STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GENE MINETTI, Complainant, vs. PORT OF SEATTLE, Respondent.	CASE NOS. 6187-U-86-1174 6201-U-86-1179 6214-U-86-1182 DECISION NO. 2548 - PECB DECISION NO. 2549 - PECB
GENE MINETTI, Complainant, vs. INTERNATIONAL LONGSHOREMENS AND WAREHOUSEMENS UNION, LOCAL 9, Respondent.	CASE NOS. 6184-U-86-1171 6202-U-86-1180 6215-U-86-1183 PRELIMINARY RULING

Gene Minetti filed complaints charging unfair labor practices with the Public Employment Relations Commission on January 21, 1986, January 29, 1986 and February 3, 1986. On each occasion, initial examination of the documents suggested possible causes of action against both the Port of Seattle and International Longshoremens and Warehousemens Union, Local 9. Accordingly, a total of six separate cases have been docketed, as indicated above.

The allegations of the complaint filed on January 21, 1986 (Case Nos. 6184-U-86-1171 and 6187-U-86-1174) concern a ratification vote taken by the union. That vote was allegedly conducted sometime prior to September 4, 1985, and concerned supplemental revisions to the collective bargaining agreement between the union and the Port of Seattle. The complainant takes issue with union procedures which restricted voting to 58 employees (who are equated with "union members") having "seniority status" out of a group of Port of Seattle employees alleged to number between 180 and 200, and with procedures by which the ballots of a majority of those voting (alleged to be 29) were determinative. While only "Port of Seattle" is listed in the space provided for designation of a respondent, the name and address of the union are also listed on the complaint form and the complainant cited only a violation of RCW 41.56.150(2).[1] The remedies requested include abrogation of the agreement between the employer and the union, affirmative action by the union and compensation to the complainant for lost wages "due to fault of" the employer.

The complaint filed on February 3, 1986 was marked "COMPLAINT II", and its allegations appear to be next in chronological order of occurrence, and so will be dealt with next here. (Case Nos. 6214-U-86-1182 and 6215-U-86-1183). Both "Port of Seattle" and "ILWU Local 9" are listed in the space provided for designation of the respondent. The complainant cited RCW 41.56.140(1),[2]

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1 RCW 41.56.150(2) makes it an unfair labor practice for a bargaining representative to "induce the public employer to commit an unfair labor practice".

2 RCW 41.56.140(1) makes it an unfair labor practice for a public employer to "interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by" the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

41.56.140(2),[3] and 41.56.150(2).[4] The factual allegations concern a September 10, 1985 implementation of an agreement between the employer and the union creating a new process for obtaining "seniority status". The complainant alleges that the new restrictions were "changed 3 times in order to shape the group of applicants to those pre-desired by the collusive establishment", that otherwise eligible applicants were thus excluded from consideration, and that the agreed-upon restrictions operated to reduce the number of minority applicants. The complainant broadly alleges collusion between the employer and union to achieve an exclusion of black and hispanic applicants. The remedies requested include requiring the employer to re-select applicants for seniority status, requiring the union to engage in affirmative action hiring and compensation to the complainant and another employee for lost wages.

The complaint filed on January 29, 1986 (Case Nos. 6201-U-86-1179 and 6202-U-86-1180) comes under a heading of "COMPLAINT III". The allegations concern implementation, on or about October 10, 1985, of hiring restricted to "44 people chosen ... with almost no exceptions ... with relationships familial, financial and fraternal to the people making the selections"; concern statements indicating that the union was aligned in interest against the complainant because of his filing of the earlier charges; and concern the agreement of the employer and union to restrict employment preference under changed rules. Both the "Port of Seattle" and "ILWU Local 9" are listed in the space provided for designation of a respondent. The complainant cited

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[3] RCW 41.56.140(2) makes it an unfair labor practice for a public employer to "control, dominate or interfere with a bargaining representative".

[4] RCW 41.56.150(2) makes it an unfair labor practice for a bargaining representative to "induce the public employer to commit an unfair labor practice".

RCW 41.56.140(1),[5] 41.56.140(3),[6] 41.56.150(2),[7] and 41.56.150(3),[8] of the Public Employees Collective Bargaining Act.

These complaints are now before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, it must be assumed that all of the facts alleged in the complaints are true and provable. The question at hand is whether unfair labor practice violations could be found.

The complaints in Case Nos. 6184-U-86-1171 and 6187-U-86-1174 could be viewed as technically deficient to the extent that they allege conduct "sometime previous to September 4, 1985" without establishing that the conduct was within the six months prior to the filing of the complaint. Under RCW 41.56.160, the complaint filed on January 21, 1986 would be timely only as to conduct occurring after July 21, 1985. Taken in the context of other allegations, however, and giving the benefit of the doubt to a pro se complainant, it is inferred that the complained-of union election was held shortly prior to September 4, 1985 as part of a fast-moving course of events which continued into the cases filed thereafter.

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5 RCW 41.56.140(1) makes it an unfair labor practice for a public employer to "interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by" the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

6 RCW 41.56.140(3) makes it an unfair labor practice for a public employer to "discriminate against a public employee who has filed an unfair labor practice charge".

7 RCW 41.56.150(2) makes it an unfair labor practice for a bargaining representative to "induce the public employer to commit an unfair labor practice".

8 RCW 41.56.150(3) makes it an unfair labor practice for a bargaining representative to "discriminate against a public employee who has filed an unfair labor practice charge".

The allegations of the January 21, 1986 complaint fail to identify any misconduct on the part of the employer. There is no indication that the employer established or otherwise participated in the complained-of election, which sounds rather like a union ratification vote on a collective bargaining agreement. There is no explicit requirement in the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, that requires a vote of bargaining unit members on matters such as the ratification of a collective bargaining agreement. Pierce County, Decision 2209 (PECB, 1985); Stelling v. IBEW Local 1547, 587 F.2d 1379, 100 LRRM 2366 (9th Cir. 1978); American Postal Workers Union Local 6885 v. American Postal Workers Union, 665 F.2d 1096, 108 LRRM 2105 (D.C. Cir. 1981); Leary v. Western Union Telegraph Co., 117 LRRM 3005 (D.C. NY 1983).[9] The general rule on such matters is:

> No law except, perhaps, its own bylaws directs the bargaining agent as to how to formulate its proposals. It need not consult all, or any, of its own members. It certainly need not consult nonmembers, ...
>
> Lewis County, Decision 556-A (PECB, 1979)

The "majority vote" test used by the union would be regulated, if at all, by the constitution and/or bylaws of the union.

At another level, however, the allegations of the January 21, 1986 complaint could be amended to clearly state a cause of action against the union. The duty to bargain which grows out of status as the exclusive bargaining representative of a bargaining unit and is imposed by RCW 41.56.150(4) includes a duty of fair representation owed by the union to all members of the bargaining

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[9] Parties still have to comply with other non-labor statutes, such as the Open Public Meetings Act. See: State Ex Re. Bain v. Clallam County, 77 Wn.2d 542 (1970); Grant County, Decision 1638 (PECB, 1983); Mason County, Decision 2307-A (PECB, 1986).

unit it represents. Upon proof that the union has aligned itself in interest against one or more employees or groups of employees within the bargaining unit, it is possible that the right of the union to enjoy the statutory benefits of "exclusive bargaining representative" status can and should be called into question. Since the Commission is empowered to police the status of "exclusive bargaining representative", such allegations state a cause of action for unfair labor practice proceedings before the Commission. The limitation of the group eligible to vote (to 58 of a total of 200 or more employees) poses a potential for a claim under the statute and, again giving the complainant the benefit of the doubt in reading of his complaint, there is a broad allegation of misconduct in connection with the limitation of voter eligibility. The complainant will need to file an amended complaint more fully setting forth the facts concerning this incident.

The complaints filed on February 3, 1986 allude to possible collusion between the employer and the union in establishing and implementing supplemental revisions of the collective bargaining agreement which would be discriminatory against the complainant. The employer and the union would not be at liberty to bargain a contract provision which either gave preference to or discriminated against applicants for employment based on criteria such as race, color, creed, national origin, union membership, or any relationship to or with the union and employer officials who made the agreement.

The complaints filed on January 29, 1986 allege, in essence, that the employer and the union followed through with implementation of a collusive agreement which unlawfully discriminated for or against certain applicants for employment. Finally, those cases include the allegation concerning discrimination for filing the earlier charges.

The allegations in Case Nos. 6201-U-86-1179, 6202-U-86-1180, 6214-U-86-1182 and 6215-U-86-1183, if found to be true, would constitute violations of Chapter 41.56 RCW. Those matters will be assigned to an examiner for hearing. Assignment will be withheld pending the consideration of related matters as set forth in the following order.

NOW, THEREFORE, it is

ORDERED

1. [Decision No. 2548]. The complaint charging unfair labor practices filed against the Port of Seattle in Case No. 6187-U-86-1174 is dismissed for failure to state a cause of action.

2. [Decision No. 2549]. The complainant will be allowed a period of fourteen (14) days following the date of this order to file an amended complaint against the International Longshoremens and Warehousemens Union, Local 9, in Case No. 6184-U-86-1171 to set forth sufficient facts to state a cause of action against the union for its limitation of the group of employees eligible to vote on ratification of an agreement reached in collective bargaining. In the absence

of an amendment, that complaint will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 10th day of October, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.