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.