STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON VOCATIONAL FEDERATION OF TEACHERS, LOCAL 3914, WFT-AFT (AFL-CIO),	CASE NO. 4560-U-83-743
Complainant,	DECISION NO. 2004 - PECB
vs.	
RENTON SCHOOL DISTRICT NO. 403,	RULING ON MOTION FOR INTERVENTION
Respondent.	

The original unfair labor practice complaint, filed against the district by the RVFT on March 25, 1983, contended that during collective bargaining negotiations the district misrepresented that it was unable to grant any salary increases for contract instructors in accordance with the newly enacted compensation law. The two-year collective bargaining contract signed on November 5, 1981, did not provide for any salary increases during its term ending August 31, 1983. The complaint filed by the RVFT sought to reopen negotiations on compensation "so that retroactive salary increases may be negotiated" for the "employees in the bargaining unit."

In subsequent negotiations for a successor contract, the RVFT and the district reached agreement on salary increment adjustments for employees whose salaries were based on the now expired contract. The salary settlement provided back pay for incremental salary for those instructors currently employed in the district. As a result of the negotiations and resolution of the salary adjustment issue, the parties agreed to stipulate to a dismissal of the pending unfair labor complaint.

Prior to the filing of the stipulated dismissal with the Public Employment Relations Commission, on May 16, 1984, Ms. Vicky L. Crutchfield filed a motion to intervene with supporting affidavit in the above-entitled matter. The motion requested an order permitting her to intervene as an additional complainant. The supporting affadavit asserted that her rights and interests were not adequately represented by the Renton Vocational Federation of Teachers, Local 3914 (RVFT). She alleges, further, that the stipulated withdrawal filed with the Commission on May 17, 1984 was negotiated without proper authority and would, if permitted, bar further litigation as res judicata. The Commission solicited a response from the RVFT and the district on this motion to intervene. The RVFT gave notice of appearance of the firm of Fuller and Fuller, through Herbert H. Fuller and

filed a memorandum in opposition to motion to intervene on June 1, 1984. Ms. Crutchfield was granted leave to respond to this memorandum on June 11, 1984.

POSITION OF PETITIONER FOR INTERVENTION

The petitioner argues that while no right to intervene in an unfair labor practice complaint is specifically granted under RCW 41.59, there is an implied right to intervene under practices of the NLRB which the Commission must consider in its interpretation of Chapter 41.59 RCW. She also claims an unconditional right to intervene under the civil rules for the Superior Court 24(a). The applicant contends that the agreement was unfair to her and others in her class, therefore, PERC should examine it in the public interest in order to avoid proliferation of litigation.

POSITION OF THE RVFT

The RVFT argues there is no right to intervene in an unfair labor practice case under RCW 41.59 or under authority of Superior Court rules. The union asserts it is the exclusive bargaining representative and the issue of fair representation is not properly before PERC.

DISCUSSION

The issue at hand is whether the petitioner has standing to intervene to challenge the withdrawal of an unfair labor practice charge now pending before this Commission. The petitioner was a union officer and was directly involved in the circumstance which led to the filing of the original complaint against the district. This complaint alleged that the district bargained in bad faith by misrepresenting its ability to negotiate salaries. In an amendment to her original motion, Ms. Crutchfield argues that the union discriminated against her and others in her class by limiting salary settlement in a successor contract resolving an unfair labor practice charge to current employees.

The Superior Court rules do not apply to proceedings before this Commission. Procedural practice is governed by Chapters 10-08, 391-08 and 391-45 WAC as well as the applicable source statutes. WAC 10-08 contains the uniform procedural rules for the conduct of contested cases. The rules were adopted pursuant to the Administrative Procedure Act (APA) Chapter 34.04 RCW. Section 10(b) of the National Labor Relations Act (29 USCA Section 160b) specifically authorizes third person intervention. Neither these rules nor

the APA specifically provide for the intervention. RCW 41.59 and WAC 391-45, as the applicant acknowledges, does not contain any provision for intervention. To utilize the legislative admonishment of RCW 41.59.110 to consider NLRB practice when intepreting RCW 41.59 as urged by the petitioner as authority for intervention in this case would be tantamount to amending RCW 41.59 by incorporating a provision from a federal statute. Only the legislature may amend the Law.

The petitioner argues that, as a matter of public policy, PERC should permit her to intervene in order to attack the settlement which led to the stipulated withdrawal of the complaint. There is some precedent in support of her contention that intervention would avoid unnecessary litigation and prevent additional unfair labor practice complaints. In Scofield and Fafnir Bearing Co., 382 US 205 (1965), the court acknowledged that the aim of the National Labor Relations Act is to avoid unnecessary proceedings in permitting intervention by the successful charging party in judicial review. More to the point is Vantran Electric, 580 F.2nd 921 (7th Circuit 1978) in which the court observed that if the NLRB perceived a need to intervene in a private out of board settlement in order to protect the public interest the appropriate time for such intervention was when the union requested withdrawal of bad faith charges. The board in Vantran Electric sought to order the employer to bargain for an extended certification year after the subsequent bargaining broke down over a good faith doubt of the union's majority status. The case is clearly distinguishable from the matter at issue.

The petitioner here seeks not to stand in the union shoes in order to litigate a bad faith bargaining charge, but to enlarge the litigation to scrutinize the sufficiency of a successor contract. She seeks to open the bad faith bargaining charge to new avenues of inquiry unrelated to the original cause of action. She appears against both parties thereby creating a different cause of action and procedural confusion which must necessarily result from a three-cornered affair. The petitioner's claim involves no question of law or fact that is raised in the original complaint. It is well settled that in this case, permissive intervention should be denied. U.S. v. Exxon Co., 450 F. Supp. 472 (D.C. Md 1978); especially if the intervention unduly complicates and opens up new avenues of inquiry. The facts of Vantran can be further distinguished on the basis that petitioner seeks scrutiny of a successor collective bargaining contract not a settlement agreement per se. See: Pride Refining Inc. v. NLRB, F.2nd 453 (5th Circuit 1977), wherein the court declined enforcement on this basis. This motion alleges facts which

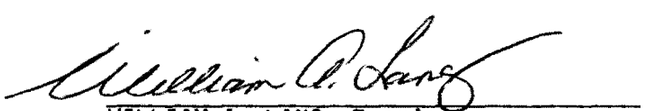
constitute a fair representation complaint. The denial of her motion will not impede her ability to protect her interests. The motion is accordingly denied.

ORDER

The motion of Vicky L. Crutchfield for intervention in the above-entitled matter is DENIED.

DATED at Olympia, Washington, this 25th day of July, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.