

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE OFFICERS' GUILD,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

Case No. 614-U-76-71

ORDER OF DISMISSAL

Decision No. 205 PECB

Seattle Police Officers' Guild having, on November 1, 1976 and November 12, 1976 filed complaints with the Public Employment Relations Commission; and the Executive Director having reviewed the matter as specified in WAC 391-20-310; and it appearing that the allegations of the complaints all relate directly to or are derivative from alleged violations of a collective bargaining agreement; and the Executive Director being satisfied that the Commission lacks jurisdiction to determine allegations of violation of a collective bargaining agreement as unfair labor practices subject to administrative remedy, and being satisfied that the facts as alleged do not, as a matter of law, constitute a violation of RCW 41.56.140;

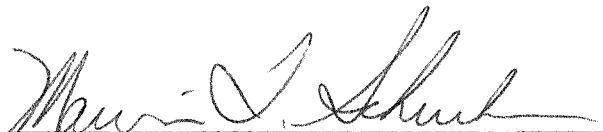
NOW THEREFORE, it is

ORDERED

That the complaint filed to initiate the above entitled matter and the petition filed in amendment thereof on November 12, 1976 be, and hereby are dismissed.

DATED at Olympia, Washington this 30th day of March, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On November 1, 1976, the Seattle Police Officers Guild filed three complaints with the Commission. The letter covering transmittal of those documents indicated that: "The original complaints are on file with the Seattle Civil Service Commission". The texts of the complaints dealt with the hiring and promotion of minority applicants for positions in the Seattle Police Department, and referenced violations of "civil service rules", "practices which unfairly discriminate against nonminority officers", actions "unlawful pursuant to RCW 49.60.030", violation of a collective bargaining agreement between the Guild and the City of Seattle, violation of WAC 162-12-140(3)(g), discrimination within the meaning of Chapter 49.60 RCW, and an unfair labor practice within the meaning of RCW 49.60.180.

On November 12, 1976, a "petition" was filed with the Commission which identifies the Seattle Police Officers' Guild as "Complainant" and which identifies the City of Seattle as "Respondent". The allegations of fact contained in the three counts of that petition are substantially similar to the factual allegations contained in the November 1, 1976 filings. These documents, however, allege that the conduct violates certain portions of Chapter 41.56 RCW. A copy of the petition is attached.

The question before the Executive Director while considering a case for a preliminary ruling pursuant to WAC 391-20-310 is whether the facts, as alleged, may constitute an unfair labor practice within the meaning of RCW 41.56.140 or RCW 41.56.150. One of the included issues in making that determination is whether, as a matter of fact and/or law, the Public Employment Relations Commission has jurisdiction over the matter. In this case, the Complainant is a labor organization representing employees of a public employer covered by Chapter 41.56 RCW, and there would seem to be no question of jurisdiction over the parties. Jurisdiction over the subject matter of the complaints presents a more difficult question.

ALLEGATION I. "Selective Certification"

The text of the first allegation includes the statement that the selective certification practice is contrary to the civil service law and rules, as well as the city charter. There can be little doubt that PERC has no jurisdiction to determine disputes directly involving and stemming from the interpretation or application of that law, those rules or that Charter. While RCW 41.56.040 is the source of the rights made available to public employees under the Public Employees' Collective Bargaining Act, neither that section nor the Chapter as a whole constitutes a direct grant of a right to be free of race or sex discrimination. The latter subjects are covered by other chapters of statute, notably Chapter 49.60 RCW, and are under the jurisdiction of another State agency, the Human Rights Commission. On page 2 of the petition, the Complainant shifts to an allegation of violation of a collective bargaining agreement and a claimed interference and domination stemming therefrom.

ALLEGATION II. "Criteria for Hiring"

The text of the second allegation also cites the collective bargaining agreement between the City and the Complainant, and alleges a violation of a notification duty imposed by that agreement. Again, interference violations are set forth as derivative from the violation of contract allegation.

ALLEGATION III. "Promotion Procedure"

The text of the third allegation cites changes in the operation of the civil service system, and concludes with the allegation that: "The above acts of the City of Seattle are in violation of RCW 41.56.140 for the reason that they demonstrate the City of Seattle has unlawfully interfered with the employment contract existing between the Seattle Police Officers' Guild and the Seattle Police Department..." An impairment of the collective bargaining process is alleged to flow therefrom.

ANALYSIS AND CONCLUSIONS

We are dealing here with allegations concerning the operation of a civil service system. The Complaint does not address itself to the effect of RCW 41.56.100, under which matters delegated to a civil service commission or personnel board similar to the State Personnel Board are excluded from the scope of collective bargaining under Chapter 41.56 RCW. However, the matter is not being disposed of on that basis.

It has consistently been the ruling of the Executive Director that Chapter 41.56 RCW does not make violation of contract allegations justiciable before the Public Employment Relations Commission as unfair labor practices. See: Thurston County (Decis. No. 103, 103-A; PECB 12/76). That conclusion is based primarily upon the fact that the statute itself does not provide an administrative remedy for this type of violation, leaving a collective bargaining agreement subject to enforcement through the dispute settlement machinery, if any, provided in the contract itself or through the Courts. This conclusion is supported by the fact that the comparable Federal law makes violation of a collective bargaining agreement a matter justiciable in the courts^{1/}, and the fact that the comparable Federal agency, the National Labor Relations Board, does not assert administrative jurisdiction in violation of contract matters^{2/}. Violation of a collective bargaining agreement is made subject to administrative remedy under the labor laws of certain other states, but our legislature has not conferred such violation of contract jurisdiction on this agency.

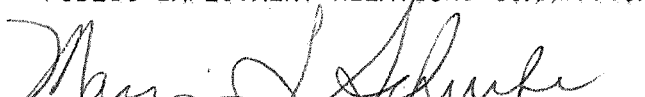
The complaint filed in the instant case must be dismissed. All of

1/ Section 301 of the Labor-Management Relations Act of 1947

2/ BNA Labor Relations Expediter, "Collective Bargaining Contracts", Section 32.

the alleged violations stem from alleged violations of a collective bargaining agreement. The interference and domination allegations of the complaint are merely derivative from the violation of contract allegations, and do not give rise to a potential for independent violations of the Act.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARVIN L. SCHURKE, Executive Director

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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

SEATTLE POLICE OFFICERS' GUILD,)	
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Complainant,)	CASE NO.
)	
vs.)	
)	
CITY OF SEATTLE,)	PETITION
)	
Respondent.)	
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The complainant charges that the City of Seattle has committed three unfair labor practices as per RCW 41.56.140, as follows:

I.

The City of Seattle Civil Service Commission utilizes an informal procedure called "selective certification" whereby the City certifies certain minority job applicants to fill civil service employment vacancies within the Seattle Police Department. The certifications are made on individual applicants who may not necessarily rank within the top 25% of the total number of candidates upon the register for the class or grade to which such position belongs. This practice is contrary to the Civil Service Commission's Laws and Rules as well as Article XVI, §9 of the City of Seattle charter. Accordingly, minority applicants are preferred over non-minority applicants since employment selection is not based upon their relative positions held on eligibility registers but rather upon the City's unwarranted concern with the affirmative action policies of the Seattle Police Department.

RCW 41.56.140 provides that it shall be an unfair labor practice for a public employer, which includes municipal corporations (RCW 41.56.020), to interfere with, restrain, or coerce

public employees in the exercise of their rights guaranteed by Chapter 41.56, or to control, dominate or interfere with the bargaining representative.

The collective bargaining rights of the Seattle Police Officers' Guild have been and continue to be undermined by the City of Seattle for the reason that the City of Seattle continues to unlawfully coerce the Seattle Police Department to violate provisions of its employment contract with the Seattle Police Officers' Guild, thus unlawfully interfering with the contractual relations between the Seattle Police Officers' Guild and the Seattle Police Department. By disregarding and bypassing the results of the collective bargaining process between the Seattle Police Department and the City of Seattle, the City of Seattle has seriously eroded or impaired the collective bargaining process itself, as well as dominated or controlled a bargaining representative within the meaning of RCW 41.56.140.

II.

There are certain qualities or criteria which must be possessed by an individual before he or she should be considered for employment as a police officer with the City of Seattle. Civil Service examinations for the position of police officer have been designed so as to identify those persons who have the highest qualifications for police officer and rank them according to their degree of excellence.

Recent examinations, however, have not meaningfully tested for such necessary qualities in these applicants. The examinations stress criteria which are nonrelated to effective prospective job performances. By the terms of the Agreement By and Between the City of Seattle and the Seattle Police Officers' Guild, Article IV, §3, the City of Seattle shall not reduce such

testing standards without first notifying the Chief of Police and the Seattle Police Officers' Guild of such anticipated action. This notice has not been given either to the Chief of Police nor to the Guild.

The above practices of the City of Seattle constitute an unfair labor practice within the meaning of RCW 41.56.140 for the reason that the acts of the City of Seattle have been consciously made with the objective of coercing the Seattle Police Department to breach its employment contract with the Seattle Police Officers' Guild, where such contract was reached through the collective bargaining process. The City of Seattle's demonstrated contempt for contractual relations forged by collective bargaining constitutes a certain violation of RCW 41.56.040, which provides that no public employer, including a municipal corporation, shall directly or indirectly interfere with, restrain, coerce or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining or in the free exercise of any other right under Chapter 41.56 of the RCW.

The City of Seattle has unlawfully interfered with the collective bargaining process between the Seattle Police Officers' Guild and the Seattle Police Department for the reason that the City of Seattle has coerced and continues to coerce the Seattle Police Department to violate its employment contract with the Seattle Police Officers' Guild by improperly relaxing the testing criteria for mental and physical qualities essential to effective performance as a law enforcement officer. This interference with the employment contract between the Seattle Police Officers' Guild and the Seattle Police Department has severely eroded and undermined

the collective bargaining process between these two bargaining units.

III.

On October 5, 1974, promotional written examination No. 118-74 was given for vacancies occurring on the renewed eligibility register for the position of Police Sergeant. The eligible list of 190 successful applicants was certified on February 28, 1975. Through July 23, 1975, ten appointments were made to the position of acting Police Sergeant from this register in the order of each appointee's respective or relative position on the promotional register. By October 23, 1975, each of these ten appointees was promoted to permanent Police Sergeant with the effective date of their promotion to permanent Police Sergeant being made retroactive to the date on which each had been appointed acting Police Sergeant. It was at this time that the City began to unlawfully oppose the Police Department's standard procedure of making appointments from the promotional register on the sole basis of numerical standing. The City's reason was apparently that minorities were not being hired on or promoted within the Police Department in sufficient numbers.

To this end, the Commission initially made the effective date of promotion, for pay, future promotions, and benefit purposes, the date of permanent promotion rather than the date of "acting" promotion. Now the City has restricted the Police Department from making "acting" promotions, thus exerting even more pressure upon the Department to select a minority candidate, regardless of merit, from the register who will meet with the approval and certification of the City. This unlawful pressure has been applied to all promotional positions, including the rank of lieutenant, captain and major.

Additionally, the City has refused to certify the appointees selected by the Department for the reason that they are non-minority individuals, when in fact these individuals are within the top 25%

of the total available eligibles and whose selection by the Department was made on the basis of their being the next highest available name on the register.

Certain members of the Seattle Police Department have consequently suffered economic as well as other damages by the discriminatory acts of the City, for the reason that promotional vacancies for the positions of lieutenant, captain and/or major have not been promptly filled as required under these civil service rules and therefore, vacancies for the promotional position of Police Sergeant have not occurred as would otherwise have normally happened in the ordinary course of events.


On August 2, 1976, the Department requested certification of a minority officer who ranked No. 33 on promotional register No. 118-74, when at that time only the first 17 names appearing on that register had been appointed. Therefore, the Department requested certification of this minority officer at a time when there were 15 other and non-minority officers who had attained a higher standing on promotional register No. 118-74 than this minority candidate. The Department's request for certification was immediately approved and this minority officer's promotion was certified by the City.

Each of the 15 officers who had attained a higher standing on promotional register 118-74 than this minority officer have been unlawfully aggrieved for the reason that the City has unlawfully coerced or forced the Police Department to pursue employment and promotional practices which unfairly discriminate against non-minority officers.

The above acts of the City of Seattle are in violation of RCW 41.56.140 for the reason that they demonstrate the City of Seattle has unlawfully interfered with the employment contract existing between the Seattle Police Officer's Guild and the

Seattle Police Department. The employment contract was forged through the collective bargaining process, and to the extent that the City of Seattle interferes and unlawfully meddles with this contract, the collective bargaining process is thereby impaired.

DATED this 9th day of November, 1976.



John P. Sullivan, President
Seattle Police Officers' Guild