Benton County, Decision 5763 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BENTON COUNTY, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 874 HC, Respondent.	)	CASE 12485-U-96-2959 DECISION 5763 - PECB ORDER OF DISMISSAL

This case is before the Executive Director for a preliminary ruling, pursuant to WAC 391-45-110, on an amended complaint filed by the employer on September 27, 1996.

BACKGROUND

The Washington State Council of County and City Employees (union) and Benton County (employer) have a dispute about their actions during and following negotiations which led to a 1995-1997 collective bargaining agreement covering a "courthouse" unit. That contract was signed in the autumn of 1995.

The Union's Charges Against the Employer

The union filed unfair labor practice charges on January 24, 1996, alleging that the employer acted in bad faith during the negotiations leading to the parties' 1995-1997 contract, and/or that commitments made during those negotiations were subsequently dishonored by the employer. That complaint was docketed as Case

12290-U-96-2903. The union's statement of facts detailed events dating back to the onset of the negotiations in July of 1994. When the union's complaint was processed under WAC 391-45-110, a cause of action was found to exist for:

> Employer's failure to bargain in good faith, by actions inconsistent with its statements to the union in bargaining. Specifically, the union alleges it agreed to accept a lesser increase in wages and insurance benefits because the employer expressed concern over the cost of operation or doing business and what impact a wage increase would have on operation costs in the future, but that the employer offered a greater amount of wages and insurance to the non-represented employees within two weeks after ratification of the agreement by the union. When this action was questioned by some of the union employees, one of the commissioners is alleged to have responded, "the union should have come back to the negotiation table and demanded the raise if that's what the employees wanted. Then they would have gotten the increase."

If the union's factual allegations were to be sustained,[1] they could provide a basis for finding that the employer engaged in fraud or bad faith in inducing the union to sign the collective bargaining agreement; such violations could be remedied by relieving the union of its ratification and execution of a tainted contract and requiring the employer to return to the bargaining table in good faith. If the union's allegations were to be dismissed on their merits, the parties' collective bargaining agreement would remain in effect and there would be no occasion for bargaining at this time.

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[1] With respect that the union's allegations relating to events that occurred prior to July 24, 1995, the union would need to overcome the six month period of limitations contained in RCW 41.56.160. The union's claims would be evaluated based on when it first knew, or reasonably should have known, of the unlawful conduct.

The employer's answer filed on March 7, 1996 included denials of various factual allegations made by the union, as well as extensive affirmative defenses based upon: (1) The involvement of a Commission staff Mediator in the negotiations, and (2) alleged bad faith and unclean hands on the part of the union.[2]

Examiner Jack T. Cowan was assigned in Case 12290-U-96-2903 on April 10, 1996, and a notice was issued on May 14, 1996 setting a hearing in that matter for September 25 and 26, 1996.

The Employer's Original Charges Against the Union

The employer initiated the above-captioned proceeding by filing a complaint charging unfair labor practices with the Commission on May 10, 1996. In addition to describing negotiations predating November 10, 1995, the employer alleged that union officials misrepresented facts in: (1) a meeting of bargaining unit members on November 28, 1995; (2) a newspaper article published on November 29, 1995; (3) a petition submitted to the employer on December 18, 1995; (4) advertisements published in local newspapers on December 20 and December 29, 1995; (5) a newspaper article published on December 29, 1996; and (6) the union's unfair labor practice charges. The employer appeared to assert the union acted in bad faith in connection with its submission of excessive reclassification requests under the 1995-1997 contract, and by its pursuit of "frivolous" unfair labor practice charges against the employer.

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[2] Affirmative defenses can only result in dismissal of the complaint in the case where they are asserted. The Commission's unfair labor practice procedures, Chapter 391-45 WAC, have never included any "counterclaim" mechanism by which a respondent could obtain any remedial order against a complainant. If a party named as a respondent in a case desires to obtain a remedy against the complainant in that case, it must file and pursue its own unfair labor practice complaint, naming its antagonist in the first case as respondent in the second case. The two cases can be consolidated upon a timely motion, if both state a cause of action.

When the employer's original complaint was considered under WAC 391-45-110, it was found insufficient to state a cause of action. A letter issued on September 16, 1996 pointed out: (1) Many of the allegations were untimely under RCW 41.56.160; (2) the Commission does not assert jurisdiction over "violation of contract" claims, such as the reclassification requests; (3) the Commission lacks jurisdiction to remedy libel, slander and general misrepresentations, such as those relating to the petitions, newspaper articles and advertisements; and (4) the union's filing of an unfair labor practice complaint could not be the basis for finding the union guilty of an unfair labor practice violation. The employer was given 14 days in which to file and serve an amended complaint which stated a cause of action, or face dismissal.

The employer had filed a motion, on May 28, 1996, for consolidation of its case with the case filed by the union.[3] The union objected to consolidation in a letter filed on June 3, 1996, pointing out that the union's case was already set for hearing. The employer reiterated its consolidation request in a letter filed on August 8, 1996. No action was taken on the motion for consolidation, however, in the absence of a viable employer complaint.

Hearing on Union's Charges

A hearing was held on the union's unfair labor practice charges on September 25 and 26, 1996. At the conclusion of that hearing, the employer moved to conform the pleadings to the proof, and moved to keep the record open for purpose of taking the deposition of a newspaper reporter. The Examiner took the employer's motions under advisement, and left open the arrangements for filing briefs.[4]

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[3] The motion was filed after a notice was issued setting a hearing on the union's complaint.

[4] The Executive Director has not read the record made at the hearing, other than employer's motions and the Examiner's taking them under advisement.

THE AMENDED COMPLAINT

The employer filed its amended complaint with the Commission on September 27, 1996. At this stage of the proceedings, all of the facts alleged in the amended complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the amended complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

Background Allegations

Extensive allegations describing the parties' negotiations in 1994 and 1995 have been re-alleged under the heading "II." in the amended complaint as "background to the union attempting, through the unfair labor practice procedures, to reform and re-negotiate a settlement which was ratified by both parties".

Subparagraph A. identifies the parties' negotiators and describes the union's opening proposals, while sub-paragraph B. describes both the high cost of the union's proposal and the employer's anticipation of declining revenues. Subparagraph C. describes the employer's opening positions, including that there be no general wage increase and there was a possibility of layoffs. Subparagraph D. describes a later employer proposal which included general wage increases in 1996 and 1997. Even if those allegations were timely, they do not appear to set forth any conduct on which a violation could be found.

Subparagraphs E. and F. describe events in bargaining between October and early December of 1994. There is a tone of bad faith in regard to a failure to follow through on commitments made by the union, but that could not be a subject for determination or remedy in this proceeding initiated a year and a half later.

Subparagraph G. begins with a description of the onset of mediation, upon the joint request of the parties, and identifies the Commission staff member assigned as Mediator. Either party has a statutory right to invoke the mediation process.

Subparagraph G. continues with description of the positions taken by the employer and union in mediation. Although there is a tone of "excessive union demands" and of "union intransigence", that could not be a subject for determination or remedy in this proceeding initiated more than a year later.[5]

Subparagraph H. generally describes concessions made by the employer during a mediation session in May of 1995, but ends with an assertion that the Mediator "never indicated that the Union had ever asked about non-bargaining employees' wages and benefits". The employer might want to assert that claimed silence as part of its defense to the union's claims about various commitments being made, but it would not be a basis for finding that the union committed an unfair labor practice on this untimely complaint.

Subparagraph I. generally describes positions taken during a mediation session in October of 1995, but ends with an assertion that the Mediator "never indicated that the Union Representatives asked anything about non-bargaining employees' wages and benefits". Again, the employer might want to assert this material as part of its defense to a union allegations about the commitments made, but it would not be a basis for finding that the union committed an unfair labor practice in this proceeding.

An un-numbered paragraph indented below Subparagraph I. alleges that the union made a substantial change of position. While "late hits" have been found unlawful in various situations where they frustrate agreement, this paragraph suggests that the union's change of position actually precipitated agreement on a contract. Moreover, even if the union made an untimely change of

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[5] As to this and several subsequent allegations which detail conversations and transactions between employer negotiators and the Mediator, the employer might face serious evidentiary problems at a hearing because of its inability to call the Mediator as a witness. See, WAC 391-08-310 and 391-08-810. A preliminary ruling under WAC 391-45-110 does not, however, assess the admissibility or weight of evidence in support of an allegation.

position, that could not be a subject for determination or remedy in this proceeding initiated more than 6 months later.

A second un-numbered paragraph indented below Subparagraph I. alleges that the parties ratified and signed a collective bargaining agreement in October of 1995. Nothing in this paragraph suggests any unlawful conduct on the part of the union.

Subparagraph J. alleges that union representatives were aware of the wage settlements reached by the employer with other bargaining units. The employer might want to assert this material as part of its defense to the union's unfair labor practice charges, but it would not be a basis for finding that the union committed an unfair labor practice.

An un-numbered paragraph following Subparagraph J. details some "reopener" and "entire agreement" provisions of the parties' 1995-1997 collective bargaining agreement. Nothing in this paragraph suggests any unlawful conduct on the part of the union. This also appears to be material that the employer might assert as part of its defense to the union's unfair labor practice charges.

In summary, the employer has provided more than five pages of background allegations which could not be the basis for finding any unfair labor practice violation in this case. Many of those allegations would be insufficient even if they were timely.

Inconsistent Allegations

The employer has set forth inconsistent theories in the first paragraph under "III." in its amended statement of facts:

On the one hand, it alleges that union statements were "not protected as an exercise of free speech when such statements and opinions are intentional misrepresentations regarding the collective bargaining process", which appears to relate to the current dispute between the parties;

On the other hand, it asserts that its charges "are not a matter of slander and libel, they are charges leveled at the Union

for bad faith ... during the bargaining process", which relates to the earlier period for which the complaint is untimely.

Offense or Defense

A second paragraph under "III." alleges that union officials misrepresented facts at a November 28 meeting with bargaining unit members, and in a newspaper article published on November 29, 1995, "in order to incite and foster unrest amongst the employees and to attempt to destroy a long standing reasonable and continuously improved relationship between the Employer and its employees".

Two paragraphs under "IV." describe a petition which the union presented to the employer in December of 1995, expressing "dissatisfaction and disappointment with actions of the Board after the conclusion of contract negotiations" [emphasis by underline in original], and "that the Board has no regard for the value of its employees". The employer alleges that the petition reflects intentional misrepresentations by the union.

Paragraph V. alleges that an advertisement published by the union in a local newspaper on December 20, 1995, contains misrepresentations about the negotiations and settlement. The first paragraph under "VI." alleges that an advertisement published by the union in another local newspaper on December 29, 1995, contains misrepresentations about the negotiations and settlement.

A second paragraph under "VI." alleges that the union misrepresented facts about the negotiations and settlement in statements given to a newspaper reporter, as reflected in an article published on December 29, 1995.

The employer has not cited any legal precedent in support of its theories. It seems clear that the union may have been attempting to mount some public pressure on the employer and/or its individual

elected officials, but the political process is outside the sphere regulated by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The employees and the union retain their right to address concerns to and about their elected officials. Sultan School District, Decision 1930-A (PECB, 1984); Fort Vancouver Regional Library, Decision 2350-C (PECB, 1988); Mason General Hospital, Decision 5558 (PECB, 1996). Constitutionally-protected free speech could not be the basis for finding that the union committed an unfair labor practice under Chapter 41.56 RCW.

While RCW 41.56.030(4) includes a "good faith" component within the duty to bargain, and RCW 41.56.140(4) and 41.56.150(4) enforce that bargaining obligation on employers and unions alike, it is significant that the employer asserts there was no occasion for bargaining during the November-December period encompassed by these allegations. If the employer is correct (i.e., that there was a valid contract in place), then the union's alleged misrepresentations occurred outside of the collective bargaining process and are not subject to regulation by the Public Employment Relations Commission. If the union were to prevail on its claim that the parties' 1995-1997 contract was tainted by the employer's bad faith, then the good faith obligation would apply to both parties in any negotiations on a replacement contract. In either case, the question of whether the union's factual claims were accurate or misrepresentations will be decided in the unfair labor practice proceeding filed by the union against the employer.

Complaint as Retaliation and Misrepresentation

Paragraph VII. begins with an allegation that an employer official challenged the union about the alleged misrepresentations in January of 1996. The balance of that paragraph and the first part of Paragraph VIII. allege that the union filed its unfair labor practice complaint in reprisal for the employer's challenge, and that the union's complaint reiterated the misrepresentations

alleged in earlier paragraphs of the employer's complaint. Without citing any legal precedent in support of its theories, the employer then asserts that:

> [F]alse allegations and bad faith exhibited through and contained in the Union's unfair labor practice charges do constitute an unfair labor practice by the Union. The Employer's position is also that the timing of the filing constitutes an unfair labor practice on its face based on bad faith and duplicity because the Union accepted the benefits of materials terms and conditions of the labor contract for the 1995 and 1996 term. It is an unfair labor practice for the Union to attempt to utilize the unfair labor practice procedures to re-negotiate and/or reform a contract after they have accepted the benefits of a contract.

Although the term "unfair" may be subject to a broader interpretation by itself, the "unfair labor practices" proscribed by Chapter 41.56 RCW are limited to the following:

> 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;
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> (2) To control, dominate or interfere with a bargaining representative;
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> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
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> (4) To refuse to engage in collective bargaining. [1969 ex.s. c 215 § 1.]
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> 41.56.150 **Unfair labor practices for bargaining representative 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 guaranteed 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 charge;
> (4) To refuse to engage in collective bargaining. [1969 ex.s. c 215 § 2.]

The employer's claims do not fit within any of the four subsections of RCW 41.56.150, "on their face" or otherwise. Reasons to conclude that RCW 41.56.150(4) is inapposite are described under the "Offense or Defense" heading, above. RCW 41.56.150(1) and (3) are expressly directed at protecting **employees**, not employers. The employer has not given any indication of how the union is inducing it to interfere with **employee** rights (so as to violate RCW 41.56-.140(1)), to dominate or unlawfully assist the union (so as to violate RCW 41.56.140(2)), or to discriminate against **employees** for filing charges or giving testimony (so as to violate RCW 41.56.140-(3)), so that RCW 41.56.150(3) is also inapposite.

An unfair labor practice proceeding initiated by an employer resulted in an order compelling a union to sign a contract reflecting a tentative agreement reached in bargaining in Naches Valley School District, Decision 2516 (EDUC, 1987), upon a finding that the union had made an untimely attempt to withhold ratification after accepting the benefits of the contract.[6] Nevertheless, reformation or vacating of a purported contract are potential remedies in unfair labor practice proceedings where a "refusal to bargain" violation is established. Thus, a written and signed contract was ordered reformed on the basis of a union complaint in Olympic Memorial Hospital, Decision 1587 (PECB, 1983), upon a finding that it did not reflect the terms agreed upon in collective bargaining. As indicated above, however, that determination will

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[6] A union complaint seeking a return to the bargaining table was dismissed in that decision. The case now before the Executive Director is distinguished by the fact that a written contract is already in place, so that there is no occasion for the employer to pursue a "sign the contract" remedy against the union here.

properly be made in the unfair labor practice case previously initiated by the union, including consideration of the factual evidence produced by the employer in its own defense.

Win or lose, the union had a statutory right to file unfair labor practice charges. The processing of unfair labor practice charges is regulated by statute:

> RCW 41.56.160 **Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders.** (1) 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.
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> (2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.
>
> (3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1994 c 58 § 1; 1983 c 58 § 1; 1975 1st ex.s. c 296 § 24; 1969 ex.s. c 215 § 3.]

> RCW 41.56.165 **Applicability of administrative procedure act to commission action.** Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules adopted in accordance with chapter 34.05 RCW, and the right of judicial review

> provided by chapter 34.05 RCW shall be applicable to all such actions and rules. [1994 c 58 § 2.]

Under RCW 34.05.010(11), a "party" to agency proceedings includes any person named as a party to agency proceedings. RCW 34.05.413 provides for an agency to commence an adjudicative proceeding upon application of any person, when required by law.[7]

The union's charges in Case 12290-U-96-2903 were sufficient to state a cause of action under WAC 391-45-110. No situation is cited or known where a prevailing respondent is entitled to a remedy under a collective bargaining statute against an unsuccessful complainant. In Anacortes School District, Decision 2464-A (EDUC, 1986), the Commission affirmed an Examiner's strong rebuke of a union for pursuing a complaint on a matter that had already been resolved by the parties, but found it necessary to reverse an award of attorney fees favoring the successful respondent. The Commission's remedial authority under RCW 41.56.160 is limited to correcting the damage done by a violation of the law and, for reasons indicated above, no violation of RCW 41.56.150 could be found against the union for exercising its statutory right to file its complaint against the employer.

Contractual Dispute

The parties' 1995-1997 contract provides for a reopener on reclassifications, as follows:

> 23.9 The parties hereby agree that this contract will be reopened for consideration of reclassification of positions in this bargaining unit during the course of this contract. Negotiations will begin on these reclassi-

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[7] WAC 391-45-010 provides an unfair labor practice complaint may be filed by "any employee, group of employees, employee organization, employer or their agents".

> fication requests on January 1, 1996, and shall continue through April 1, 1996. The Employer is required to provide a response on or before January 26, 1996, and the parties are to commence negotiations on or before February 1, 1996.

In the first paragraph under "IX.", the amended complaint alleges that the union submitted reclassification requests for about 30 percent of the bargaining unit members. The deficiency notice sent on the original complaint characterized similar allegations as relating to the contractual process for bargaining reclassifications, noted a difficulty with envisioning how an unfair labor practice could be found against the union when the bargaining appeared to be authorized by the parties contract, and noted that the Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

The amended complaint takes a somewhat different direction, in seeking to tie the contractually-authorized reclassification negotiations to the union's quest for equality of treatment through its unfair labor practice complaint. However, the employer's concerns are anticipatory, at best. Apart from the fundamental fact that there has been no determination of the union's allegations on their merits, or any remedial order stemming from the union's complaint, there has been no occasion for the union to demand wage increases for bargaining unit employees equal to those given to persons outside the bargaining unit. Parties are entitled to advance proposals on so-called "permissive" subjects, and need only drop such proposals if an impasse is reached in actual bargaining. There is clearly no allegation (or possibility of an allegation) here that the union has insisted to impasse on an unlawful proposal, so no violation could be sustained on these facts.

Insistence Upon Negotiations for Reopener

In a second paragraph under "IX.", the employer alleges that it questioned whether negotiations on the reclassifications reopener could proceed while the union's unfair labor practice charges remained pending, and the union refused to withdraw its charges. It then alleges that the union's assertion that "the threat to discontinue the reclassification in accordance with the collective bargaining agreement would be coercion and retaliation on the part of the employer" constitutes "clear and unequivocal evidence of the Union's bad faith by its filing frivolous ULP [sic] charges to get more wages than bargained for and to attempt to pursue additional wage increases under the existing labor contract ...".

Rather than a basis for righteous indignation on the part of the employer, the facts set forth by the employer could be a basis for finding the employer guilty of an unfair labor practice. The withdrawal of an unfair labor practice complaint is not a mandatory subject of bargaining, and an employer was found to have committed an unfair labor practice in Public Utility District 1 of Clark County, Decision 2045-A (PECB, 1989), by conditioning agreement in contract negotiations upon the union's withdrawal of pending unfair labor practice charges. Thus:

If the existing contract were to be found invalid, the entire issue of "wages" could be reopened for negotiations between the parties and issues concerning the requested reclassification would blend into negotiations for the entire bargaining unit. Thus, the employer's conditioning of bargaining for the sub-group upon withdrawal of unfair labor practice charges here might be challenged as a violation of the statutory duty to bargain.

If the existing contract is valid, the employer would still have a duty to implement the terms of that contract. Thus, the employer's refusal to negotiate under the contractual reopener might be challenged as a violation of the contract and/or as a repudiation of the contract itself.

Union Failure to Inquire

The first paragraph under "X." in the amended complaint alleges that the union never inquired during mediation about the wage and benefit changes being provided for persons outside of the bargaining unit represented by the union. The second paragraph under "X." alleges that persons outside the bargaining unit have frequently received wages and benefits different than were negotiated for bargaining unit employees. As with allegations discussed above, these claims appear to be potential defenses for the employer in the unfair labor practice case initiated by the union.[8] At best, they anticipate circumstances which might arise if the parties' 1995-1997 contract were to be invalidated, and there is no basis to conclude that a cause of action now exists against the union for an insistence to impasse in bargaining which has not yet occurred (and may never occur).

Bad Faith by Timing of Union Complaint

Paragraph XI. of the amended complaint alleges that the timing of the filing of the union's unfair labor practice complaint is "precisely in line with bad faith" by the union, because it came just after the wage increase for 1996 was implemented. No cause of action exists on those allegations. Apart from having a statutory right to file unfair labor practice charges against the employer, the union had a statutory right to do so for up to six months after the acts or events complained of. Moreover, there does not appear to be any circumstance by which the 1996 wages increased promised by and implemented pursuant to the 1995-1997 contract could be eradicated:

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[8] Parallel to the evidentiary problems which the employer would face in proving some of its claims in this case, the union was not able to call (and would never be able to call) the Mediator as a witness in support of its version of what transpired in mediated negotiations.

If the union's unfair labor practice charges are sustained, an earlier or later filing within the six months after discovery of the unlawful conduct would make no difference in either the finding of a violation or the remedy. In any reopened negotiations, the employer could demand "credit" for the implemented wage increase just as the union could demand wages higher than those promised in the 1995-1997 contract.

If the employer successfully defends against the union's unfair labor practice charges and they are found to be without merit, they will be dismissed and the 1995-1997 contract will remain in effect.

In the last sentence of Paragraph XI. of the amended complaint, the employer asserts:

> There is no other remedy available to the Employer when a Union [sic] commits an unfair labor practice through the allegations contained in its own self-serving unfair labor practice charges and attempts to illegally repudiate, reform and/or re-negotiate the terms and conditions of an already implemented and accepted labor agreement.

The employer assumes, but does not provide any legal precedent to support, that some remedy is available through unfair labor practice proceedings before the Commission. The Commission is not a court of general jurisdiction, with authority to rule on all manner of tortious conduct. As noted above, there is no basis for the employer's theory within RCW 41.56.150.

Conclusionary Allegations

Paragraph XII. reiterates that the union has "acted in bad faith and attempted to interfere with Employer and employee rights", "engaged in Union discrimination for filing charges", and "bargained in bad faith by ratifying and signing a three year contract

then trying to repudiate the contract while insisting that certain provisions of the current contract continue to be enforced." These conclusionary allegations do not set forth any facts in addition to those previously set forth, and are thus insufficient to state a cause of action.

"Other Unfair Labor Practice"

Paragraph XIII. of the amended complaint alleges that the union has "violated the intent and purpose of RCW 41.56.010 which is ... to promote continued improvement of the relationship between public employers and their employees ...", and that "[t]he false representations by the Union ... clearly violate the basic tenets of 'promoting continued improvement of the relationship ...'." While RCW 41.56.140(1) and 41.56.150(1) are traditionally interpreted as referring back to the definition of "collective bargaining" set forth in RCW 41.56.030(4), and to the "rights of employees" set forth in RCW 41.56.040, the employer provides no statutory reference or legal precedent to support the proposition that some unspecified portion of RCW 41.56.150 could be a basis for finding an unfair labor practice related to RCW 41.56.010.

THE MOTION FOR CONSOLIDATION

The cases filed by the employer and union have proceeded down separate paths, notwithstanding the employer's motion for consolidation. The motions made by the employer on September 26, 1996, at the close of the hearing on the union's case, will need to be considered by the Examiner in that case in the context of a delay in the processing of the employer's original complaint under WAC 391-45-110, in the context that the amended complaint was signed by the employer's counsel on September 25, 1996, and in the context that this order of dismissal is being issued after the close of that hearing. These circumstances suggest that the parties went

through the hearing on the union's complaint without a clear vision of where the employer's charges were headed.

For the most part, the factual claims asserted by the employer in this case are matters which could have been asserted by the employer as defenses to the unfair labor practice charges filed by the union. In fact, the absence of any "statute of limitations" on defenses would permit the employer to plead and prove matters that it would not be able to pursue in this case because of RCW 41.56.160. The Executive Director encourages the Examiner to be cognizant of the overall context when ruling on the employer's motion to conform the pleadings to the proof, and if called upon to rule on a motion for reopening of the hearing on the union's case.

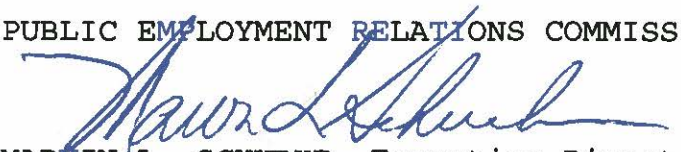
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed by Benton County in the above-captioned matter is DISMISSED as failing to state claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Issued at Olympia, Washington, on the 26th day of November, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.