

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LINDA R. LACOSSE,)	CASE NO. 4893-U-83-842
Complainant,)	
vs.)	DECISION NO. 1901 - PECB
AMALGAMATED TRANSIT UNION,)	
Respondent.)	PRELIMINARY RULING

The complaint charging unfair labor practices was filed in the captioned matter on October 7, 1983. The complainant, an employee of the Jefferson Transit Authority, alleges that she was the first of two employees offered employment as a dispatcher with the employer; that she and the other employee both actually commenced their employment on the same date; that the union listed the other employee with a more favorable position on the seniority list; that she took the matter up with the union, which resolved the matter (with the concurrence of the other employee); and that she is not satisfied with the resolution of the matter as set forth by the union.

The matter is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The issue for determination is whether the complaint states a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

The Jefferson Transit Authority is not named as a respondent, and there is no allegation that the employer has violated rights secured to the complainant by Chapter 41.56 RCW. An employer document filed by the complainant with the complaint would appear to suggest that, while hoping for an early resolution of the dispute, the employer does not take a particular position concerning the correct seniority roster position of the complainant.

Chapter 41.56 RCW protects the right of public employees to organize for the purposes of collective bargaining and to be represented for the purposes of securing their wages, hours and working conditions. Seniority of employees is not a right directly created or protected by statute, but is rather a body of rights established by an employer and the exclusive bargaining representative of its employees through collective bargaining. It has long been established that the Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to directly remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). To the extent that there is

any dispute among the complainant, the union and the employer concerning the interpretation or application of the seniority provisions of a collective bargaining agreement, those parties would need to obtain determination of that dispute through whatever procedures are contained within the collective bargaining agreement or through civil litigation in the courts.

An alternative view of the complaint would be to interpret it broadly (but far beyond its expressed terms) as a complaint that the union has breached its duty of fair representation in connection with its conduct regarding the complainant's seniority claim. The Public Employment Relations Commission does not assert jurisdiction to determine allegations of breach of duty of fair representation where they arise exclusively in connection with the processing of claims under an existing collective bargaining agreement. For reasons set out in Mukilteo School District, Decision 1381 (PECB, 1982), the breach of duty of fair representation determination in such a case is merely one of several elements to be proven in civil litigation for enforcement of the collective bargaining agreement. A labor organization certified or recognized as exclusive bargaining representative of public employees enjoys, under RCW 41.56.080, a statutory status and privileges, and would not be at liberty to negotiate contractual provisions which discriminated on an impermissible basis against one or more sub-sets of the employees it represented. See: Tacoma Public Library, Decision 1734 (PECB, 1983); Elma School District, Decision 1349 (PECB, 1982); Steele v. Louisville & Nashville Railroad, 323 U.S. 192 (1944). However, no allegation of the complaint suggests that the union aligned itself in interest against the complainant, either in the negotiation of the seniority provisions or in their administration, for such an impermissible reason.

The complaint, as presently framed, fails to state a claim on which relief can be granted. With the direction provided here as to what is not available to the complainant through the unfair labor practice procedures of the Commission, she may be better able 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 5th day of April, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director