STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	
WALTER E. WASHINGTON, Complainant,	CASE 8830-U-90-1935
vs.	DECISION 3835 - PECB
PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS, LOCAL 763, IBT, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Walter E. Washington, appeared pro se.

Davies, Roberts & Reid, by Bruce Heller, Attorney at Law, appeared for the union.

On October 16, 1990, Walter E. Washington filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Public, Professional & Office-Clerical Employees and Drivers, Local 763, International Brotherhood of Teamsters, et al., had violated RCW 41.56.150(1), (2) and (3). A hearing was held before Examiner Rex L. Lacy at Kirkland, Washington, on April 2, 1991. The parties did not file post-hearing briefs.

BACKGROUND

The City of Seattle is a "public employer" within the meaning of RCW 41.56.030(1). Among other services to its residents, it operates a Department of Licensing. The Enforcement Section within

that department has employees working under the titles of: "license and standards inspector" and "warrant server".

Public, Professional & Office-Clerical Employees and Drivers, Local 763, a "bargaining representative" within the meaning of RCW 41.56.030(3), is one of 13 unions who make up the Joints Crafts Council. Jon Rabine is both the secretary-treasurer of Local 763 and the president of the Joint Crafts Council. As a part of the Joint Crafts Council, Local 763 is the exclusive bargaining representative of a bargaining unit of City of Seattle employees which includes the "license and standards inspector" and "warrant server" classification in the Enforcement Section of the Department of Licensing. Section 17 of Local 763's by-laws contains provisions which govern initiation fees, reinstatement fees, and assessments. At the time this matter arose in 1989, the initiation fee was set at $100.00 and monthly dues for the members of this bargaining unit were set at $27.00 per month. The union's by-laws require that bargaining unit members who are delinquent three months or more must pay a reinitiation fee of $100.00.

The City of Seattle and the Joint Crafts Council were signatory to a collective bargaining agreement that was effective from September 1, 1986 through August 31, 1989. That contract contained a union security provision.

Walter E. Washington is an employee of the City of Seattle, working under the title of "license and standards inspector" in the Enforcement Section of the Department of Licensing. He was hired to his current position in May, 1989. Under the terms of the collective bargaining agreement then in effect, he came under union security obligations as of June 16, 1989. Washington did not authorize payroll deduction for his union dues. He made one payment to the union in the amount of $127.00, of which $100.00 was applied to his initiation fee and $27.00 was applied as payment for his dues for the month of June, 1989.

Negotiations for a successor agreement extended beyond the August 31, 1989 expiration date of the 1986-89 contract between the City of Seattle and the Joint Crafts Council. Walter Washington discontinued making dues payments to the union during the hiatus between contracts.

On March 2, 1990, Washington and another employee of the Enforcement Section filed a representation petition with the Commission, seeking to decertify Local 763 as exclusive bargaining representative of the bargaining unit which includes the "license and standards inspector" and "warrant server" classifications.[1] That representation case was withdrawn by the petitioners on April 9, 1990, for reasons not at issue here.[2]

On June 22, 1990, the employer and the Joint Crafts Council signed a collective bargaining agreement that is nominally effective from September 1, 1989 to August 31, 1991. That contract contains a union security provision, as follows:

> ARTICLE III - UNION MEMBERSHIP AND DUES
>
> 3.1 It shall be a condition of employment that each employee covered by this Agreement who voluntarily is or who voluntarily becomes a member of said Union shall remain a member of same during the term of this agreement. ... Any employee hired or permanently assigned into a bargaining unit covered by this Agreement on or after January 1, 1972, shall on or before the thirtieth (30th) day following the beginning of such employment join the appropriate Union. Failure by any such employee to apply for and/or maintain such membership in accordance with this provision shall constitute cause for discharge of such employee; provided

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1 Case number 8462-E-90-1428.

2 An order of dismissal was issued for that case as City of Seattle, Decision 3459 (PECB, 1990).

however, the requirements to apply for Union membership and/or maintain union membership shall be satisfied by the employee's payment of the regular initiation fee and the regular dues uniformly required by the Union of its members.

...

3.1.2 Employees who are determined by the Public Employment Relations Commission to satisfy the religious exemption requirements of RCW 41.56.122 shall contribute an amount equivalent to regular union dues and initiation fees to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the regular monthly dues.

3.2 Failure by an employee to abide by the afore-referenced provisions of the Article shall constitute cause for discharge of such employee; provided however, it shall be the responsibility of the Union to notify the City in writing when it is seeking discharge of an employee for noncompliance with Sections 3.1 or 3.1.1 or 3.1.2 of this Article. When an employee fails to fulfill the union security obligations set forth within this Article, the Union shall forward a "Request For Discharge Letter" to the affected Department Head (with copies to the affected employee and the City Director of Labor Relations). Accompanying the Discharge Letter shall be a copy of the letter to the employee from the Union explaining the employee's obligation under Article III, Sections 3.1 or 3.1.1. or 3.1.2.

3.2.1 The contents of the "Request For Discharge Letter" shall specifically request the discharge of the employee for failure to abide by Sections 3.1 or 3.1.1 or 3.1.2 of Article III, but provide the employee and the City with thirty (30) calendar days written notification of the Union's intent to initiate discharge action, during which

time the employee may make restitution in the amount which is overdue. Upon receipt of the Union's request, the affected Department Head shall give notice in writing to the employee, with a copy to the Union and the City Director of Labor Relations that the employee faces discharge upon the request of the Union at the end of the thirty (30) calendar day period to present to the affected department any information relevant to why the Department should not act upon the Union's written request for the employee's discharge.

3.2.2 In the event the employee has not yet fulfilled the obligation set forth within Sections 3.1 or 3.1.1 or 3.1.2 of this Article within the thirty (30) calendar day period noted in the Request For Discharge Letter, the Union shall thereafter reaffirm in writing to the affected Department Head, with copies to the affected employee and the Director of Labor Relations, its original written request for discharge of such employee. Unless sufficient legal explanation or reason is presented by the employee why discharge is not appropriate or unless the Union rescinds its request for the discharge the City shall, as soon as possible thereafter, effectuate the discharge of such employee. If the employee has fulfilled the union security obligation within the thirty (30) calendar day period, the Union shall so notify the affected Department Head in writing, with a copy to the City Director of Labor Relations and the affected employee. If the Union has reaffirmed its request for discharge, the affected Department Head shall notify the Union in writing, with a copy to the City Director of Labor Relations and the affected employee, that the Department effectuated the discharge and the specific date such discharge was setting forth the reasons why it has not done so.

> 3.3 The City shall deduct from the pay check of each employee who has so authorized it, the regular initiation fee and regular monthly dues uniformly required of members of the Union. The amounts deducted shall be transmitted monthly to the Union on behalf of the employees involved. The Union shall indemnify and save harmless the City from any and all liability resulting from dues deductions. Authorization by the employee shall be on a form approved by the parties hereto and may be revoked by the employee upon request.

The union increased its dues for the bargaining unit involved here to $29.00 per month, effective July 1, 1990.

On August 14, 1990, Local 763 notified Walter Washington that he was delinquent in paying his union security obligations. At that time, the union demanded payment in the amount of $245.00, computed as follows:

$100.00 - Reinitiation fee
$ 81.00 - Dues for June, July and August of 1989 @ $27
$ 54.00 - Dues for June and July of 1990 @ $29
$ 10.00 - Assessments

The union requested payment by August 30, 1990, and provided a telephone number for the complainant to contact the union.

On September 4, 1990, Local 763 sent a letter to Washington by certified mail, informing him that he was delinquent in his payments under his union security obligations. The union demanded $187.00 at that time, computed as follows:

$100.00 - Reinitiation fee
$ 81.00 - Dues for June, July and August of 1990 @ $?
$ 6.00 - Assessments for 1989

The union requested payment by September 12, 1990, and warned that failure to comply would result in a request by the union for termination of the complainant's employment.

On September 14, 1990, Business Representative Thomas Krett of Local 763 notified Walter Washington that, pursuant to Article III, Section 3.1 of the 1989-91 contract, the union was initiating discharge proceedings against him for being delinquent in the payment of his monthly dues. The union wrote to the director of the Department of Licensing on the same date, requesting that Washington be discharged for noncompliance with Article III, Section 3.1 of the collective bargaining agreement.

The complaint charging unfair labor practices filed in this matter on October 16, 1990 pointed to the situation of another employee who had not been charged a "reinitiation fee", and alleged that the union's actions were in reprisal for the complainant's participation in the decertification effort.

POSITIONS OF THE PARTIES

Walter Washington contends that Local 763 has discriminated against him in the method of collection of dues and reinitiation fees, that other employees in the same situation were treated differently, and that the union's actions were in retaliation for his involvement in filing a representation petition to decertify the union.

The union contends that it has not discriminated or retaliated against Washington for his participation in the decertification effort, and that Washington was not billed for any month which he did not owe dues. Further, the union contends that Washington was properly assessed a reinitiation fee in 1990, because he was in arrears at least four months.

DISCUSSION

Chapter 41.56 RCW defines unfair labor practices for bargaining representatives as follows:

> **41.56.150** **UNFAIR LABOR PRACTICES FOR BARGAINING REPRESENTATIVES ENUMERATED.** It shall be an unfair labor practice for a bargaining representative:
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights granted by this chapter;
> (2) To induce the public employer to commit an unfair labor practice;
> (3) To discriminate against a public employee who has filed an unfair labor practice;
> (4) To refuse to engage in collective bargaining.

Among the types of conduct defined as an unfair labor practice by a public employer is:

> **RCW 41.56.140** **UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED.** It shall be an unfair labor practice for a public employer:
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter ...

That leads, in turn, to the provisions of statute which specify the rights of employees and permit union security arrangements, as follows:

> **RCW 41.56.040** **RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE.** No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collec-

> tive bargaining, or in the free exercise of any other right under this chapter.
>
> ...
>
> **RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS-- AUTHORIZED PROVISIONS.** A collective bargaining agreement may:
>
> (1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision ...

Thus, a union commits an unfair labor practice under Chapter 41.56 RCW either by: (1) Direct interference with or discrimination against public employees in the exercise of their rights; or (2) indirect discrimination through the employer, which can include the enforcement of union security obligations in an unlawful manner. See, Snohomish County (Washington State Council of County and City Employees), Decision 3705 (PECB, 1991).

The authority and duty of the Public Employment Relations Commission to prevent unfair labor practices is set forth in Chapter 41.56 RCW, as follows:

> **RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS.** The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

As the moving party, Walter Washington has the burden of proving that the union's actions were in retaliation for his protected activity in the March, 1990, decertification attempt, or that he was treated differently than other bargaining unit employees in the administration of the union security provision of the contract.

Discrimination for the Decertification Attempt

The record establishes that the union was aware of Washington's participation in the decertification effort, because his name was on the petition filed with the Commission. Beyond being named on the petition, the record is unclear as to Washington's role in the decertification effort.

Other than the union security enforcement at issue in this case, the record is devoid of any incidents where the union took any action against Washington. Indeed, he was asked to serve on a union committee at the contract ratification meeting held shortly after the decertification petition was withdrawn. Nothing in the record indicates that Local 763 considered, or treated, Washington's situation as anything more than a bookkeeping transaction.

Based on the record as a whole, this allegation must be dismissed. Washington has not sustained his burden of proving the union interference allegations set forth in the complaint.

Inconsistent Enforcement of Union Security

There is precedent for finding an unfair labor practice where a union's administration of union security obligations is erratic and inconsistent, as between employees. Pierce County (Teamsters Local 461), Decision 1840-A (PECB, 1985). In the case now before the Examiner, the complainant contends that another employee, Lois Washington,[3] was treated differently in a similar situation.[4]

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3 Lois Washington and the complainant are not related.

4 Documents in the record indicate that the union made a request of Lois Washington in January of 1990, for a total of $108.00. A second letter in February of 1990 increased the amount due to $135.00. A letter from the union under date of August 14, 1990, however, reduced the amount due to $81.00 for the months of June through August of 1989.

The union explained that Lois Washington's situation differed from the complainant's. She had signed a dues authorization check-off card, but the employer had not deducted her dues properly. The union recognized that it was the employer, not the employee, who was at fault in that situation, and Lois Washington's reinitiation fee and dues obligation were adjusted to correct for the employer's error.

Erroneous Demands for Union Security Payments

The focus of this inquiry must be on the letter issued to Walter Washington on September 4, 1990, and on the letters sent by the union to Walter Washington and the employer on September 14, 1990. The first of those letters was the first occasion when enforcement of the union security obligation by discharge was threatened; the later letters are important because they sought the complainant's discharge to enforce the union security obligation. They thus went beyond union/member relationships, and brought the employee's job security into question.

The "Reinitiation" Fee -
Walter Washington's principal objection appears to have been with the $100.00 "reinitiation fee" demanded by the union in its September 4, 1990 letter. A determination on the legitimacy of that fee requires a review of the history.

Walter Washington was hired into a bargaining unit position in May of 1989, while the 1986-89 contract was in effect. He was obligated to make payments under the union security provision of that contract, including payment of the union's $100.00 initiation fee. Washington made a payment to the union in September of 1989, that covered his initiation fee and his dues for one month.

Walter Washington then exercised his right to drop out of the union during a hiatus between contracts. The Commission has ruled that

a union cannot enforce union security obligations against bargaining unit employees when there is no collective bargaining agreement in effect. City of Seattle, Decisions 3169, et al. (PECB, 1989); AFFIRMED Decisions 3169-A et al. (PECB, 1990). The Commission also held in those cases that a union security provision expires when the collective bargaining agreement expires. The 1986-1989 collective bargaining agreement covering the complainant's employment expired on August 31, 1989. Consistent with the Commission's rulings, the union has never demanded that Washington pay dues for any month during the hiatus between contracts.

The exercise of a "right" is not necessarily free of all risks or costs. Apart from being a source of revenue to the organization which levies it, an "initiation fee" arrangement tends to encourage prompt and consistent payment of periodic dues thereafter. Whether the decision involves a health studio, a labor union or some other type of organization, a member who contemplates dropping out must weigh the cost of re-joining against the savings to be achieved. Walter Washington stood to save $27.00 per month by dropping out of the union, but incurred a $100.00 reinitiation fee by doing so.

The complainant made his decision to drop out of the union in September, 1989. Regardless of the actual outcome,[5] he is not in a position to complain of the union's demand for a reinitiation fee. He was not entitled to be considered a "member" of the union or "in good standing" without payment of that reinitiation fee.

The Monthly Dues -

By the time the 1986-1989 contract expired on August 31, 1989, Washington owed the union $181.00 for his initiation fee and three

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5 Had the hiatus between contracts lasted less than four months, the complainant would have been better off to remain a dues-paying member and preserve his original initiation fee. Since the hiatus actually lasted more than nine months, the complainant had a net savings even after payment of the reinitiation fee.

months' dues. Washington did not claim that the expiration of that contract freed him of his dues obligations incurred up to that time, and he made a $127.00 payment in September of 1989.[6] That left a balance of $54.00 owing to the union, for dues for the months of July and August, 1989.

The 1989-1991 collective bargaining agreement was signed and effectuated on June 22, 1990, and the complainant's union security obligations resumed from that date.[7] The record indicates that the complainant did not resume making dues payments until August, 1990, when he paid for "three months".[8] By that time, Washington owed the union $85.00 for monthly dues (June at $27.00, plus July and August at $29.00), in addition to the $100.00 reinitiation fee.

The record establishes that the union considers "members" to be delinquent when they have not paid the required dues for three months or more. As indicated above, however, Washington would not have been entitled to be treated as a "member" in the absence of having paid the reinitiation fee required to resume union membership. Washington had resisted payment of the reinitiation fee. Hence, Washington was still in arrears when the union issued its letters on September 3 and 14, 1990.

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6 During the course of the hearing in this matter, Walter Washington acknowledged in cross-examination that he remained obligated for dues for July and August of 1989. Transcript at page 14, line 12.

7 The contract does not contain a "grace period" for a continuing employee who has dropped out during a hiatus between contracts. Under the provisions of the National Labor Relations Act, employees have a 30-day statutory grace period before they are required to become members of the union which represents their bargaining unit, but there is no such provision in Chapter 41.56 RCW.

8 Cross-examination of Walter Washington, Transcript at page 13. The complainant had alleged in the complaint that an $87.00 payment was made on August 30, 1990.

Sufficiency of Notice

Employees who choose to enroll for the dues check-off authorized by RCW 41.56.110 and Article III of the contract are freed of the responsibility of keeping their union dues payments current. An employee who does not make use of the check-off procedure must be informed of his or her obligations under WAC 391-95-010, but is not statutorily entitled to monthly billings from the union such as are commonly received from credit card firms, department stores and public utilities.

The record does not support Washington's contentions that he was not informed of the amounts of monies he owed, and that he did not receive notification that he was in danger of becoming delinquent in his dues. It came out in cross-examination that the complainant's union security obligations were described to him by a union representative in July of 1989, within two months after he commenced his employment in this bargaining unit.[9] The union's September 3, 1990 letter threatening enforcement of the union security obligation contained the specific amounts demanded. The notification process used in the case of Walter Washington is the same as is used for all other members of the union. The record in this matter thus clearly indicates that the complainant was aware of his union security obligations, and was aware that he was delinquent.

FINDINGS OF FACT

1. The City of Seattle is a "municipal corporation" within the meaning of RCW 41.56.020, and is a "public employer" within the meaning of RCW 41.56.030(1). The employer operates a

[9] Transcript, page 11.

Department of Licensing which employs "license and standards inspectors".

2. Public, Professional & Office-Clerical Employees and Drivers, Local 763, IBT, a "bargaining representative" within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of a bargaining unit of City of Seattle employees which includes "license and standards inspectors" in the Department of Licensing. Local 763 is one of 13 labor unions who make up the Joint Crafts Council.

3. The employer and the Joint Crafts Council were signatory to a collective bargaining agreement that was effective from September 1, 1986 through August 31, 1989. That contract contained a union security provision which required bargaining unit employees to become and remain members in good standing. The contract provided that failure to comply with the union security provision may result in termination from employment with the City of Seattle.

4. Walter Washington, a "public employee" within the meaning of RCW 41.56.030(2), was hired as a "license and standards inspector" by the City of Seattle Department of Licensing in May, 1989. Washington's employment was within the bargaining unit represented by Local 763 as part of the Joint Crafts Council. Under the terms of the 1986-1989 collective bargaining agreement, Washington was required to become a member of Local 763 in June, 1989. Washington did not tender any dues or initiation fees to the union until September, 1989.

5. Walter Washington declined to pay dues to Local 763 for a period from September, 1989, until May, 1990, while there was no collective bargaining agreement in effect between the City of Seattle and the Joint Crafts Council.

6. On March 2, 1990, Walter Washington and other employees in the bargaining unit filed a petition for investigation of a question concerning representation with the Commission, seeking to decertify Local 763 as the exclusive bargaining representative of that bargaining unit. That petition was withdrawn by the petitioners on April 9, 1990.

7. On June 22, 1990, the City of Seattle and the Joint Crafts Council effectuated and implemented a successor contract that is effective from September 1, 1989 through August 31, 1991. Union security obligations specified in Article III of that contract became operative on that date. The 1989-91 contract provided that failure to comply with the union security provision may result in termination from employment with the City of Seattle.

8. On August 14 and September 4, 1990, Local 763 notified Walter Washington that he was in arrears in payments under his union security obligations, with respect to the payment of a $100.00 reinitiation fee. The September 4, 1990 letter warned that enforcement of the union security obligation could result in termination from employment with the City of Seattle.

9. On August 14, 1990, Local 763 notified Walter Washington that he was in arrears in payments under his union security obligations, with respect to the payment of monthly dues for specified months while the 1986-89 contract was in effect. The union did not demand dues for any month during the hiatus between contracts.

10. On September 4, 1990, Local 763 notified Walter Washington that he was in arrears in payments under his union security obligations of the current collective bargaining agreement, with respect to the payment of monthly dues for June, July and August of 1990. That letter warned that enforcement of the

union security obligation could result in termination from employment with the City of Seattle.

11. Walter Washington refused to pay the reinitiation fee assessed by the union.

12. On September 14, 1990, Local 763 notified Washington that the union was initiating discharge proceedings against him, in accordance with Article III, Section 3.1 of the collective bargaining agreement applicable to his employment. On the same date, the union made a request of the employer for the discharge of Walter Washington, citing his non-compliance with Article III, Section 3.1 of the collective bargaining agreement then in effect.

13. The situation of one Lois Washington is distinguished from that of Walter Washington, in that the dues delinquency of Lois Washington was traceable to the failure of the employer to properly implement a check-off of dues previously authorized by Lois Washington.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. Walter Washington has not sustained his burden of proof with regards to the allegation that the union has discriminated and retaliated against him, in violation of RCW 41.56.150(1), for his role in the decertification effort in March, 1990.

3. Walter Washington has not sustained his burden of proof that the union has sought unlawful enforcement of union security

obligations against him, in violation of RCW 41.56.150(2), by its demand for payment of a reinitiation fee after Washington dropped out of the union during a hiatus between contracts.

4. Walter Washington has not sustained his burden of proof that the union has sought unlawful enforcement of union security obligations against him, in violation of RCW 41.56.150(2), by its demand for payment of monthly dues for June, July and August of 1990, while a collective bargaining agreement was in effect containing a union security provision.

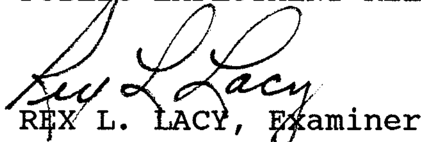
5. Walter Washington has not sustained his burden of proof that the union discriminated, as between employees, in its enforcement of the union security provisions of the collective bargaining agreement between the City of Seattle and the Joint Crafts Council.

ORDER

The complaint charging unfair labor practices in the above-entitled matter is DISMISSED.

DATED at Olympia, Washington, this 6th day of August, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Examiner

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