

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHERYL OLDHAM,)	
)	CASE NO. 4353-U-82-696
Complainant,)	
)	DECISION NO. 1576 - PECB
vs.)	
)	
C-TRAN,)	
)	ORDER OF DISMISSAL
Respondent.)	

The complaint charging unfair labor practices was filed in the captioned matter on November 29, 1982. The complaint form makes reference to a letter previously directed to the Commission. Review of the correspondence files of the Commission yielded a letter dated July 12, 1982 and received on July 29, 1982 wherein the complainant described her efforts to process a grievance concerning her discharge by C-Tran, a public transit operation. Since the complaint form contained no other statement of facts, the previous correspondence is taken to be the required statement of facts.

The complainant alleges that her discharge was unjustified, but does not allege that the discharge was motivated by her exercise of collective bargaining rights protected by Chapter 41.56 RCW. The Public Employment Relations Commission is authorized by law to remedy unfair labor practices committed in violation of RCW 41.56.140 and RCW 41.56.150, but the Commission is not thereby empowered to review all disputes arising from employment relationships in public employment. The right of an employee to challenge a discharge as "unjustified" arises, if at all, from a collective bargaining agreement between the employer and the union certified or recognized as the exclusive bargaining representative of the employee. Violation of a collective bargaining agreement is not an unfair labor practice under Chapter 41.56 RCW. See: City of Walla Walla, Decision 104 (PECB, 1976). The Commission will occasionally evaluate the just cause for a discharge, but only where "just cause" is asserted as an affirmative defense to allegations of a discharge in reprisal for the exercise of union activity. The complaint in this case lacks any allegation of unlawful discrimination and therefore fails to state a cause of action.

The complainant alleges that she sought to process her discharge grievance through her union, and that the union failed or refused to act on the matter. These allegations could be read broadly as a claim of breach of

the duty of fair representation in connection with the processing of the grievance, but the union is not named as a party respondent or otherwise identified in the complaint. Further, recent decisions hold that the jurisdiction of the Public Employment Relations Commission will not be asserted in the litigation of "fair representation" claims arising exclusively from the processing of contractual grievances. See: Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982). The facts of the instant situation clearly demonstrate the practical application of that policy. The complainant's discharge occurred in August, 1981. As a result of expenditure reductions imposed by the Legislature, the time required for processing of cases before the Public Employment Relations Commission has increased markedly. Even if the complaint were in good order, naming the union as a party respondent and otherwise sufficiently detailed to warrant further processing against the union, it would be some time before the final order could be issued in the case. Since the Public Employment Relations Commission would not have jurisdiction to remedy a violation of contract by the employer even if a breach of duty of fair representation were found against the union, the complainant would have an empty victory in the proceedings before the Commission and might well prejudice her rights if she fails to timely file civil litigation in the Superior Courts to secure any contractual rights she may have vis-a-vis the employer.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is dismissed for failure to state a cause of action which is subject to remedy in unfair labor practice proceedings before the Public Employment Relations Commission.

Dated at Olympia, Washington, this 28th day of January, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director