

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK McCOY,)	
)	
Complainant,)	CASE NO. 5692-U-85-1046
)	
vs.)	
)	
AMALGAMATED TRANSIT UNION,)	
LOCAL 1055,)	
)	
Respondent.)	
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MARK McCOY,)	CASE NO. 5693-U-85-1047
)	
Complainant,)	DECISION NO. 2354-A - PECB
)	
vs.)	
)	
C-TRAN,)	DECISION OF COMMISSION
)	
Respondent.)	

Mark McCoy, appeared pro se.

Horenstein, Wynne and Horenstein, by Mark B. Hansen, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a petition for review timely filed by the complainant, Mark McCoy. The cases were docketed on February 20, 1985 based on filing of a complaint charging unfair labor practices which named "Les White - Ann Arnett - Mark Wells - C-Tran" in the space provided for designating the respondent, and which alleged violations of each of the subsections of RCW 41.56.140 and of RCW 41.56.190. Examiner Rex L. Lacy held a hearing in the matter in June of 1985 and issued findings of fact, conclusions of law and order in the matter on December 30, 1985, dismissing the complaints.

BACKGROUND

Mark McCoy has filed a complaint charging unfair labor practices against the Clark County Public Transportation Benefit Area Corporation (hereinafter referred to as C-Tran) and certain named individuals who are identified in the record as officials of C-Tran. The complainant alleged that C-Tran had reneged on an agreement relating to the processing of grievances. That prior agreement was drawn up in settlement of two previous unfair labor practice cases filed by this complainant against both his employer, C-Tran, and his union, Amalgamated Transit Union, Local 1055.¹ The settlement agreement is set out in Exhibit No. 4 and reads as follows:

Amalgamated Transit Union, Local 1055, will process grievances for Mark McCoy as both a bargaining unit member and a shop steward on the basis as they would process grievances for any other member of the local union. And that the employer's letter from Les White to Mark McCoy will be entered in the record for purposes of settling this dispute.

Do you stipulate to that? Mr. McCoy?

MR. MCCOY: I'll agree to that.

¹ The complainant filed two separate complaints with the Commission on August 8, 1984. The complaint in Case No. 5395-U-84-982 named C-Tran as the respondent, alleged that the employer had discriminated against him, and claimed violations of each of the subsections of RCW 41.56.140. The complaint in Case No. 5396-U-84-983 specifically named ATU Local 1055 as respondent, alleged that the union had breached its duty of fair representation, and claimed violations of RCW 41.56.150(1) and (4). Both cases were closed as "withdrawn" by an order issued on January 21, 1985.

THE EXAMINER: Mr. Perkins?

MR. PERKINS: Yes.

THE EXAMINER: Mr. Horenstein?

MR. HORENSTEIN: Yes.

THE EXAMINER: Further, Mr. McCoy, based upon this being settled to your satisfactions, are you agreeable to withdrawing the unfair labor practices filed in case number 5395-U-84-982 and 5396-U-84-983?

MR. MCCOY: Yes.

THE EXAMINER: Is there any other thing to come before the hearing? Hearing none, the hearing is adjourned.

While the letter from Les White to Mark McCoy referred to in the agreement does not appear to be in the record, the focus of the agreement appears to be that grievances will be processed consistently and fairly. The question now before the Commission is whether that agreement has been breached.

The applicable collective bargaining agreement provides:

ARTICLE XXI. GRIEVANCE PROCEDURE

Should there be a dispute or grievance between the Employer and the Union or an Employee in a position covered by this Agreement concerning an alleged breach or violation of this Agreement, it shall be processed in accordance with the following procedure:

Section 1. Procedure

STEP A. Any grievance or dispute shall be taken up by the Employee and the immediate supervisor within five (5) working days from the occurrence. The Employee may be

accompanied by the Union committee person if he so desires. The parties agree to make every effort to settle the grievance promptly at this level. If no settlement is reached, the grievance may be advanced to Step B within ten (10) working days of the meeting of the parties.

STEP B. The grievance shall be reduced to writing setting forth the nature of the grievance, the article and section of the agreement alleged to be violated, and the remedy sought, and signed by the Employee. The Employee and the Union committee person and either the Union Business Representative or Financial Secretary shall present the written grievance to the Director of Operations and Maintenance, who will conduct a meeting within ten (10) working days of receipt of the written grievance. The Director of Operations and Maintenance shall transmit a copy of his decision, in writing, to the Employee, the Union, and the Executive Director and Personnel Manager within ten (10) working days of such meeting.

STEP C. If no satisfactory settlement is reached in Step B, the grievance may be presented to the Executive Director or his designee within ten (10) working days of receipt of the written decision set forth in Step B above. The Executive Director or his designee shall meet with the aggrieved, the accredited Union Representatives, the Director of Operations and Maintenance, and other directly involved individuals as determined by the parties to be appropriate within ten (10) working days of being presented with an unsettled grievance. The Executive Director or his designee shall transmit a copy of his decision within ten (10) working days of such meeting to the Employee, and the Union, and the Director of Operations and Maintenance.

STEP D. For any grievance not settled in Step C, the decision to request arbitration of the grievance must be made by the Union

within ten (10) days after decision set forth in Step C is received.

[Procedures for arbitration omitted]

Section 2. Introduction by Union

Nothing in the steps outlined in Section 1, above, shall be construed as prohibiting the Union Business Representative or Financial Secretary from initiating a grievance at Step B of Section 1, above, within ten (10) days of the occurrence, [(sic)] and pursuing said grievance through Steps C and D.

Section 3. Timeliness

After the grievance is reduced to writing, failure, by either party, to advance the grievance within time limits stipulated in this Article shall result in the grievance automatically being settled in favor of the non-offending party, unless the parties mutually agree to extend the time limit for a given step for a stated period of time. All references to days in this Article shall mean "working days" as in a normal work week of Monday through Friday.

Section 4. Employer Utilization

If the Employer alleges a breach or violation of this Agreement by the Union or one of its officers, the Union shall meet with the Employer at the request of the Executive Director or his designee within ten (10) days of the date of the alleged breach or violation of the Agreement to discuss the grievance. In the event the grievance is not resolved by such meeting, it may be submitted by the Employer to an arbitrator within the timeline and procedure set forth in Section 1 of this Article. Availability of the grievance procedure to the Employer shall in no way restrict or preclude the use of other legal and available remedies either prior to or in lieu of using the grievance procedure.

On November 18, 1982, C-Tran and Local 1055 entered into the following memorandum of agreement:

MEMORANDUM OF AGREEMENT

It is mutually agreed and accepted by both C-Tran and ATU Local 1055 that the Grievance procedure of the current working agreement shall be modified as follows:

ARTICLE XXI, Section 1. Procedure
STEP A

Any grievance or dispute shall be reduced to writing setting forth the nature of the grievance, the article and section of the agreement alleged to be violated, and the remedy sought. The employee shall submit the grievance to his/her immediate supervisor within five working days from the occurrence and the supervisor shall hold a hearing and submit a written decision on the grievance within the five (5) working day period. The Employee may be accompanied by the Union committee person if he so desires. The parties agree to make every effort to settle the grievance promptly at this level. If no settlement is reached, the grievance may be advanced to Step B within ten (10) working days of the meeting of the parties.

STEP B

(Eliminate the first sentence in current language)

This agreement shall become effective December 1, 1982, and shall remain in effect for a period of ninety (90) days from the date noted above and shall be automatically renewed and continued indefinitely unless either party shall give thirty (30) days notice in writing to the other of the desire to amend or terminate this Memorandum of Agreement.

On April 11, 1985, C-Tran and Local 1055 entered into the following memorandum of agreement:

MEMORANDUM OF AGREEMENT

The parties to this Agreement do hereby establish the following understanding regarding the interpretation of the labor agreement currently in effect between C-TRAN and Amalgamated Transit Union, Local 1055, which became effective January 1, 1982, and any subsequent Memoranda of Agreement which pertain to the procedures and rules governing the grievance process as established by the parties.

First, it was never the intent of either party to bar participation in the grievance process of any persons not specifically named as participants to the grievance procedure. Appropriate participation or attendance by persons representing either Union or management was, and is, understood as normal and acceptable by both parties to this Memorandum.

Secondly, it is the intention of both parties to this Memorandum to exclude legal counsel of either party from participation within the process or attendance at hearings, except at Step "C" of the process, and only then with the express consent of both parties to this Memorandum.

Thirdly, the grievance process is intended to provide a resolution to misunderstandings which may occur from time to time upon the interpretation of the labor agreement. It provides the opportunity for both parties to present information which may serve to correct misunderstandings.

Finally, the process provides mechanisms for the protection of the rights of all participants in the process, both Union and management, and is viewed as a problem-solving tool rather than a mechanism which

serves to blunt the attempts to improve labor/management relations.

POSITIONS OF THE PARTIES

As developed before the examiner and in a letter filed on January 27, 1986 in support of the petition for review, McCoy's complaints relate basically to two areas in the grievance process. He maintains that union official Ed Perkins should be present at Step B hearings, and that a second management representative should not. Additionally, McCoy claims a right to move grievances from Step B to Step C by personally notifying C-Tran. He maintains that C-Tran continues to improperly process grievances that he files on behalf of himself and others, in violation of the labor agreements and the settlement agreement. He disagrees with the examiner's decision on a number of points.

C-Tran management personnel maintain that they always have and continue to properly process grievances filed by McCoy.

DISCUSSION

Complainant McCoy has refused to attend grievance hearings because of disputes as to who should be in attendance. The Commission finds, however, that the language in the grievance procedure and memoranda of agreement does not require the attendance of union officials at Step B hearings, nor does it exclude management representatives.

While the language in the contractual documents does not require that Step C grievances be filed by the union financial secretary, such a procedure is not in conflict with the language and appears to have been consistently followed. Further, it appears that in those instances when C-Tran was notified by persons other than the financial secretary of a grievant's desire to process a grievance to Step C, C-Tran would notify the financial secretary of the situation and request him to file, if desired. A copy of that notification is provided to the grievant and grievance filer.

The sixth, seventh and ninth paragraphs of the complainant's January 27, 1986 letter relate to the complainant's principal claim of procedural errors by the employer and union in the processing of his grievances. The procedural points brought out by the complainant are not correct. C-Tran has not improperly refused to accept and process grievances filed by the complainant. Complainant also misstates the record as to the obligations for attendance at grievance meetings. The point at the hearing was that McCoy was responsible for getting union representation to a meeting. Complainant appears to be making several statements of fact for which support is not found in the record. Having reviewed the record, the Commission finds that C-Tran did not improperly process grievances submitted by McCoy.

The complainant raised a number of other specific points in the January 27, 1986 letter. Each has been considered by the Commission, as follows:

In the first paragraph of the letter, the complainant appears to offer that additional evidence could be obtained from Carol Sexton. Carol Sexton testified as a witness at the hearing

before the Examiner. Her testimony has been considered in arriving at the Commission's decision.

In the second paragraph of the letter, the complainant asserts that it was the responsibility of the Commission to move for default against the union following its failure to answer the complaint. The complainant misunderstands the role of the agency as the impartial administrator of the statutes. The union was specifically accused of misconduct in the earlier cases, which apparently resulted in the docketing of a separate case against it when the current complaint was filed. Careful review of the allegations of the February 20, 1985 complaint indicates, however, that the union was not accused of any wrongdoing and was and is not a party to the present dispute. The union was not named as a respondent. None of the boxes on the complaint form relating to "union unfair labor practice" sections of the statute were checked. No direct evidence has been placed in the record faulting the union. The docketing of a case was in error. No answer was required.

Continuing the theme of the previous item, the complainant avers in the third paragraph of the letter that the Examiner refused to inquire fully into the facts concerning misconduct by the union. The obligations of prosecution are on the complainant. WAC 391-45-270. As noted above, the complainant did not file against the union, nor did he subsequently raise or pursue any allegations against the union.

The complainant takes issue in the fourth paragraph of the letter with a statement made by the examiner concerning the effective dates of an agreement between C-Tran and the ATU. The ratification and effective dates of the agreements are not in dispute, however, and have no influence on the outcome.

In the fifth paragraph of the letter, the complainant appears to allege that the examiner's reference to the number of grievances filed by the complainant constituted or implied some retaliation against his exercise of rights. The number given is supported by the record and the inference is unwarranted.² This decision is based on the statutory and contractual rights of the complainant, and not on the number of grievances filed.

Paragraph eight of the letter relates to the modifications of the grievance procedure agreed to by the employer and union. The complainant appears to be making several misstatements of fact. The record fails to support a conclusion that the agreements to change the grievance procedure were discriminatory or otherwise unlawful.

Paragraph ten of the letter takes issue with the examiner's description of the record as demonstrating that the complainant had failed to exhaust the steps of the grievance procedure. The complainant alleges that he has filed complaints with the Human Rights Commission. The Human Rights Commission is, indeed, a proper forum for discrimination complainants. The fact of filing in that forum does not negate the fact that contractual dispute resolution procedures were not completed.

In paragraph eleven of the letter, the complainant takes issue with the characterization of the testimony of two witnesses as

² See: City of Mercer Island, Decision 1580 (PECB, 1983), where the same examiner found that an employer committed an unfair labor practice by threatening an employee for filing too many grievances and other actions against the employer. Such activities are protected by the statute. Valley General Hospital, Decision 1195-A (PECB, 1981).

"highly speculative". The Commission has considered the testimony of those two witnesses in reaching this decision.

In sum, the additional points raised by the complainant do not alter the basic conclusion reached above, concerning the rights of the complainant with respect to the processing of grievances. The decision of the examiner is affirmed.

DATED at Olympia, Washington, this 8th day of August, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner