STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CYNTHIA L. HILL, Complainant, vs. PIERCE COUNTY FIRE DISTRICT 2, Respondent.	CASE 9289-U-91-2062 DECISION 4063 - PECB ORDER OF DISMISSAL

On July 25, 1991, Cynthia L. Hill filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the "Lakewood Fire Department" as the respondent.[1] The case came before the Executive Director for processing pursuant to WAC 391-45-110, and a preliminary ruling letter issued on August 13, 1991 pointed out certain defects which precluded processing of the complaint, as filed. The complainant was given a period of time in which to file and serve an amended complaint. The complainant made a supplemental filing on August 19, 1991.

The matter is again before the Executive Director for processing pursuant to WAC 391-45-110.[2] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor

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[1] The formal name of the public employer is used by the Commission in its docket records.

[2] On November 6, 1991, a letter was issued purporting to assign an Examiner in the case. That was in error, as there had been no preliminary ruling finding a cause of action to exist in the case. Such a ruling is a condition precedent to valid assignment of an Examiner.

practice proceedings before the Public Employment Relations Commission.

The statement of facts accompanying the original complaint describes problems encountered by other employees in the processing of their grievances.[3] The preliminary ruling letter pointed out that, as an individual, Hill lacks legal "standing" to pursue claims on behalf of other individuals. The supplemental letter submitted by the complainant does not pursue claims on behalf of the other individuals.

The statement of facts accompanying the original complainant indicates that the complainant brought in an official of a labor organization other than her exclusive bargaining representative, to meet with her co-workers about their grievances. The preliminary ruling letter noted the absence of any suggestion that the union official interceded for the purpose of organizing, or that the other union took any steps towards becoming the exclusive bargaining representative of the employees involved, and thus the absence of any factual basis for a charge of "interference" by the employer with the right of employees to choose their exclusive bargaining representative. The supplemental letter submitted by the complainant does not claim that the other organization's official was on the premises in an organizing mode.

The statement of facts accompanying the original complaint also described the assistance and advice provided by the official of the other union to the complainant's co-workers. The preliminary ruling letter interpreted these to be actions taken by the union official as an individual, and pointed out Commission precedent holding that processing of grievances by or on behalf of individuals is not an activity protected by the Public Employees' Collec-

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[3] The complainant identifies herself as a shift supervisor employed in the employer's dispatching operation; the other employees are her co-workers on the same shift.

tive Bargaining Act, Chapter 41.56 RCW. The supplemental letter submitted by the complainant does not claim that the activities of the other organization's official were within the scope of activity protected by RCW 41.56.040.

Finally, the statement of facts alleges that the employer imposed new restrictions on visitors to the complainant's place of work. To the extent that a unilateral change of practice was being alleged, the preliminary ruling letter pointed out that an individual employee lacks legal "standing" to pursue a "refusal to bargain" violation before the Commission, including challenges to unilateral changes such as are alleged here. The supplemental letter submitted by the complainant does not pursue the "unilateral change" as such. Instead, the supplemental letter seeks to emphasize the change of visitation procedures as "retaliation" against the employees for their earlier activities.

The key problem for the complainant in this case was, and remains, establishing a connection with union activities within the scope protected by RCW 41.56.040. Other activities by or on behalf of individuals are not "protected" by the statute or subject to any remedy before the Commission, even if they arise out of the employment relationship. See, City of Seattle, Decision 489 (PECB, 1978).[4]

The dispatcher employees have exercised their right to organize for the purposes of collective bargaining. RCW 41.56.080 confers a special status on a union which has been recognized by an employer or certified by the Commission as the "exclusive bargaining

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[4] In that case, an employee who pursued grievances on behalf of other employees was doing so outside of the collective bargaining process. The activity would have been "protected" under Section 7 of the National Labor Relations Act, but was found to be unprotected under our statute due to the omission of a "concerted activities" clause from RCW 41.56.040.

representative" of an appropriate bargaining unit. Employees retain the right to process grievances individually under RCW 41.56.080, but the employer is neither obligated nor entitled to deal with the representatives of another union. In the absence of any allegation that the intervention of the official of another union in this case was made in the context of organizing activity, it must be regarded as an "individual" activity, not a "collective bargaining" activity protected by the statute.

Any "discrimination" violation found under RCW 41.56.140(1) must involve the deprivation of a known right for an unlawful reason. In the absence of any indication that the union official mentioned in this complaint was either an agent of the employees' exclusive bargaining representative or in an "organizing mode" on behalf of his own organization, there was no basis to conclude that the employees had a "right" to have him present at the work site during business hours. The complaint thus fails to state a cause of action.

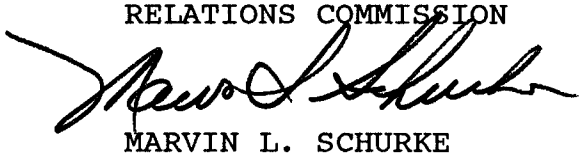
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above-entitled matter is DISMISSED for failure to state a cause of action.

ENTERED at Olympia, Washington, this 4th day of May, 1992.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARVIN L. SCHURKE
Executive Director

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