STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOHN SCANNELL, Complainant, vs. CITY OF SEATTLE, Respondent.	)	CASE 10528-U-93-2440 DECISION 4551 - PECB PRELIMINARY RULING AND PARTIAL DISMISSAL

On June 21, 1993, John Scannell filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had committed various unfair labor practices against him in violation of RCW 41.56.140. In a preliminary ruling letter issued on July 14, 1993, pursuant to WAC 391-45-110,[1] an allegation with respect to discrimination was found to state a cause of action for further proceedings before the Commission. The complainant was found to lack standing to pursue an allegation concerning a "refusal to bargain" about the safety implications of a new rule, so no cause of action was found to exist on that allegation. The complainant was given a period of 14 days in which to file an amended complaint. Nothing further has been heard or received from the complainant.

---

[1] At that 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 practice proceedings before the Public Employment Relations Commission.

This case concerns the employer's implementation of a new "safety rule" at the Seattle Center, whereby drivers of the Zamboni ice resurfacer machine are required to drive past hockey fans who are attempting to "high five" the driver, without returning the "high five" as had previously been the practice. A cause of action was found to exist on an allegation that the employer discriminated against Scannell, by imposing a three-day suspension on him, because of his status as a shop steward.

The complainant also alleged that the new rule placed the drivers in some danger, and was bargainable. The preliminary ruling letter noted that, while an employer is obligated to bargain with the exclusive bargaining representative of its employees regarding mandatory subjects of bargaining, it would place itself in legal jeopardy if it were to bargain such issues directly with individual employees. Although the "discrimination" allegation is based on the complainant's role as a shop steward for the union, there was no indication in the complaint that Scannell was acting as an agent of the exclusive bargaining representative in filing the complaint. In the absence of an amendment which overcomes the defect noted in the preliminary ruling letter, the "refusal to bargain" charge must be dismissed on the basis that an individual employee lacks standing to file or pursue such a complaint.

NOW, THEREFORE, it is

ORDERED

1. The allegation of the complaint charging that the employer took disciplinary action against John Scannell in retaliation for his having engaged in protected activities is found to state a cause of action, and will be referred to an Examiner in due course for further proceedings.

2. The allegation of the complaint charging that the employer refused to bargain with respect to a new safety rule is hereby dismissed for failure to state a cause of action.

DATED at Olympia, Washington, this 8th day of December, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

Paragraph 2 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.