STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

A. ROY DUNN, JR., Complainant,	)	CASE NO. 4539-U-83-740
vs.	)	DECISION NO. 1745 - PECB
MASON COUNTY, Respondent.	)	PRELIMINARY RULING

The complaint charging unfair labor practices was filed in the above-entitled matter on March 9, 1983 and is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. The material allegations of the complaint are:

> In September 1981, A. Roy Dunn Jr. was hired by the Mason County Assessor, his employment to be temporary to December 31, 1981. In early December the Mason County Commissioners and the Mason County Assessor agreed to extend his employment to May 1982, and to again review it at that time. During these nine months he fulfilled his initial probationary period. At the beginning of his seventh month he was given a raise and allowed to use the vacation and sick time he had accrued.
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> Because of budgetary shortages he was layed off on May 31, 1982. After being unemployed for three months he was called back to work when a second staff member resigned. The position was neither posted nor advertised. He received seniority and sick time he had previously accrued. There was no probationary period imposed since he had already served the initial probation required by the Mason County Code.
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> On January 3, 1983, after one year of employment there was an argument between Mr. Dunn and the chief appraiser. Following the report of the argument A. Roy Dunn Jr. was dismissed on January 5, 1983. The guild held an investigation into the dismissal and found undue harshness in the action and presented its response to the Assessor. Shortly thereafter the Assessor revised his dismissal to a seven day suspension. Included in this letter of retraction was a decision to put Mr. Dunn on a second probation as of the reemployment date of September 1982. Mr. Dunn requested that the Assessor give supporting documentation in writing as to the reasons for the probation, but he never received it. After using sick time on January 28 to February 2 it was discovered that his pay check was reduced three working days even though he had the leave coming.

> On February 25, 1983, Mr. Dunn was again dismissed with the explaination (sic) that his probation was drawing to an end and his aptitude and attitude were not acceptable as a Mason County employee. No documentation was included to support the reasons of the dismissal, nor does the guild know of any.
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> Based on our documentation we can find no reason for the second probation other than to get around the original retraction of dismissal. To initiate the second probation was to deny Mr. Dunn all of his rights as a county employee. It leaves him to no recourse but to request a PERC hearing to enable him to vindicate his reputation and to receive the position which he is entitled.

A violation of RCW 41.56.140(3) is claimed. The relief requested is reinstatement of the complainant with back pay and benefits.

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to enforce collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). The collective bargaining statute does not make provision for or otherwise regulate probationary period arrangements such as are referred to in the first paragraph of the statement of facts filed with the complaint. Such arrangements exist by reason of employer policy or by reason of negotiated agreements. Similarly, provisions concerning layoff and recall as are referred to in the second paragraph of the statement of facts generally exist as a part of employer policy or of negotiated agreements. Further, restrictions on the right of the employer to discharge an employee, including requirements for "just cause" or similar evaluation of the harshness of a discharge in relation to employee conduct involved, are also the product of employer policy or negotiated agreements. While the Public Employment Relations Commission deals from time to time with discharge allegations, including the discharge of a probationary employee, the issue in such cases is whether the employee has been discriminated against for the exercise of collective bargaining rights protected by the statute. See: City of Olympia, Decision 1208-A (PECB, 1982); Valley General Hospital, Decision 1195-A (PECB, 1981). Taking the allegations contained in the statement of facts as a whole, there is only the slightest suggestion in the final paragraph that the February 25, 1983 dismissal had anything to do with the previous grievance processed on the complainant's behalf. Even at that, it merely appears that the complainant protests a violation of the grievance settlement previously reached, which is itself a contract violation problem not subject to resolution before the Public Employment Relations Commission. The allegations fall short of alleging that the complainant was discharged in February in reprisal for his prosecution of the January grievance or for any other activity protected by RCW 41.56.040.

With the direction provided here, the complainant may be better able to amend the complaint so as to focus attention on any claims which are within the jurisdiction of the Commission.

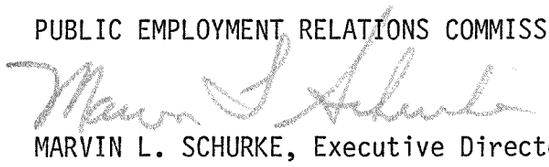
NOW, THEREFORE, it is

ORDERED

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

DATED at Olympia, Washington, this 22nd day of September, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director