STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| C-TRAN,<br><br>Employer, | |
| CAROL R. SEXTON,<br><br>Complainant,<br><br>vs.<br><br>AMALGAMATED TRANSIT UNION,<br><br>Respondent. | CASE NO. 5397-U-84-984<br><br>DECISION NO. 2052 - PECB<br><br>PRELIMINARY RULING |

The complaint charging unfair labor practices was filed in the captioned-matter on August 8, 1984. The complainant, an employee of C-TRAN (a public transit system), alleges that her union has improperly compromised her rights and has breached its obligations towards her by refusing to pursue the full remedy granted to her as the result of the successful prosecution of a grievance.

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.

C-Tran 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.

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. The specific wages and benefits to be paid, and any differentials between treatment of full-time and part-time employees, are not directly regulated by the statute, but are part of the body of rights established for employees by an employer and the exclusive bargaining representative through collective bargaining. The Public Employment Relations Commission does not assert its 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), or to enforce agreements concerning the arbitration of grievances. Thurston County Communications Board, Decision 103 (PECB, 1976). It appears that the employer and union properly took their dispute concerning the complainant's part-time or full-time employment status to an arbitrator under procedures contained in the collective bargaining agreement.

Although the term of art "breach of the duty of fair representation" is not used in the complaint, the essence of the complainant's claim is that the union has improperly compromised her rights flowing from the arbitration award. A labor organization certified or recognized as exclusive bargaining representative of public employees enjoys, under RCW 41.56.080, a statutory status and certain privileges, and would not be at liberty to negotiate or administer contractual provisions in a manner which discriminated on an impermissible basis against one or more of the employees represented. See: Tacoma Public Library, Decision 1734 (PECB, 1983); Elma School District, Decision 1349 (EDUC, 1982); Steele v. Louisville & Nashville Railroad, 323 U.S. 192 (1944). The union, as the party to a collective bargaining agreement, may be confronted from time to time with an employee interpretation of an agreement which differs from the union's own interpretation. The Public Employment Relations Commission does not assert jurisdiction to determine allegations of breach of the 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 initiated by the employee for enforcement of the collective bargaining agreement. The remedy sought in this case at hand is directed against the employer, in the form of the full amount claimed by the grievant under the arbitration award. A court would have jurisdiction over the employer in contract enforcement litigation which is lacking in proceedings before the Commission, and would be in a position to remedy all claims. As was noted in Mukilteo, assertion of jurisdiction by the Commission in such cases could give complainants false hopes while delivering empty victories and potentially prejudicing their assertion of timely claims in the courts, both by the passage of time and expenditure of resources to process the case. If the underlying dispute involves a disagreement between the union and the employee over the level of benefits that employee should receive, the matter would fall within the Mukilteo pattern.

The only allegation in the complaint now before the Executive Director that could amount to a cause of action relates to statements concerning disparate treatment because the complainant holds some union office. Complainant

suggests that she was asked to accept a smaller grievance settlement than other employees out of concern for the future relationship between the employer and the union. However, the allegations of the complaint are not set forth in sufficient detail to form a conclusion that the union aligned itself in interest against the complainant in this case for reasons which would place the union's right to enjoy certification as exclusive bargaining representative of the bargaining unit into question.

With the direction provided here as to what is or 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. It must be noted that any remedy available before the Commission would be against the union only, and not against the employer. The complainant will need to take those limitations into consideration when selecting the forum(s), if any, to pursue the complaint.

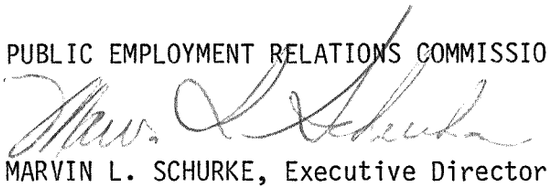
NOW, THEREFORE, it is

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 10th day of October, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director