STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PACIFIC MEDICAL CENTER, Employer ********** ROOSEVELT LEWIS, Complainant, vs. AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, Local 1170, Respondent.	)	CASE NO. 6414-U-86-1256 DECISION NO. 2537-PECB PRELIMINARY RULING

On May 21,1986, Roosevelt Lewis filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC), listing American Federation of Government Employees (AFGE), Local 1170 as respondent. The matter is now before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it must be assumed that all of the facts alleged are true and provable. The question here is whether the complaint states a claim for relief available through the unfair labor practice provisions of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

Under WAC 391-45-050 a complaint charging unfair labor practices is to be accompanied by a clear and concise statement of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences. In addition, the complaint is to contain a listing of the sections of the Revised Code of Washington (RCW) alleged to have been

violated. The complainant in this matter has failed to comply with either of those requirements. Instead, the complainant has submitted a number of items of correspondence between himself and the union, the employer and the Washington State Human Rights Commission. Although this complaint thus technically fails to comply with the requirements of WAC 391-45-050, all of the documents have been thoroughly reviewed in order to avoid a hardship on this pro se complainant. The Executive Director summarizes the allegations as follows:

- Roosevelt Lewis is employed at the Pacific Medical Center (hereinafter "the center")[1] as a Mail/Distribution Technician in the center's Mail Distribution Center. Lewis is a member of a bargaining unit represented by the AFGE.

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[1] Notice is taken of the proceedings and decisions in Public Health Hospital Preservation and Developmental Authority, Decision 1435 (PECB, 1982) and Seattle Public Health Hospital (American Federation of Government Employees, Local 1170), Decision 1781-A (PECB, 1984), AFFIRMED: 1781-B (PECB, 1984), which indicate that the center is officially chartered by the City of Seattle as the "Public Health Hospital Preservation and Developmental Authority". The center was formerly operated by the federal government as the "United States Public Health Service Hospital, Seattle, Washington". AFGE represented employees of the hospital from 1968 until the federal government ceased to operate the hospital in 1981. The Public Health Hospital Preservation and Developmental Authority commenced operating the hospital in 1981, and continues to provide medical care to patients in the greater Seattle area. AFGE filed a petition with the Public Employment Relations Commission raising a question concerning representation for certain employees of the hospital. On April 16, 1982, AFGE was certified by PERC, after a secret ballot election, as the exclusive bargaining representative for an appropriate bargaining unit described as:

INCLUDED; All professional and non-professional employees employed by the employer.

EXCLUDED: Management officials, supervisory employees, employees engaged in personnel work in other than a purely clerical capacity, and all employees of any independent group practice that may contract with the employer.

- Lewis was hired in May, 1984, as a Materials Handler I in the center's Material Services Department. Under that job classification, his duties included transporting patients and supplies, as well as sorting mail and operating duplicating and postage metering equipment.

- In October, 1984, the Manager of the Mail/Distribution Center vacated that position and complainant began to assume the manager duties, although he received no additional compensation.

- In April, 1985, after review of his job responsibilities by the personnel department, complainant was upgraded to the position of Mail/Distribution Technician.

- On March 17, 1986, a new manager was hired, and the complainant was asked to train the new manager.

- The complainant alleges that the union has failed to properly represent him with respect to the processing of two grievances on his behalf concerning the upgrading of his job classification and pay grade to reflect increased duties that he was performing.

- In addition, complainant alleges that the union failed to grieve two "counselling reports" that he received in March, 1986 for poor job performance.[2]

Complainant's unfair labor practice charges, filed on May 21, 1986, requested a remedy described as:

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[2] Such reports, written by complainant's supervisor, were not placed in complainant's official file but were retained by the supervisor in an unofficial file kept by the supervisor to accumulate various data on problems and information on compliments received by employees.

> Proper classification, up-grade from acting manager to full manager, collective bargaining agreement enforced by union agents and managers alike. Back pay and to be made whole.

The complaint could be viewed as technically deficient, at least to the extent that some of the complained-of conduct may have occurred prior to November 21, 1985. The Commission is limited in its authority to process unfair labor practice charges by the provision of RCW 41.56.160 that imposes a six month statute of limitations on the filing of unfair labor practice charges. Conduct occurring beyond such period of time cannot be remedied by the Commission. Giving the benefit of the doubt to a pro se complainant, and inferring that at least some of the conduct did occur within the six months preceding the May 21, 1986 filing of the complaint in this case, the complaint has been reviewed on the assumption that it is timely filed at least with respect to some of the more recent incidents listed in the correspondence. Matters occurring prior to November 21, 1985 would fall outside of the Commission's remedial authority, but would provide background to timely-filed allegations.

PERC has drawn a distinction between two types of "duty of fair representation" cases, asserting jurisdiction over one type and declining jurisdiction over the other.

In Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982), the Commission declined to assert jurisdiction where an alleged breach of the union's duty of fair representation arose exclusively from the processing of a grievance under an existing collective bargaining agreement. Since the Commission lacks "violation of contract" jurisdiction as to the employer, such cases would be empty victories for complainants even if successfully prosecuted before the Commission. Therefore, such matters must be pursued through a

civil suit filed in a court having jurisdiction over the employer. See, also, City of Bremerton (Teamsters Union, Local 589), Decision 1935 (PECB, 1984); METRO (Amalgamated Transit Union, Local 587), Decision 2320 (PECB, 1985); Edmonds School District (Edmonds Association of Educational Assistants (PSE)), Decision 2363 (PECB, 1986).

By way of contrast, Elma School District (Elma Teachers Organization), Decision 1349 (PECB,1982), involved allegations of breach of the duty of fair representation arising out of a motive of discrimination against a grievant because of her previous support of another labor organization. A breach of the union's duty of fair representation as alleged in Elma would place in question the right of the organization involved to continue to enjoy the status and benefits conferred by the statute on an exclusive bargaining representative. Cases of that type are processed by the Commission as an adjunct to its authority to certify bargaining representatives pursuant to RCW 41.56.080.

This case appears to fall within the class governed by the Mukilteo precedent. The complainant has not filed any unfair labor practice charges against the employer. The documents submitted concern an allegation that the union failed to properly represent the complainant in the processing of several contract grievances. In contrast to the claims made in Seattle Public Health Hospital (American Federation of Government Employees, Local 1170), Decision 1781-A (PECB,1984); AFFIRMED: 1781-B (PECB, 1984), the complainant in this instant case has made no allegation that the union's actions were discriminatory against the complainant pursuant to Chapter 41.56 RCW. In addition, there is no allegation that the collective bargaining agreement negotiated by the union and employer was applied in a discriminatory manner, nor is there any allegation that the union was in collusion with the employer or otherwise aligned in interest

against the complainant in its failure to process complainant's grievances.

As presently framed, the allegations do not constitute a cause of action that can be remedied through unfair labor practice proceedings before the Public Employment Relations Commission. With the direction herein provided, complainant may be able to amend the complaint to better focus attention on claims within the jurisdiction of the Commission.

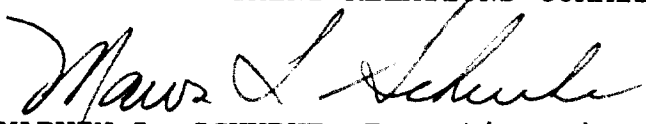
NOW, THEREFORE, it is

ORDERED

The complainant is allowed fourteen (14) days following the date of the Order to file and serve an amended complaint. In the absence of an amended complaint, the matter will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 3rd day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director