STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

YAKIMA VALLEY COLLEGE FEDERATION OF TEACHERS, Local 1485, AFT, AFL-CIO, Complainant vs. YAKIMA VALLEY COLLEGE, Respondent	CASE NO. 255-U-76-19 DECISION NO. 240-CCOL

Mr. Roger D. Carlstrom, Union Representative, on behalf of the Complainant.

Mr. Paul Rickman, Special Consultant to the President, on behalf of the Respondent.

MEMORANDUM DECISION

On April 7, 1976, the above named Complainant addressed correspondence to the Executive Director of the Public Employment Relations Commission wherein, among other matters, the following was set out:

> "In addition to the above, and having given notice to the YVC Board of Trustees on March 26, 1976, we charge that the District through its President, Dr. Russell, and the President of the Board of Trustees, Mr. de La Chapelle, and the trustees and administrators of the District, has engaged in blatantly unfair labor practices in the following ways:
>
> "(1) The District has acted unfairly and unilaterally to break an existing labor agreement with the Union.
>
> "(2) The District has acted unfairly and unilaterally to accept and adopt policies which state that an agreement with the Union exists when in fact no such agreement has been made. The only agreement is the 1974-75 Agreement, which they have broken by their action of April 1, 1976.
>
> "(3) The District has acted unfairly and unilaterally in selectively distributing salary increase monies to administrative personnel, while withholding the major portion of increase monies from full time faculty and distributing no increase at all to hourly academic employees.

"(4) The District has acted unfairly by the discharge of Mr. Jerry Gaddy, the nominee for Union President for 1976-77. This action was contrary to the recommendation of the College Tenure Review Committee and constitutes the first time in the history of the College that a tenure recommendation after the three year process has been completed has been overturned and a faculty member discharged. The cause stated for the dismissal of Mr. Gaddy was the "recommendation of President Russell." We charge this is a blatant case of discrimination against an officer of the Union and a prima facie case of anti-union activity on the part of the Board.

"(5) The District has acted unfairly to deny the award of tenure to Ms. Virginia Mack, Vice President of the Washington Federation of Teachers, and a member of our local. Ms. Mack was terminated by the District from her probationary appointment allegedly because the District was paying her from federal funds. The District had not applied this condition to any other faculty members on federal money. When the District was accused of singling out Ms. Mack for union activity, the District called a special meeting and rescinded the tenure of two other (non-member) academic employees. This action admits that the District had in fact singled out Ms. Mack, and the entire actions prove a blatant case of discrimination and prima facie evidence of anti-union activity on the part of the Board.

"We ask that the Commission investigate these complaints and provide relief in the following ways:

"(1) That the District distribute the entire state appropriation for salary increases to the academic and exempt employees of the District by agreement with the Union.

"(2) That the District abide by the existing 1974-75 Agreement until it is replaced by a mutually agreed-to and mutually ratified 1975-76 Agreement.

"(3) That the District reinstate Mr. Gaddy and Ms. Mack in their appointments and grant tenure to them as well as the other academic employees who were arbitrarily discriminated against in an attempt to cover up the earlier anti-union actions.

"We respectfully request that the Commission use its powers to intervene in this dispute, reverse the unfair labor practices, and restore an atmosphere of peace and decency wherein legal and proper collective bargaining can exist."

The unfair labor practice allegations were docketed separately from other cases involving the same dispute, and the parties were advised that the extent of the Commission's unfair labor practice jurisdiction under Chapter 28B.52 RCW would be made a matter for study. Negotiations between the parties were resolved and on October 29, 1976 the Commission closed mediation and factfinding cases which had been opened in connection with those negotiations. Following further correspondence, the Complainant declined to withdraw its unfair labor practice charges and the Commission acting in the absence of administrative rules for

processing of unfair labor practice allegations under Chapter 28B.52-RCW, requested written arguments from the parties concerning the extent of its jurisdiction under that Chapter. Both parties filed written arguments on the matter.

POSITION OF THE COMPLAINANT

The Complainant relies on RCW 28B.52.070 as a source of substantive rights and urges the Commission to act under RCW 28B.52.080 to adopt rules for the disposition of unfair labor practice allegations in administrative proceedings before the Commission. The Complainant therefore argues that the Commission clearly has jurisdiction over the fourth and fifth allegations made in its April 7, 1976 letter. With respect to the first three allegations, the Complainant acknowledges that Chapter 28B.52 RCW does not include an obligation to bargain in good faith, but the Complainant seeks to infer such an obligation from RCW 41.58.040(1). Thus, the Complainant contends that the difference between the duty "to bargain" and the duty "to make agreements" is one of form and not of substance, and that the Commission is thus obligated to assert a "refusal to bargain" jurisdiction over Community Colleges.

POSITION OF THE EMPLOYER:

Starting from the premise that the law of labor relations did not exist at common law, and distinguishing Chapter 28B.52 RCW from other Washington State public sector labor relations laws, the Employer takes the position that the authority of the Commission is limited to that specifically conferred by Chapter 28B.52. The Employer expresses "some serious doubts" as to whether the Commission has unfair labor practice jurisdiction under that Chapter.

DISCUSSION:

The legislative history of Chapter 28B.52 RCW has been considered by the Commission in reaching its conclusion in this matter. Community College faculties were subject to the coverage of the former "Professional Negotiations Act", Chapter 28A.72 RCW, from the time of the enactment of that statute (1965) until Chapter 28B.52 RCW was enacted in 1971. Individual community college districts, rather than the State Board For Community College Education, had rule-making authority under the RCW 28B.52.080 from 1971 through 1975. During the 1975

legislative sessions, Senate Bill 2500 was enacted [1/] defining and establishing administrative machinery for the processing of unfair labor practice cases of certificated employees of school districts formerly covered by Chapter 28A.72 RCW. Parallel bills, including Senate Bill 2263, which would have extended similar provisions to community college academic faculties in lieu of the rights provided by Chapter 28B.52 RCW failed enactment. Senate Bill 2408 was enacted as Chapter 296, Laws of 1975, 1st ex.sess., and codified, together with Chapter 5, 2d.ex.sess., as Chapter 41.58 RCW, creating this Commission and transferring to it administrative jurisdiction over five public sector labor relations acts and one private sector labor relations act. Except for the substantive changes made in the bargaining rights of certificated employees of school districts by the separate legislation already mentioned, few substantive changes were made in Chapters 41.56, 28B.52, 53.18, and 47.64 RCW. The only changes enacted in Chapter 28B.52 RCW were:

1. Substitution of the Commission as the administrative agency in place of the State Board for Community College Education;
2. Elimination of the "Impasse Committee";
3. Substitute of rule-making authority vested in the Commission in place of rule-making authority vested in the individual Boards of Trustees of community college districts.

RCW 41.58.005 states the general legislative intent and the construction of the Chapter. RCW 41.58.020 and RCW 41.58.040 parallel the language of Sections 203 and 204 of the 1947 amendments to the National Labor Relations Act, both portions of "Title II - Concilliation of Labor Disputes In Industries Affecting Commerce; National Emergencies".

Chapter 28B.52 RCW contains references to "mediation", "factfinding" and "certification elections", all of which are traditional functions of labor relations administrative agencies, but contains no reference to "unfair labor practices" or anything akin thereto. Contrary to the arguments of the Complainant herein, RCW 41.58.005(3) provides:

> "(3) Nothing contained in this 1975 amendatory act shall be construed to alter any power or authority regarding the scope of collective bargaining in the employment areas affected by this 1975 amendatory act, but this amendatory act shall be construed as transferring existing jurisdiction and authority to the public employment relations commission." (Emphasis added)

1/ Now codified as Chapter 41.59 RCW

On the basis of the foregoing, we must conclude that RCW 41.58.040(1) has not enlarged the "meet, confer and negotiate" obligations of RCW 28B.52.

Administrative agencies have only the powers conferred upon them by the legislature. When Chapter 28B.52 was enacted, the legislature had before it the National Labor Relations Act with years of interpretation and application. Unfair labor practices are specifically defined in Section 8 of that Act and the National Labor Relations Board is specifically empowered by Section 10 of that Act to prevent unfair labor practices. Chapters 41.56 RCW and 41.59 RCW are patterned generally after the National Labor Relations Act. RCW 41.56-140, RCW 41.56.150 and RCW 41.59.140 specifically define unfair labor practices and RCW 41.56.160 and RCW 41.59.150(1) authorize the Commission to prevent certain unfair labor practices. The legislature rejected these precedents when it enacted RCW 28B.52. The fact that RCW 28B.52.070 is comparable in some respects both to Section 8(a)(3) of the National Labor Relations Act and to RCW 41.59.140(1)(c) does not give rise to administrative jurisdiction in the absence of any provision in RCW 28B.52 which is comparable to Section 10(a) of the N.L.R.A., to RCW 41.56.160 or to RCW 41.59.150(1). The enforcement of rights conferred by RCW 28B.52.070 are matters for the courts. Upon the basis of the foregoing, the Commission makes the following:

FINDING OF FACT

The Complainant filed charges with the Commission alleging that Yakima Valley College had committed unfair labor practices relating to academic employees of Yakima Valley College, a community college district established pursuant to RCW 28B.50.

CONCLUSION OF LAW

RCW 28B.52 does not confer on the Commission the power to remedy unfair labor practices.

ORDER

The unfair labor practice charges filed by Yakima Valley College Federation of Teachers, Local 1485, AFT, AFL-CIO under date of April 7, 1976 are dismissed for lack of jurisdiction.

DATED this 10th day of June, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug

Mary Ellen Krug, Chairman

Michael H. Beck

Michael H. Beck, Commissioner

Paul A. Roberts

Paul A. Roberts, Commissioner