STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LARRY FEJFAR, Complainant, vs. PIERCE COUNTY, Respondent.	CASE NO. 4843-U-83-818
LARRY FEJFAR, Complainant, vs. TEAMSTERS LOCAL 461, Respondent.	CASE NO. 4856-U-83-828 DECISION NO. 1847 - PECB PRELIMINARY RULING

On September 20, 1983, nine employees of Pierce County jointly filed a complaint with the Public Employment Relations Commission, alleging that Pierce County and Teamsters Local 461 have each committed unfair labor practices. In the absence of any identified entity representing the nine employees, the joint complaint was taken to claim nine separate causes of action against the employer and nine separate causes of action against the union. Under the docketing procedures of the commission, 18 separate cases have been established. All of the cases have been reviewed by the Executive Director for purposes of making the preliminary ruling called for in WAC 391-45-110. Nine separate preliminary rulings are being issued, representing the pairs of cases containing the allegations of each of the employees.

The statement of facts filed in support of the complaints states:

> Reference attached labor-manaement (sic) collective bargaining agreement; Article III, which requires all employees, as a condition of employment, to become members of the labor organization. (Attachment 1)
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> Reference attached job vacancy announcement; requires individuals accepted for employment to become members of the bargaining unit labor organization even though they may not be afforded the covenents (sic) being probationary employees. (Attachment 2)

> Employer, by conducting a meeting between employees and labor organization representatives, 3:30 P.M., August 24, 1983, in the sheriffs conference room within the county-city building. This meeting was conducted in order to make it known to those employees that dues requirement was valid and that re-initiation fees are not. Those in attendance were: Employer representatives Ms Kay Adkins, Personnel Director. Ms. Rose Swanson, Chief Examiner Sheriff's Civil Service Commission, and Mr. Marsh, Attorny (sic). Labor Representatives; Mr. John Newell and Mr. Fred Vancamp, Business Agents, Teamsters Local 461. Employees: Mr. George Neill, Mr. Fred Stark, Ms. Rose Hansen, Ms. Sandi Garner, Mr. Ronald P. Maassen, Mr. James Bevill, Mr. Edward Tess, Mr. William P. Kelly, Mr. Richard A. Barrett, Ms. J. Shiner Mr. Robert Holifield, Ms. Jean Knable, and Mr. John Abbott.
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> Labor representatives, by seeking to terminate from employment, selected individuals, even though others are not in good standing. See attached letters. (Attachment). Employer representative, Mr. James Coughlin, Jail Administrator, met with employees individually Sept. 2, 1983, enforcing dues requirement by directing individuals to pay their dues or offer to tender their dues to the labor organizations. In the event the individual employee does not pay or offer to pay their dues, they will be terminated. Employees involved are listed on the attached list. (Attachment 4).

Attachment 1 is a copy of the 1983-85 collective bargaining agreement between Pierce County and Teamsters Local 461, executed April 14, 1983. Attachment 2 is an examination announcement issued by the Pierce County Sheriff's Civil Service Commission on November 12, 1980 for the classification of "Jail Security Officer", to which is attached a four-page job description. Attachment 3 is a copy of a letter directed to the complainant by Teamsters Local 461 under date of June 24, 1983, advising the employee of the existence of a collective bargaining agreement containing a union security clause, the initiation fee and monthly dues amounts, the computation of a delinquency claimed by the union, notice to the employee to clear up the claimed delinquency within a specified time period, and notice to the employee that the consequences of non-payment would be that the union would request dismissal of the employee. Violations of RCW 41.56.140(1) and RCW 41.56.150(1) are alleged.

At this stage of the unfair labor practice proceedings, it is assumed that all of the facts alleged in the complaints are true and provable. The question at hand is whether the complaints state claims for relief through the unfair labor practice provisions of Chapter 41.56 RCW. Based on review under the standard indicated, it is concluded that the complaints as presently framed fall short of stating causes of action.

The first paragraph of the statement of facts merely alleges that the employer and the union have a collective bargaining agreement which contains a union security clause. Such contracts and contractual clauses are authorized by RCW 41.56.122(1), which states:

> 41.56.122 COLLECTIVE BARGAINING AGREEMENTS - AUTHORIZED PROVISIONS. A collective bargaining agreement may:
>
> (1) Contain union security provisions: Provided, That nothing in this section shall authorize a closed shop provision: Provided further, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.
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> * * *

The collective bargaining agreement union security provision obligates tender of the uniform initiation fees and monthly dues within thirty days after the commencement of employment or the effective date of the agreement, whichever is later. On its face, there is nothing in the first paragraph of the statement of facts or in the supporting attachment which suggests that either the employer or the union has committed any unfair labor practice.

The second paragraph of the statement of facts makes reference to a vacancy announcement made well in excess of two years prior to the filing of the complaint with the Commission. The Commission formerly applied a two-year statute of limitation derived from RCW 4.16.030. METRO, Decision 1356-A (PECB, 1982). On July 24, 1983, the statute was amended to impose a six-month statute of limitations on the filing of unfair labor practice complaints. Under either standard, allegations relating to an action which occurred in November of 1980 were time-barred when these complaints were filed. An alternate view of the allegation would be to take it as protesting that the union security obligation might be applied to persons holding probationary status with the employer, but none of the allegations suggest that the complainant occupies such status at the present time or has occupied such status within a period timely for consideration through unfair labor

practice proceedings. Finally, union security obligations and "probation" procedures operate independently of one another, such that the complaints would not appear to state a cause of action even if it were alleged that the complainant were in probationary status.

The third paragraph of the statement of facts deals with the employer's efforts to enforce its obligations under the union security provision of the collective bargaining agreement. If the union security provision itself is lawful (and the complaint does not suggest otherwise), the employer's efforts to enforce it would also seem to be lawful.

The fourth paragraph of the statement of facts deals with the union's efforts to enforce the obligations under the union security provision of the collective bargaining agreement. The attached correspondence indicates that the union was seeking to comply with the requirements imposed on it by the rules of the Commission in WAC 391-95-010. As with the charges against the employer, if the union security provision itself is lawful, the union's efforts to enforce it would also be lawful.

The complainants have not made clear what the respondents have done in violation of rights protected by RCW 41.56. The only suggestion of a dispute lies in a possible difference of opinion between the employer and the union regarding the obligation of employees to pay initiation fees. With the direction provided here, the complainant may be better able to amend the complaints so as to supply any necessary additional facts and to focus attention on any claims which are within the jurisdiction of the Commission.

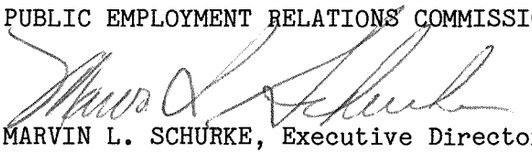
NOW, THEREFORE, it is

ORDERED

The complainant will be allowed a period of fourteen (14) days following the date of this Order to amend the complaints. In the absence of an amendment, the complaints will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 15th day of February, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director