STATE OF WASHINGTON BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1576 Case No. 1792-U-78-232 Complainant, Decision No. 570 PECB vs. SNOHOMISH COUNTY PUBLIC TRANSPORTATION BENEFIT AREA CORPORATION ORDER OF DISMISSAL Respondent. On October 20, 1978, the above-named labor organization filed with the Public Employment Relations Commission a complaint charging unfair labor practices. The substantive allegations of the complaint are: "Sept. 1, 1978 a. Discharge of Bus Operator Audry Sexton without due cause, after denying Medical Leave of Absence due to injury in car accident while off duty. Labor Agreement does not give the right to discharge an employee when off sick. Failure of the company to notify the Union in the case of a discharge as provided for in the Labor Agreement. Sept. 6, 1978 Union files grievance on the above matters. Sept. 19, 1978 a. Company admits to failure in notifying the Union. Company $\underline{\text{refuses}}$ to hold a hearing on the b. matter as required by the Labor Agreement. Oct. 6, 1978 The Union informs company that above action is unacceptable under Labor Agreement specifications. b. Union <u>once again</u> requests a hearing on this matter before taking any other action.

The complaint alleges a violation of RCW 41.56.140(4) and requests as relief that: "...the employee be reinstated with full rights to seek a Medical Leave of Absence from the SCPTBAC without jeopardizing her future employment with the company and that the company will straightforwardly work out all grievances with the Union." The matter is now before the Executive Director for a preliminary ruling pursuant to WAC 391-21-510.

LABOR PRACTICE."

NO RESPONSE FROM COMPANY! UNION FILES UNFAIR

Oct. 17, 1978

The Courts of this State, rather than the Public Employment Relations Commission, have the responsibility for the enforcement of contracts. Absent specific

1792-U-78-232 -2-

statutory authority making violation of a collective bargaining agreement an unfair labor practice, the Commission lacks jurisdiction to enforce any "due cause", "medical leave of absence", "discharge", "notice to union" or "grievance procedure" provisions of a collective bargaining agreement. See: Thurston County Communications Board, Decision 103 (PECB, 1976); City of Walla Walla, Decision 104 (PECB, 1976). Procedural issues arising during the processing of a grievance are also within the province of the Court, although they are routinely deferred to the arbitrator where a grievance arbitration procedure exists. See: John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).

It is an unfair labor practice to discriminate against employees for their exercise of the rights conferred by RCW 41.56, but in this case there are no allegations of such discrimination. Nothing contained in RCW 41.56 provides protection from discharge while unable to work due to illness, and any such right would have to stem from the collective bargaining agreement. Similarly, any obligation to give notice to the union arises from the collective bargaining agreement. Those allegations call for an interpretation or application of the agreement which is beyond the jurisdiction of the Commission. The procedural rights claimed by the union also arise from the contract rather than from the statute, and must be enforced under procedures provided in the contract or in the Courts.

Even if the union were able to prove all of the facts which it has alleged, no unfair labor practice violation could be found under RCW 41.56.140.

ORDER

The complaint charging unfair labor practices filed in the above entitled matter is dismissed subject to the right of the complainant to file an amended complaint within twenty (20) days following the date of this Order.

Dated at <u>Olympia</u>, Washington, this <u>16th</u> day of <u>January</u>, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director