

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES' INTERNATIONAL )		
UNION LOCAL 120, )		CASE NO. 1381-U-78-170
Complainant )		DECISION NO. 378-PORT
vs. )		<u>ORDER OF DISMISSAL</u>
PORT OF EDMONDS, )		
Respondent )		
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The complaint of unfair labor practices was filed in the captioned matter on February 1, 1978. The factual allegations of the complaint relate to unilateral changes in hours and conditions of employment made by the employer immediately prior to and immediately after a representation election conducted by the Commission leading to the certification of the Complainant as the representative of the employees, by refusal to bargain, and discrimination against employees for their union activity. The employer answered the allegations on their merits. In a letter covering transmittal of the complaint for filing, Counsel for the Complainant states:

"We are aware that RCW 41.56.020 states: 'This chapter shall apply to any county or municipal corporation, or any political subdivision of the State of Washington except as otherwise provided by . . . Chapter 53.18 RCW.' It is our position, however, that since RCW 53.18 does not provide a remedy for unfair labor practices committed by an employer, that the provisions of the Act for the filing of charges should apply."

The statutory violations claimed in the complaint of unfair labor practices relate to RCW 41.56 and to the Commission's rules implementing that Chapter.

It is well known that we have a somewhat fragmented array of public sector collective bargaining laws in this State. In addition to the statute which creates PERC (RCW 41.58), PERC administers five different statutes providing bargaining rights to various groups of public employees. Two separate groups of State employees bargain under the jurisdiction of

two other administrative agencies. Public Utility Districts and their employees are authorized to engage in collective bargaining, but have not been designated as being within the administrative jurisdiction of any State labor relations agency. In addition, there are several "no-man's lands" in the public sector.

Chapter 296, Laws of 1975, 1st. ex. sess., now codified as RCW 41.58.005, created PERC and transferred to it administrative jurisdiction over five public sector labor relations laws and one private sector labor relations law. In making that transfer, the legislature brought together the labor relations functions formerly handled by four separate agencies, and gave PERC a charge to be more "uniform", "impartial", "efficient" and "expert".

While altering the administrative arrangements, the legislature did not alter the substantive rights of employees. 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 supplied).

The legislature clearly did not enact a uniform collective bargaining act covering all public employees.

Although both enacted in 1967, RCW 41.56 and RCW 53.18 were enacted as separate pieces of legislation. On numerous points, they differ markedly. Subsequent amendments installed unfair labor practice law and procedure under RCW 41.56 (1969) and interest arbitration procedure for law enforcement and firefighter personnel under RCW 41.56 (1973). During its 1977 session, the legislature addressed the question of interest arbitration coverage for law enforcement and firefighter employees of port district operated airports. (1977 H.B. 85). PERC's predecessor, the Washington State Department of Labor and Industries had declined to assert its RCW 41.56 unfair labor practice authority with respect to port district employees. Port of Seattle, Case No. 0-1707, Director's Decision, October 31, 1974.

The Commission has ruled that four year college faculties are not "public employees" within the meaning of RCW 41.56. Eastern Washington State College, Decision No. 245-PECB (1977). The Commission has also ruled that, in the absence of a specific delegation of administrative authority to prevent and determine unfair labor practices, the grant of authority to mediate and conduct representation elections in the community

college sector under RCW 28B.52 does not give PERC unfair labor practice jurisdiction. Yakima Valley College, Decision No. 240-CCOL (1977). The legislature has rejected the precedent of the National Labor Relations Act in enacting collective bargaining rights for port district employees, and has omitted making amendments to RCW 53.18 when it did incorporate the unfair labor practice features of the NLRA into RCW 41.56. In view of RCW 41.58.005 and the Commission's expressed reluctance to presume the existence of unfair labor practice jurisdiction, the undersigned must dismiss the complaint filed herein on a basis of lack of jurisdiction.

NOW, THEREFORE, it is

ORDERED

The complaint of unfair labor practices filed in the above-entitled matter is dismissed for lack of jurisdiction.

Dated at Olympia, Washington this 2nd day of March, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, EXECUTIVE DIRECTOR