STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LARRY K. HARTMAN, Complainant, vs. CITY OF REDMOND, AND REDMOND EMPLOYEES ASSOCIATION, Respondents.	)	CASE NO. 1932-U-79-258 DECISION NO. 886-PECB DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Thomas H. Grimm (Inslee, Best, Chapin, Uhlman and Doezie), attorney at law, appeared on behalf of the Complainant.

John D. Lawson, City Attorney, appeared on behalf of the City of Redmond.

William Gifford, Association president, and Mark Denton, Association vice president, appeared on behalf of the Redmond Employees Association.

Larry K. Hartman filed a complaint on January 16, 1979 with the Public Employment Relations Commission alleging that the Redmond Employees Association (the Association) and the City of Redmond (the City) committed unfair labor practices in violation of Chapter 41.56 RCW when the Association breached its duty of fair representation owed to Hartman by failing to process his grievance and when the city refused to further consider the grievance.

THE FACTS

The Association has been recognized as the exclusive bargaining representative of the City's non-uniformed personnel since 1972. It represents about 80 employees who in the main are either office workers at city hall or else blue collar workers in the public works department. The Association has 50 members, no counsel, and a very small treasury.

The Association and the City were parties to a collective bargaining agreement covering a period from January 1, 1978 to December 31, 1979. That agreement provided:

ARTICLE VI - GRIEVANCE PROCEDURE

Section 1. Any grievance which may arise on the part of an employee concerning the correct application or interpretation of this Agreement shall be handled in the following manner:

Step 1. Within four calendar days after the event giving rise to the grievance, the employee involved shall personally present the grievance to his immediate supervisor for disposition. The supervisor shall consider the grievance and within four working days make such disposition as is consistent with the Agreement and with the policies of the City and shall advise the employee of his action.

Step 2. If the grievance is not resolved under Step One above, it may be reduced to writing by the Association and appealed to the appropriate Department Head, provided this is done within seven calendar days of receipt of the supervisor's response under Step One. A written response shall be returned to the Association by the Department Head within seven calendar days thereafter. The Department Head or his designee may conduct such hearing or investigation as is deemed appropriate in the course of preparing such response.

Step 3. If the grievance is not resolved under Step Two above, it may be appealed to the Mayor in writing by the Association, provided this is done within seven calendar days of receipt of the Department Head's response under Step Two. The Mayor shall hear the matter promptly and shall make a final decision which shall be communicated to the Association in writing within twenty (20) calendar days of the receipt of the appeal notice.

Step 4. If the grievance is not resolved in Step 3 above, the grievance may, within fifteen (15) working days be referred to an arbitration committee. ... The decision shall be final and binding upon both parties to the grievance. The cost of said arbitrator shall be borne equally by the Association and the City.

* * *

Section 2. The City may discipline an employee for just cause; however, no employee shall be discharged unless a written notice shall previously have been given to the individual stating the complaint concerning work or conduct, a copy of which shall have been sent to the Association. No prior warning notice shall be necessary if the cause for discharge is dishonesty, moral turpitude or unfitness to work as a result of comsumption of alcoholic beverages or narcotics, or possession or use of alcoholic beverages or narcotics while on the job. This includes hallucinatory drugs or other drugs when not approved by a medical doctor.

Larry K. Hartman began his employment with the City in 1972. He worked within the bargaining unit represented by the Association in the street department of the City's public works division, operating equipment such as roadgraders, backhoes, and street sweepers. Bruce Morse, Hartman's leadman, and Frank Hansche, the director of public works, both testified that Hartman was a good worker. Both indicated that they were aware of a history of friction between Hartman and John Fay, the street supervisor.

On one occasion in 1977, Fay docked four hours' pay from Hartman for not performing any work while his sweeper had broken down. Hartman successfully grieved this, contending that there was no work for him to perform under the circumstances. Otherwise Hartman was never formally disciplined until his discharge for allegedly smoking marijuana.

Hartman's discharge resulted from a series of events which occurred on September 19, 1978. Hartman testified as follows: At 11:45 A.M. he returned to the shop from an assignment he had performed with Morse. Fay angrily shouted at Hartman for not obeying his directive to return by 11:30 A.M. (Morse testified that he was responsible for the late return and that it was unfair for Fay to direct his anger at Hartman.) Hartman and Morse returned from their next assignment 10 or 15 minutes past the normal 12 noon start of their half hour lunch period. Hartman spent his lunch break in his van in the parking lot. Shortly after 12:30 P.M., Joe Warner, a co-employee came to the van, tapped on the window, and told Hartman that Fay wanted him back at work. Hartman answered from the rear of the van that Warner should tell Fay that he had another 10 or 15 minutes left in his lunch break. (Warner testified that the window was open a few inches and he noticed no smoke.) Hartman testified that he then moved to the front seat and lit a Marlboro cigarette from a pack which his girlfriend had left there. When Fay approached, Hartman attempted to conceal the cigarette because he didn't want Fay to believe that he had resumed smoking after having given it up. Fay then accused Hartman of smoking marijuana. Hartman put the cigarette in the ashtray, got out of the van and got into a heated argument with Fay, though he can't remember what was said. A co-employee refused Fay's request to smell the van. Hartman followed Fay's directive to go home. The next morning when Hartman reported to work, he was told by Fay that he could accept indefinite probation and loss of a recent merit raise or else he would be terminated. Hartman refused to accept Fay's conditions for returning to work and elected to file a grievance.[1/]

Hansche confirmed Hartman's testimony that in the past Fay merely reprimanded several other employees for smoking marijuana.

On September 25, 1978, the City issued its termination notice to Hartman, giving the reason as "possession or use of narcotics while on the job." On the same day, Hartman's private counsel sent a letter to Fay and the City, protesting the termination and initiating step 1 of the grievance procedure. Fay rejected the step 1 grievance on September 28, 1978.

1/ Neither Fay nor any other City witness testified to facts that occurred on September 19, 1978. In its brief the City argues for the first time that if the reasons for Hartman's termination are considered in this decision, the hearing should be reopened and the City be afforded an opportunity to present testimony regarding the termination. The City had the opportunity to rebut the Complainant's testimony at the trial and failed to do so. Its request is thus denied as untimely.

On October 5, 1980, the Association's grievance committee met to consider whether to proceed with Hartman's grievance to step 2. Hartman and Fay separately testified before the committee. Fay told the committee that the cigarette Hartman was smoking appeared to be a marijuana cigarette. At first the committee decided to recommend that discipline less harsh than discharge be imposed upon Hartman. Hartman's private counsel phoned Association President Bill Gifford, who is also an employee of the public works department, and indicated that the grievance committee's course of action was unacceptable. The committee reconsidered the matter and voted by a 3-2 margin to proceed with the grievance to step 2. The three members of the committee who voted in favor of proceeding were all blue collar employees in the public works department. The two who voted against proceeding were office employees at city hall. Gifford testified that there existed a small amount of tension between bargaining unit members who worked in office positions and those who worked in the yard. Despite the close vote, Gifford told Hartman that he thought it was a very good grievance. On October 6, 1978, Gifford wrote to Hansche informing him that it was the position of the committee that there was insufficient evidence to support Hartman's discharge and that he should be reinstated. On October 13, 1978, Hansche responded that at his request an investigation was conducted by Julian Sayers, the City's director of planning and community development. Based on Sayers' written report adverse to Hartman, the grievance was denied.

On October 19, 1978, the grievance committee voted 2-1 not to appeal to the mayor as per step 3 of the grievance procedure. The grievance committee considered no new information except for Sayers' report. Again the two office employees voted not to proceed with the grievance. However, one of the other members was on vacation that week and did not participate in the vote. While the grievance committee apparently had no formal governing rules, Gifford viewed his role as a tie breaker. Thus he did not cast a vote even though he viewed Hartman's grievance as meritorious. Hartman's counsel unsuccessfully requested of Gifford that the committee reconsider its decision. On October 20, 1978, Gifford wrote the Mayor that the grievance committee, after re-evaluating the case, had decided not to continue to process the grievance.

On October 23, 1978, Hartman wrote to the mayor and attempted to initiate step 3 of the grievance procedure. On November 21, 1978, the mayor responded to Hartman that since the contract required that step 3 be initiated by the Association and since the Association refused to proceed with the grievance, the termination would stand and no further appeal would be available to him.

POSITIONS OF THE PARTIES

The Complainant contends that the Association violated its duty of fair representation owed to Hartman by arbitrarily abandoning his meritorious grievance after step 2 of the grievance procedure. He further argues that the City violated the Act because it discriminated against him for insisting upon his collective bargaining agreement rights, and because it used the wrongful conduct of the Association as a vehicle to refuse to further consider Hartman's meritorious grievance.

The City asserts that the Association's processing of a grievance is discretionary, that the City played no part in the Association's determination to drop the grievance, and that the City did not discriminate against Hartman for exercising his rights.

The Association filed no brief and made no closing argument. In his opening statement at trial, the Association's representative asserted that the Association's grievance committee decided "in all good conscience" after hearing the facts that it could not process the grievance further.

DISCUSSION

While the doctrine of the duty of fair representation is a novel one for the Public Employment Relations Commission, it has a long history in the private sector. The duty of fair representation was conceived in the context of a proceeding brought under the Railway Labor Act, involving gross racial discrimination. The U.S. Supreme Court held that an exclusive bargaining agent has the duty to represent fairly and without discrimination all those for whom it acts. Steele v. Louisville and Nashville, 323 U.S. 192 (1944). The Court later applied the duty to a union subject to the National Labor Relations Act (NLRA) in Ford Motor Co. v. Huffman, 345 U.S. 330 (1953). There the Supreme Court described this duty:

> ... The bargaining representative ... is responsible to, and owes complete loyalty to, the interests of all whom it represents ... A wide range of reasonableness must be allowed a statutory representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.2/

In Conley v. Gibson, 355 U.S. 541 (1957), the Court held that the duty of fair representation includes the duty owed to the employee to fairly represent him through the grievance procedures.

2/ 345 U.S. 330, 337-38.

The duty of fair representation impliedly arose out of the obvious need to protect the individual employee. Section 9(a) of the N.L.R.A. had stripped the individual of the right to represent himself by granting to the union the right to act as the exclusive bargaining representative. This comprehensive power given to the union had to be tempered to provide the individual, "stripped of traditional forms of redress" with some protection.[3/] In Steele v. Louisville and Nashville Railroad Co., 323 U.S. 192, 202 (1944), the Court said:

> It is a principal of general application that the exercise of granted power to act in behalf of others involves the assumption toward them of a duty to exercise the power in their interest and their behalf.

In the private sector, where a union wrongfully refuses to process a grievance, the aggrieved employee has a choice of forums. He may sue his employer and/or the union in a court action or he may file an unfair labor practice charge with the National Labor Relations Board (N.L.R.B.).

In 1962, the N.L.R.B. adopted the doctrine of the duty of fair representation, previously developed by the courts. The Board concluded that Section 8(b)(1)(A) of the N.L.R.A., which makes it an unfair labor practice for a union "to restrain or coerce employees in the exercise of the rights guaranteed in Section 7", prohibits unions from violating the duty of fair representation.[4/] Section 7 provides employees with the right "to bargain collectively through representatives of their own choosing." The Supreme Court in Vaca v. Sipes,[5/] appeared to have assumed, without explicitly deciding, that a violation of the duty of fair representation is an unfair labor practice.

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, parallels the N.L.R.A. closely enough so that the same rationale developed in the private sector which supports the existence of the duty of fair representation can be extended as well to the public employees within the purview of Chapter 41.56 RCW.[6/]

3/ Vaca v. Sipes, 386 U.S. 171, 182 (1967); Int'l U. of Electrical, Radio and Machine Workers, Frigidaire, Local 801 v. NLRB, 307 F.2d 679 (C.A.D.C. 1962).

4/ Miranda Fuel Company, Inc., 140 NLRB 181, 185 (1962); see also Truck Drivers, Local 568 v. N.L.R.B., 379 F.2d 137 (C.A.D.C. 1967); Local 12, United Rubber Workers v. N.L.R.B., 368 F.2d 12 (CA5, 1966); NLRB v. Electrical Workers (IUE), Local 485, 454 F.2d 17 (CA2, 1972).

5/ Supra, note 3, at 176-78.

6/ Wash. Fed. of State Employees, and Higher Education Personnel Board v. Central Wash. U., ___ Wa.2d ___ (1980).

RCW 41.56.150 provides:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter.

RCW 41.56.040 protects the right of public employees to organize for the purpose of collective bargaining. RCW 41.56.080, like the N.L.R.A.'s Section 9(a), grants unions the authority to act as exclusive bargaining representatives and "require[s exclusive bargaining representatives] to represent all the public employees within the unit..."

In both the federal scheme and our state scheme, the statutory authority given to a union to act as the exclusive bargaining representative for employees implies a statutory duty owed to those employees.

The parameters of "fair representation" are difficult to define. The Supreme Court's most recent pronouncement on the matter indicated that:

> ... a union breaches its duty when its conduct is "arbitrary, discriminatory or in bad faith," as, for example, when it "arbitrarily ignore[s] a meritorious grievance or process[es] it in a perfunctory fashion." Vaca v. Sipes, supra, at 190, 191.[7/]

On the other hand, an employee has no absolute right to compel arbitration of his grievance regardless of the provisions of the collective bargaining agreement.[8/] If the employee was given the right to have his grievance taken to arbitration regardless of its merit, these procedures would be substantially undermined. It would discourage early settlement of a grievance and greatly increase the cost of including an arbitration provision in the contract.[9/]

In Vaca[10/], the grievant, who had been on sick leave, grieved the employer's refusal to reinstate him because of his health. The union paid for a doctor to examine the grievant, but the examination was not supportive. Nevertheless, the union pressed the grievance through the four steps of the grievance procedure, attempted to secure for him less

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7/ Electrical Workers v. Faust, 442 U.S. 42, 47 (1979).

8/ Supra, note 3, at p. 191.

9/ Id., at pp. 191-92; see Moore v. Sunbeam Corp., 459 F.2d 811, 819-20 (C.A.7 1972).

10/ Supra, note 3.

vigorous work at the plant, and obtained a compromise offer from the employer to refer the grievant to a rehabilitation center. The Court held that the union's failure to demand arbitration was not a violation of its duty of fair representation. It said that "...when Owens supplied the union with medical evidence supporting his position, the union might well have breached its duty had it ignored Owens' complaint or had it processed the grievance in a perfunctory manner."11/ The Court held that the union's efforts on Owen's behalf satisfied its duty.

In handling a non-frivolous grievance, a union has the responsibility to at least investigate it objectively and in more than a perfunctory manner.12/ If the record indicates that the grievance is clearly frivolous, then a breach of duty will not be found. Buffalo Newspaper Guild, 220 NLRB No. 17 (1975), at p. 79. The importance of the grievance to the grievant should also be considered in evaluating the extent of the union's duty. It is readily apparent that a grievance concerning a discharge is of critical importance to the affected employee.

The N.L.R.B. recognizes that the duty of fair representation is more than an absence of bad faith or hostile motivation. It is also the avoidance of arbitrary conduct. A union must have a reason for failing to process a grievance. "Sometimes the reason will be apparent, sometimes not. When it is not, the circumstances may be such that we will have no choice but to deem the conduct arbitrary if the union does not tell us what it is." General Truck Drivers Local 315, 217 NLRB No. 95 (1975), at pp. 617-18.

In the case at hand, the Association officers who testified, indicated that they believed that the grievance was meritorious. After initially informing the City by letter that there was insufficient evidence to support Hartman's discharge, the Association informed the City that it has reconsidered and decided not to proceed to step 3 of the grievance procedure. On what basis did it reconsider? It had not conducted any further investigation. The only offered basis for its decision was the majority vote of the Association's grievance committee. One might have assumed that the committee's decision was based on its evaluation of the merits of the case, if the merits clearly weighed against Hartman. However, this is not the case. Hartman had a good work record with the City for six years. He was dismissed based on evidence which appeared to this Examiner to be considerably less than overwhelming, by a supervisor who had previously displayed hostility toward him. Further, this supervisor had not terminated several other employees who were caught in the same act that Hartman was alleged to have committed.

11/ Id., at p. 194.

12/ American Postal Workers Union Local 4193, 226 NLRB No. 160 (1976), at p. 1004; see Hines v. Anchor Motor Freight, 424 U.S. 554 (1976).

On the other hand, one might assume from the committee's actions that the majority acted as it did because of hostility which existed between the office employees and the shop employees. In short, there is no basis for reasonably assuming that the committee had a valid basis for its decision not to process the grievance. A union cannot avoid its duty of fair representation by delegating its authority to make decisions. General Truck Drivers, Local 315, 217 NLRB No. 95 (1975), at p. 619, enforced 545 F.2d 1173 (9th Cir. 1976). Since no reason is apparent for the Association's action, it must be deemed to be arbitrary. This conclusions is buttressed by the Association's perfunctory handling of the grievance. There is no indication that the Association ever met with the City to discuss the grievance or seek a compromise. Surely the gravity of the employer's action and the facts of the case warranted something more than a terse letter, which was the only action that was taken on Hartman's behalf. Considering the totality of the circumstances, the Association breached its duty of fair representation owed to Hartman, and thus violated RCW 41.56.150(1).

In Miranda, the N.L.R.B. held that an employer who participates in a union's arbitrary action against an employee also commits an unfair labor practice. It gave as an example of such participation, the situation where an employer accedes to a bargaining representative's attempt to cause an employee's discharge for arbitrary reasons.[13/] Absent such participation an employer does not commit an unfair labor practice merely because the union has violated its duty of fair representation. Complainant's contention that the Association was in complicity with the City in the discharge is unsupported by the record.[14/] Similarly, the record is devoid of evidence supporting Complainant's contention that the City discriminated against Hartman for his insistence upon his collective bargaining rights. In the instant case it *may* be that the City committed a breach of contract. A breach of contract is not *per se* an unfair labor practice.[15/]

Complainant also contends that the City violated RCW 41.56.140 "because it used the wrongful conduct of the union as a vehicle to refuse to further consider the meritorious grievance of Mr. Hartman." The applicable collective bargaining agreement gives the Association the right to have the City consider its appeal to step 3 of the grievance procedure.

13/ Supra, note 4, at pp. 185-186.

14/ In support of this contention, complainant points to "the inconsistent reasons given by the City for the discharge from the notice of termination and the report by Mr. Sayers at step two." Sayers in his report indicated that he might have recommended leniency for Hartman had he admitted his indiscretions. I am unable to see how this indicates complicity.

15/ Council of County and City Employees vs. Thurston County Communication Board, Decision No. 103 PECB (Wa. P.E.R.C., 1976); see Vaca v. Sipes, supra, note 3, at pp. 186-188.

The employee is not granted such a right. While the City may have elected to consider Hartman's personal appeal, it was not obligated by the contract or by RCW 41.56.140 to do so.

REMEDY

Having found that the respondent Association has engaged in certain unfair labor practices, I will order that they cease and desist from them and take certain affirmative action designed to effectuate the policies of Chapter 41.56 RCW. The Association will be ordered to attempt to seek redress for Hartman through the grievance and arbitration procedure. It is appropriate that Hartman be made whole by the Association for damages which are attributable to its breach of duty. However, the Association should not be held responsible for damages attributable to the City's alleged breach of contract.[16/] While such an alleged breach is not subject to remedy here, I assume that it would be in a court suit buttressed by the Association's breach of duty, or at arbitration. The Supreme Court has indicated:

> The governing principle, then, is to apportion liability between the employer and the union according to the damage caused by the fault of each. Thus, damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer.[17/]

The Court explained that "limitation on union liability... reflects an attempt to afford individual employees redress for injuries without compromising the collective interests of union members in protecting limited funds."[18/]

In Faust[19/], the Court held that a union which breaches its duty of fair representation cannot be held liable for punitive damages. In Vaca, the Court said:

> In this case, even if the Union had breached its duty, all or almost all of [the grievants'] damages would still be attributable to his allegedly wrongful discharge by [the employer].

* * *

16/ Vaca v. Sipes, supra, note 3, at pp. 197-198.

17/ Id.

18/ Supra, note 7, at p. 50.

19/ Id.

> ... may an award against a union include, as it did here, damages attributable solely to the employer's breach of contract? We think not. Though the union has violated a statutory duty in failing to press the grievance, it is the employer's unrelated breach of contract which triggered the controversy and which caused this portion of the employee's damages. The employee should have no difficulty recovering these damages from the employer, who cannot, as we have explained, hide behind the union's wrongful failure to act; in fact, the employer may be (and probably should be) joined as a defendant in the fair representation suit.. It could be a real hardship on the union to pay these damages... With the employee assured of direct recovery from the employer, we see no merit in requiring the union to pay the employer's share of damages.[20]

The N.L.R.B., having found a breach of the duty of fair representation relating to a union's handling of a discharge grievance, would make the union liable for backpay from the date of the grievant's discharge until either the union actually secures consideration of the grievance by the employer, or the employee is actually reinstated by the employer or obtains other substantially equivalent employment. United Steelworkers, 223 NLRB No. 177 (1976). I believe that remedy would be too burdensome to the Association, when considered in light of the Supreme Court's pronouncement in Vaca[21] and Faust[22]. This tribunal is not the appropriate forum to determine the merits of Hartman's grievance. Since an arbitrator or a court may ultimately hold that Hartman's grievance was not meritorious, and in any event, the employer would be responsible for most of the damages, it would be punative and premature to hold the Association liable for all damages Hartman conceivably may have suffered. Jurisdiction will be retained in this matter for the purpose of assessing damages attributable to the union in the event that another tribunal holds that Hartman's grievance is meritorious.[23] In view of this the Association will be ordered to permit Hartman to use his own counsel in any future proceeding involving the merits of the grievance.

I recognize that this remedy may cause aggrieved individuals in similar situations to initially seek redress in the state courts rather than through the Public Employment Relations Commission. In a court action, the employee would be able to join the employer as a party to the action and thus obtain a more complete remedy in a quicker fashion. In Vaca[24], the Supreme Court held that the courts are not preempted from considering allegations of breach of the duty of fair representation,

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20/ Supra, note 3, at pp. 197-98.

21/ Supra, note 3.

22/ Supra, note 7.

23/ W.A.C. 391-21-556.

24/ Supra, note 3.

even though as a general rules courts do not have jurisdiction over suits directly involving activity which is arguably an unfair labor practice. San Diego Building Trades Council v. Gormon, 359 U.S. 236 (1959). The Court explained that the N.L.R.B. would be unable to provide a complete remedy unless the employer participated in the union's unfair labor practice.[25/] Hartman may have to invoke the jurisdiction of a court or an arbitrator in order to obtain remedies in this situation which are not available in proceedings before the Public Employment Relations Commission.

FINDINGS OF FACT

1. The City of Redmond is a public employer within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

2. The Redmond Employees Association is a bargaining representative within the meaning of RCW 41.56.030(3).

3. Larry K. Hartman is a public employee within the meaning of RCW 41.56.030(2).

4. The Association is the exclusive bargaining representative of a unit of employees of the City including Hartman.

5. Hartman, an employee of the City since 1972, was discharged for alleged misconduct as a result of a series of events which occurred on September 19, 1978.

6. Hartman filed a timely, non-frivolous grievance with the Association concerning his discharge.

7. The Association processed Hartman's grievance in a perfunctory manner and, without explanation, arbitrarily refused to process it beyond step 2 of the grievance procedure outlined in the collective bargaining agreement which was in effect between the Association and the City.

8. The City refused to further consider the grievance, relying solely on its collective bargaining agreement with the Association which provided that an appeal to step 3 of the grievance procedure must be initiated in writing by the Association.

25/ Vaca v. Sipes, supra, note 3, at p. 199, fn 12.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.

2. By the events described in findings of fact 5 through 7, the Association acted in violation of its duty of fair representation owed to Hartman, and thereby did commit an unfair labor practice violative of RCW 41.56.150.

3. By the events described in findings of fact 8, the City did not commit an unfair labor practice violative of RCW 41.56.140.

ORDER

1. The complaint charging unfair labor practices, insofar as it alleges violations by the City of Redmond, is dismissed.

2. Redmond Employees Association, its officers, agents, and representatives, shall immediately:

A. Cease and desist from:

(1) Interfering with, restraining, or coercing unit employees in the exercise of their rights guaranteed by Chapter 41.56 RCW by failing to represent them in a fair and impartial manner.

(2) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed by Chapter 41.56 RCW.

B. Take the following affirmative action which is necessary to effectuate the policies of Chapter 41.56 RCW:

(1) Request of the City of Redmond, that it resume consideration of Larry K. Hartman's grievance.

(2) If the City agrees to resume consideration of Hartman's grievance and if thereafter no agreement is reached which has Hartman's approval, request that the City proceed to arbitration of the matter.

(3) Permit Hartman to be represented by his own counsel at the arbitration hearing, if he so desires.

(4) In the event that Hartman's grievance is found meritorious in arbitration or by a court, make Hartman whole for any loss of earnings attributable to the Association's breach of its duty of fair representation.

(5) Post at its business offices and meeting halls copies of the attached notice marked "Appendix". Such notices shall, after being duly signed by an authorized representative of the Redmond Employees Association, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Redmond Employees Association to ensure that said notices are not removed, altered, defaced or covered by other material.

(6) Sign and mail to the Executive Director of the Public Employment Relations Commission 5 copies of said notice, on forms provided by him, for posting at the premises of the City of Redmond, if the latter is willing.

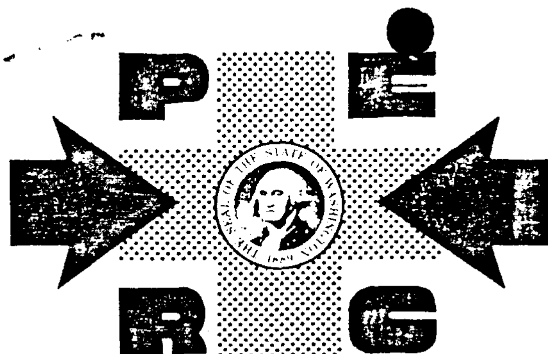
(7) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days from the date of this order, what steps the Association has taken to comply with it.

DATED at Olympia, Washington, this 21st day of May, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ALAN R. KREBS, Examiner

"Appendix"



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, THE REDMOND EMPLOYEES ASSOCIATION HEREBY NOTIFIES OUR MEMBERS THAT:

WE WILL NOT interfere with, restrain, or coerce unit employees in the exercise of their rights guaranteed by Chapter 41.56 RCW by failing to represent them in a fair and impartial manner.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed by Chapter 41.56 RCW.

WE WILL request of the City of Redmond, that it resume consideration of Larry K. Hartman's grievance.

WE WILL, if the City agrees to resume consideration of Hartman's grievance and if thereafter no agreement is reached which has Hartman's approval, request that the City proceed to arbitration of the matter.

WE WILL permit Hartman to be represented by his own counsel at the arbitration hearing, if he so desires.

WE WILL, in the event that Hartman's grievance is found meritorious in arbitration or by a court, make Hartman whole for any loss of earnings attributable to our breach of our duty of fair representation.

DATED:__________________________

RENTON EMPLOYEES ASSOCIATION

BY:______________________________

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.