STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer.	)	
DONALD J. WAKENIGHT, Complainant,	)	CASE 12645-U-96-3016 DECISION 5702 - PECB
vs.	)	CASE 12683-U-96-3032 DECISION 5703 - PECB
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, Respondent.	)	ORDER OF DISMISSAL

On August 14, 1996, Donald J. Wakenight filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that his exclusive bargaining agent, International Federation of Professional and Technical Engineers, Local 17 (union), interfered with his rights as an employee of a unnamed employer. The statement of facts described a dispute concerning the processing of two grievances that Wakenight delivered to the union's office on July 10, 1996, but did not detail the subject matter of the grievances. That complaint was docketed as Case 12645-U-96-3016.

On September 5, 1996, Wakenight filed a second complaint charging unfair labor practices with the Commission, this time alleging that the union interfered with his rights as an employee by providing false and/or misleading information to employees. The statement of facts described meetings and an election held by the union in June of 1996, and accused the union of misrepresenting the number of years of service credit that an employee could purchase in connection with an "early separation package" which had been

offered by an unnamed employer to its employees. That complaint was docketed as Case 12683-U-96-3032.

Both complaints were considered by the Executive Director for the purpose of making preliminary rulings under WAC 391-45-110.[1] Deficiency notices sent to the parties on September 20, 1996 (Case 12645-U-96-3016) and September 24, 1996 (Case 12683-U-96-3032) pointed out several problems with the complaints, as filed. In each case, Wakenight was given a period of 14 days in which to file and serve amended complaints which corrected the noted problems, or face dismissal of these cases.

On October 9, 1996, Wakenight filed a more detailed statement which made reference to Case 12683-U-96-3032.

On October 21, 1996, Wakenight filed documents which he designated as a "more detailed statement", but no case number was indicated.[2] On closer examination, the materials filed on October 21 appeared to combine, for the first time, the facts concerning the two complaints. Specifically, the supplementary materials explain that the two grievances referred to in Case 12645-U-96-3016 concerned the early separation program referred to in Case 12683-U-96-3032. Wakenight further detailed that the first grievance he filed with the union concerned late delivery of a city-wide memo on "early

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[1] At that stage of the proceedings, all of the facts alleged in the complaints were assumed to be true and provable. The question at hand was whether, as matter of law, the complaints' claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

[2] Wakenight had attempted to submit the same materials by telefacsimile transmission on October 4, 1996. He was provided with an information sheet that cites WAC 391-08-120, and explains that it is not possible to "file" materials for an adjudicative proceeding by telefacsimile transmission.

separation", and that the second grievance concerned a lack of application forms. Wakenight also added a new allegation: That the union had not posted the vote on union bulletin boards as he alleged had been the past practice.

The cases are again before the Executive Director for preliminary rulings under WAC 391-45-110. Because it is now apparent that the two complaints concern the same fact pattern, they have been considered together for this purpose.

Potential Insufficiency of Service -

WAC 391-45-030 requires the party who files an unfair labor practice complaint to serve a copy on each party named as a respondent. That requirement is reiterated on the reverse side of the current form promulgated by the Commission for the filing of unfair labor practice complaints. The deficiency notices issued in both of these cases specifically directed Wakenight to "file and serve" any supplementary materials. Nevertheless, there is basis for concern about the sufficiency of service in this case.

Neither the materials filed on October 9 nor the materials filed on October 21, 1996 indicate, on their face, that copies have been provided to the union. Review of the case files fails to disclose anything which indicates that either of the original complaints was ever served on the union. Proof of service is required under WAC 391-08-120 only where the sufficiency of service has been contested, however, and nothing has been heard or received from the union in these cases. Wakenight will be given the benefit of the doubt, and the supplementary materials filed by Wakenight are being acted upon here under a rebuttable presumption that they were properly served on the union contemporaneous with their filing.

Insufficiency as to Form -

WAC 391-45-050 sets forth the required contents of a complaint charging unfair labor practices. The Commission has promulgated a

complaint form and encourages its use, but does not require that it be used in each case. The Commission will process other complaints that meet the requirements of WAC 391-45-050.

The deficiency notice issued in Case 12683-U-96-3032 observed that Wakenight used an obsolete complaint form which did not include all of the required information. The most notable omission was the name of the employer, but examination of the Commission's docket records disclosed that there have been previous cases arising out of Wakenight's employment by the City of Seattle. The Commission thus made a rebuttable presumption that these complaints also involve employment with the City of Seattle.[3]

The supplementary materials filed on October 9, 1996, still did not name the employer. The supplementary materials filed on October 21, 1996 did, however, specifically mention the "Seattle City Council". Moreover, a copy of a June 25, 1996 letter enclosed with the supplemental materials makes specific reference to the City of Seattle. Thus, the omission of naming the employer is not sufficient, standing alone, to warrant dismissal of these cases.

Substantive Defects -

The supplemental materials include a copy of a letter Wakenight sent to union Business Representative Sara Luthens, as follows:

> I would like to file a grievance(s) on the "Early Separation" package Being offered by the City.

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[3] It does not appear that the employer is charged with any wrongdoing in these cases, but every case processed by the Commission must arise out of an employment relationship existing under one of the statutes administered by the Commission. Even where the employer is not a party to the immediate dispute, the name of the employer appears on the docket records and captions for a case, in order to identify the public sector employment relationship from which the Commission asserts jurisdiction.

> The 1st item I would like to grieve is using 2088 hours for a year's service credit.
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> > Article 19, Section 19.1 states: "Eight hours shall constitute a work day and five consecutive days a work week"
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> 8x5=40, 40x52=2080. Using 2088 reduces my service time by over one month. Eight hours x 27 years = 216 hours.
>
> The second item I would like to grieve is the City's ability to pick and choose who may use or may not use this program. I believe since there are no guidelines this violates article 1, non-discrimination.
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> > Article 6, section 6.1, Grievance Procedure: "Any dispute between the City and the Union or between the City and any employee covered by this agreement concerning the interpretation, application claim of breach or violation of the express terms of this agreement shall be deemed a grievance.

Wakenight also enclosed a handwritten note to union Business Manager Joe McGee, which stated:

> I wish to file a grievance against the City of Seattle.
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> The two items I wish to grieve are:
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> 1. The memo on City Wide Early Separation Program dated June 24, 1996 was not delivered to the South Service Center until June 25, 1996.
>
> 2. I went to the SSC Annex, SSC-A/101 and could not pick up the application. I then spoke to Kari Lundquist @ 1:55p.m. on June 25, 1996 and she advised me she had not received the application packets.
>
> What is happing [sic] on 2088?

The supplemental materials include McGee's response dated August 6, 1996, as follows:

... here's the answer to your first question: Correct information was put out that might have been misunderstood. I believe most of the information conveyed was accurate. Part of the plan was, indeed to allow employees granted a separation incentive who were vested in the Retirement System the option to use the pay out to purchase up to four years of retirement service credit by paying both the employee and employer contribution rate. This information was also summarized in written materials distributed in connection with the meeting and vote.

I can assure your that "fraud and deception" were not on anyone's agenda and I resent you suggesting that this was the case. Think about it Don; what would the Union have to gain by orchestrating a favorable vote? Why would we want to do that?

...

Second question: Notices and information about the vote were mailed to each member at their home address. This is considered to be the highest, best (and most expensive) form of notice. We always encourage stewards and member-leaders to post information they receive and my hope is that this information did make it to some bulletin boards. I can assure you that we always like as many people as possible to participate in elections and that's why multiple meetings and voting opportunities were scheduled on this issue. If you believe the Union was attempting to discourage turn out, why would we do a direct mailing and hold multiple meetings? And how could we know which way the vote would go whether there was a large turnout or a small turnout?

Third question: Results of the vote were made available to you and all members through several means, including a 24 hour telephone hotline. Out of approximately 2100 members in the City, 199 voted and the proposal was accepted by 179. Though we might like a higher turn out, this number is not unusual in such an election, particularly where not everyone in the unit feels they will be affected by a proposed change. Often times when members have advance information about the issues to be voted, as they did here, and they don't have strong feelings about them, they do not come to the meeting to vote. ...

With his amended complaint, Wakenight also supplied a worksheet which he claimed showed that no union member who needed service credit could buy more than slightly over 2 years of service credit. The worksheet is not identified as to either its author or original use, however, so it is impossible to infer that the union is in any way responsible for its content.[4]

Taking the materials filed in the two cases together, it is apparent that the disputes between Wakenight and the union are not of a nature for which relief is available in through unfair labor practice proceedings before the Public Employment Relations Commission. While an exclusive bargaining representative owes a "duty of fair representation" to employees within a bargaining unit that it represents, the Commission does not assert jurisdiction over "breach of duty of fair representation" claims arising **exclusively** out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).

The Commission does police its certifications, and it does assert jurisdiction over "duty of fair representation" claims where it is alleged that a union had aligned itself in interest against one or more bargaining unit employees based on unlawful considerations (e.g., race, creed, national origin, or union membership).[5] No such allegations of discrimination are advanced in either of these cases, however.

Finally, Wakenight has not provided facts that could lead to a conclusion that the information which he received from the union

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[4] Figures are filled into boxes, with some of the figures altered to compute what Wakenight alleges to be a different calculation than was computed previously.

[5] Such discrimination would place in question the union's right to enjoy the benefits of status as an exclusive bargaining representative under the statute.

concerning the early separation program was wholly without basis in fact or wholly unreasoned, or that the union was acting dishonestly or in bad faith when it provided information concerning service credits in the retirement system. Nor did Wakenight allege that he ever relied on incorrect information to his detriment. A mistake made in good faith, if a mistake was indeed made, is not actionable as an unfair labor practice. As was stated in Auburn School District, Decision 3408 (PECB, 1990):

> The exclusive bargaining representative of employees has a duty under state law to bargain collectively, in good faith, with the employer of employees that it represents, and also has a "duty of fair representation" towards all of the employees in the bargaining unit it represents. RCW 41.56.020(2); RCW 41.56.090. **The union is not obligated to secure** equal treatment or **the complete satisfaction of each employee it represents**. The Supreme Court of the United States described the duty as follows:
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> > Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
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> Ford Motor Company v. Huffman, 345 U.S. 330 (1953) at 338.
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> ...
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> To the extent that the union has or may have "misled" its members, that would tend to be on a "political" issue within the organization absent some claim of an unlawful motivation.

[Emphasis by **bold** supplied]

That is particularly true where, as here, there is no claim or evidence of any adverse consequences to the complainant.

Based upon the foregoing, it is concluded that the complaints and amended complaints filed in the above-entitled matters fail to state a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

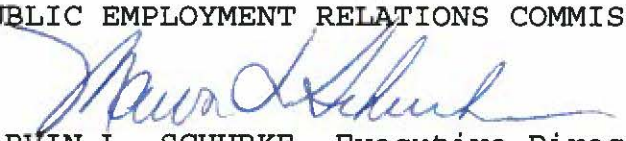
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-captioned matters are hereby DISMISSED for failure to state a cause of action.

DATED at Olympia, Washington this 31st day of October, 1996.

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.