STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK McCOY, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 1055, Respondent.	CASE NOS. 5692-U-85-1046 5693-U-85-1047
MARK McCOY, Complainant, vs. C-TRAN, Respondent.	DECISION NO. 2354 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Mark McCoy, appeared pro se.

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

This matter came on for hearing before Examiner Rex L. Lacy on June 24, 1985 at Vancouver, Washington.

BACKGROUND AND PROCEDURAL HISTORY

On August 8, 1984, Mark McCoy filed an unfair labor practice complaint with the Public Employment Relations Commission under

RCW 41.56.140. Two separate cases were docketed: Case No. 5395-U-84-982 was assigned to allegations that McCoy had been harassed by his employer for filing grievances. Case No. 5396-U-84-983 was assigned to allegations that his union had committed a breach of its duty of fair representation by refusing to file and/or process McCoy's grievances. The Executive Director made preliminary rulings pursuant to WAC 391-45-110, assigning both cases to Examiner Rex L. Lacy for hearing.

The complainant's employer is Clark County Public Transportation Benefit Area Corporation, hereinafter C-Tran, a municipal corporation organized to provide public transit services to Clark County, Washington. Leslie R. White is executive director, Mark B. Wells is director of operations, and Ann Arnett is personnel manager.

Amalgamated Transit Union, Local 1055, is the recognized exclusive bargaining representative of a bargaining unit of bus operators, including regular, extra board, and part-time operators. Ed Perkins is financial secretary of Local 1055. Mark McCoy was employed in the bargaining unit represented by Local 1055.

Both the union and the employer filed answers to the compaint. A hearing was held on December 19, 1984 on Case Nos. 5395-U-84-982 and 5396-U-84-983. Both the union and the employer appeared in their own defense. During the course of that hearing, the parties reached a settlement agreement on the issues before the Examiner. Based upon that settlement agreement, McCoy withdrew the unfair labor practice allegations.

On February 20, 1985, McCoy filed another complaint charging unfair labor practices with the Public Employment Relations Commission. The complaint was filed on the form promulgated by Commission. In the space provided on the form for information as to the identity of the "Respondent", the complainant had inserted only the names of the three management persons identified above and the term "C-Tran". In the portion of the form calling for description of the bargaining unit involved, however, the complainant had inserted the names of the union and union official Perkins. The material allegations of the February 20, 1985 complaint are as follows:

> On December 19, 1984 there was a hearing at C-Tran office for an unfair labor practice complaint. A settlement was reached at 11:30 AM. I agreed to withdraw the complaints based on settlement and agreement made by Les White, executive director, Ann Arnett, personnel manager, and Mark Wells, director of operations, also Scott J. Horenstein, C-Tran's attorney.
>
> However on the same day, December 19, 1984, a letter was written by Ann Arnett, #4526/AA/CK, that ignores the agreement we had just made at 11:30 that day. I also received a letter from Les White, executive director, #4525/LRW/SL, written the same day of the hearing. It also ignores the agreement intered into just a few hours before.
>
> There has been "NO" change at work even though there was an agreement agreed to by all the parties.
>
> Les White, Ann Arnett and Mark Wells (C-Tran) continues to deny me the right to the grievance process, as an employee and as a shop steward. I have been denied the grievance process for "3" three years now. My family and I have been made to pay a high toll just to keep my job at C-Tran.

> I was tricked into withdrawing the charges of unfair labor practices.
>
> The fact is C-Tran entered into an agreement they did not keep for even 24 hours. This was an agreement of law and order, everyone understood what was happening, and how things were to go, according to grievance procedure.
>
> Letters were written the same day of the hearing, just hours after the charges were withdrawn, and other letters after that date, show that C-Tran's bargaining practice is an unfair labor practice.
>
> To enter into a collective bargaining hearing and make an agreement and then ignore the same, I submit is an unfair labor practice.

The remedy requested in the complaint was:

> $75,000. All grievances that have been processed in which the bargaining agreement and or the agreement of December 19, 1984, Case 5395-U-84-982 and 5396-U-84-983 was not used, be made void and all be settled in favor of the non-offending party. For all information making references to discipline be taken from work and personnel files.

Given the references to both of the earlier proceedings, two separate cases were docketed. In making preliminary rulings on March 8, 1985 pursuant to WAC 391-45-110, the Executive Director identified separate causes of action in Case No. 5692-U-85-1046 against the union (for breach of its duty of fair representation), and in Case No. 5693-U-85-1047 against the employer (for interference with rights guaranteed by Chapter 41.56 RCW), reflecting the causes of action identified in the earlier cases. Rex L. Lacy was designated as Examiner to conduct further proceedings under Chapter 391-45 WAC.

A notice of hearing was issued on May 31, 1985, setting hearing on both cases for June 24, 1985 and setting June 14, 1985 as the deadline for filing of an answer. The employer filed an answer on June 13, 1985, and it appeared by counsel at the hearing and took an active part in the proceedings. The union did not file an answer. Perkins was present in the hearing room throughout the hearing and gave testimony as a witness called by the complainant, but the union did not otherwise take an active role in the proceedings. During the course of the hearing, the complainant did not move for default based on the failure of the union to file an answer, and he did not pursue any allegations of misconduct on the part of the union.

The complainant and the employer filed post-hearing briefs.

FACTS:

C-Tran and ATU Local 1055 have been parties to a series of collective bargaining agreements, the latest effective from January 1, 1982 to December 31, 1984. The same parties are also signatory to a memorandum of agreement dated November 11, 1982.

Mark B. McCoy, the complainant, is employed by C-Tran as a bus operator. Additionally, McCoy serves as a shop steward for Local 1055. As an individual and as shop steward for Local 1055, McCoy has filed in excess of 30 grievances in the two-and-one-half years preceding the hearing in the captioned matters. McCoy has also filed at least one Equal Employment Opportunity complaint.

Article XXI of the collective bargaining agreement reads as follows:

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 ocurrence, (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.

Essentially, the parties agreed in their settlement of the first set of unfair labor practice charges to process grievances in accordance with the provisions of the collective bargaining agreement and the memorandum of agreement dated November 18, 1982, which establish the minimum number and the titles of participants at each step of the grievance procedure.

Subsequent to the hearing and settlement of those charges, McCoy filed several more grievances. The grievances involved the pay status of McCoy under PDO (paid days off) and STD (short-term disability) provisions. McCoy was represented at Step A of the grievance procedure by Carol Sexton, another shop steward. The February 20, 1985 complaint claims that the employer violated the terms of the December, 1984, settlement agreement by refusing to properly process McCoy's grievances, and for not having the proper union and management officials present at the designated steps of the grievance procedure.

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

The complainant contends that the employer violated the terms of the December 19, 1984 settlement agreement, the provisions of the grievance procedure, and the November 18, 1982 memorandum of agreement, in processing grievances filed by the complainant as an individual, and as a shop steward. Additionally, McCoy contends that the employer has interfered with his statutory rights by refusing to accept grievances filed for himself, and for other bargaining unit employees.

The employer contends that it has not violated RCW 41.56.140, that it has not refused to accept and process McCoy's grievances, and that the grievance procedure and November 18, 1982 memorandum of agreement have been followed in processing McCoy's grievances.

DISCUSSION

The authority of the Public Employment Relations Commission in unfair labor practice cases pursuant to Chapter 41.56 RCW is limited to enforcement of the following proscriptions:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
>
> (4) To refuse to engage in collective bargaining.

> RCW 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.

The Fair Representation Issue

The February 20, 1985 complaint did not include any specific allegations that the union had breached its duty of fair representation in the processing of McCoy's grievances. At hearing, the complainant acknowledged that the complaint was solely against the employer. However, the complainant makes some references in his post-hearing brief to non-performance by the union at Step B hearings on grievances filed by McCoy. Because those references were raised, albeit late in the proceedings, the Examiner has studied the record as a whole to determine if there is, in fact, a cause of action against the union for violation of its duty of fair representation.

The duty of fair representation was established in a series of cases arising under the Railway Labor Act. In Steele v. Louisville & N.R.R., 323 US 192 (1941), the Supreme Court stated:

> The union's duty is to exercise fairly the power conferred upon it, in behalf of those for whom it acts, without hostile discrimination against them.

The Supreme Court later stated in Vaca v. Sipes, 386 US 207 (1967):

> A breach of the statutory duty occurs ... when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.

In Vaca, the Supreme Court ruled that a cause of action exists in state and federal courts under Section 301 of the Labor-Management Relations Act of 1947 (Taft-Hartley Act) for grievants who can establish that their union has breached its duty of fair representation in connection with the processing of a contractual grievance, thus giving the grievant access to a remedy against the employer for breach of the collective bargaining agreement. The availability of judicial relief for a union's breach of the duty of fair representation is discussed in Vaca as follows:

> There are also some intensely practical considerations which foreclose pre-emption of judicial cognizance of fair representation duty suits, considerations which emerge from the intricate relationship between the duty of fair representation and the enforcement of collective bargaining contracts. For the fact is that the question of whether a union has breached its duty of fair representation (sic) will in many cases be a critical issue in a suit under L.M.R.A. Section 301 charging an employer with a breach of contract. 64 LRRM 2369 at 2374.
>
> * * *
>
> ... it is obvious that the courts will be compelled to pass upon whether there has been a breach of the duty of fair representation in the context of many Section 301 breach-of-contract actions. If

> a breach of duty by the union and a breach of contract by the employer are proven, the court must fashion an appropriate remedy. Presumably in at least some cases, the union's breach of duty will have enhanced or contributed to the employee's injury. What possible sense could there be in a rule which would permit a court that has litigated the fault of the employer and the union to fashion a remedy only with respect to the employer? Under such a rule, either the employer would be compelled by the court to pay for the union's wrong - slight deterrence, indeed, to future union misconduct - or the injured employee would be forced to go to two tribunals to repair a single injury. Moreover, the (National Labor Relations) Board would be compelled in many cases either to remedy injuries arising out of a breach of contract, a task which Congress has not assigned to it, or to leave the individual employee without remedy for the union's wrong. 64 LRRM 2369 at 2375.

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of RCW 41.56 to remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). Violations of collective bargaining agreements, like other causes of action arising from contracts, are remedied through civil litigation in the courts. The Public Employment Relations Commission has processed several "fair representation" cases. Elma School District, Decision 1349 (EDUC, 1982), involved allegations of discrimination by a union against a non-member, a type of conduct which could clearly have been in violation of the duties imposed on an exclusive bargaining representative by the statute. In City of Redmond, (Redmond Employees Association), Decision 866 (PECB, 1980), the union refused to process a grievance without a valid reason for refusing to do so, and a breach of duty of fair representation

violation was found, but it was impossible for the examiner to place himself in the role of the courts in enforcement of the contract itself. Later, Mukilteo School District, (Public School Employees), Decision 1381 (PECB, 1982), arose from an allegation involving differing interpretations of the collective bargaining agreement. In dismissing the complaint in Mukilteo, the Executive Director stated:

> Assuming all the facts alleged to be true and provable, it is nevertheless the conclusion of the undersigned that the Public Employment Relations Commission lacks jurisdiction to remedy a breach of the duty of fair representation arising exclusively from the processing of claims arising from an existing collective bargaining agreement.

The Mukilteo case casts serious doubt on the jurisdiction of the examiner in this case. Any complaint against the union arises exclusively from the processing of the grievances filed by the complainant.

The Racial Discrimination Issue

The National Labor Relations Board has held that discrimination based on race, color, religion, sex, or national origin, standing alone, is not a violation of the National Labor Relations Act, absent actual evidence, as opposed to speculation, of a nexus between the alleged discriminatory conduct and interference with, or restraint of, employees in the exercise of the rights protected by the Act. Jubilee Manufacturing Co., 202 NLRB 272 (1973). Employees are considered engaged in protected activities, however, when they protest their employer's discriminatory practices, provided they do not bypass an applicable collective bargaining agreement. The Supreme Court

held that employees lose the protection of the Act when they bypass the grievance procedure and attempt to eliminate alleged discriminatory practices on their own. Emporium Capwell Co. v. Western Addition Community Organization, 420 US 50 (1975). Accord: City of Seattle, Decision 205 (PECB, 1977). In any event, racial discrimination unrelated to the labor relations relationship between the parties is under the jurisdiction of another state agency, the Human Rights Commission.

In this instance, the record establishes that McCoy had not exhausted the steps of the grievance procedure of the collective bargaining agreement. Rather, he attempted to truncate the grievance procedure by alleging discrimination.

At the hearing, the evidence presented to the Examiner involved several ex-employees' testimony that the employer may have discriminated for racially oriented reasons. Those employees were black Americans, just as McCoy is black. Their statements were highly speculative, and, additionally, related to incidents occuring more than six months prior to the filing of these complaints. RCW 41.56.160 provides that an unfair labor practice complaint shall not be processed for any unfair labor practice occuring more than six months before the filing of the complaint with the Commission. Therefore, testimony concerning events occuring beyond the six-months statute of limitations has been ignored in this decision.

The record, as a whole, does not establish that either the employer or the union has discriminated against McCoy on the basis of race, color, religion, sex, or national origin while he was engaged in filing and processing grievances, or while he was engaged in any other protected activities.

The Grievance Issue

The National Labor Relations Board has determined that discipline or discharge of employees for filing and processing grievances pursuant to a contractual grievance procedure is a violation of Section 8(a)(1) of the Labor-Management Relations Act of 1947, as amended,. John R. Secton and Co., 217 NLRB 80 ((1975); Ernest Steel Corp., 212 NLRB 78 (1974); Southwestern Bell Tel. Co., 212 NLRB 43 (1974). The Public Employment Relations Commission has similarly determined that filing and processing of grievances are protected activities pursuant to RCW 41.56.140(1), Valley General Hospital, Decision 1195-A (PECB, 1981); King County, Decision 1698 (PECB, 1983); Port of Tacoma, Decision 1396-A (PECB, 1983). An employer will be found guilty of a violation if the employer merely interferes with the employee's attempts to file and process grievances pursuant to a grievance procedure.

Viewed as a whole, the entire record in these matters does not indicate that the employer has denied McCoy access to the grievance procedure, either as an individual or on behalf of other employees in his role as a shop steward for Local 1055. McCoy has filed over 30 grievances during the course of his employment. Those grievances have been accepted and processed by the employer at each step of the grievance procedure. It is clear from the record that McCoy, not the employer, was responsible for numerous interruptions of the grievance process. McCoy refused to process his own grievances and those of fellow employees whenever he believed that the contractually designated persons were not present. Additionally, McCoy refused to process grievances if he believed that somebody was present whose presence was not specifically required by the contract.

The contract, as amended by the November, 1982 memorandum of agreement, was designed to establish the minimum number of participants at each step of the processing of employee grievances. The complainant alleges that the intent of the December, 1984 settlement agreement was not followed by the employer, but the record establishes that the director of operations responded to Step A grievances, and the personnel manager scheduled and conducted Step B level hearings. The grievance procedure permits a union committee person to present grievances at Step A of the process. Grievances at Step B may be presented by the financial secretary, the union's business representative, or a union committee person. McCoy, in his role as shop steward, was entitled to present grievances at Step A or Step B. Whether or not the business representative or financial secretary was present at Step B was McCoy's responsibility. The employer has no obligation to require the union's representatives be present during the presentation of any grievance.

When considered on their merits, it appears that McCoy's claims must fail. The collective bargaining agreement grievance procedure as amended establishes the process for resolving employee grievances. The subsequent agreement of the employer and union evidences an attempt to de-emphasize procedural rights while pursuing a goal of improved communications which is consistent with the purposes of the Public Employee Collective Bargaining Act. See: RCW 41.56.010. Any violation of rights that could be established herein arises solely from Article XXI of the collective bargaining agreement, not Chapter 41.56 RCW.

In conclusion, the burden of proof in unfair labor practice proceedings rests with the complaining party. The Courts of Washington explain the burden thusly:

> Generally, the "burden of proof", in sense of duty of producing evidence, passes from party to party as the case progresses, while the burden of proof, meaning the obligation to establish the truth of the claim by a preponderance of evidence, rests throughout upon party asserting the affirmative of the issue, and unless he meets this obligation upon the whole case, he fails.

Gillingham v. Phelps, 11 Wn.2d 492 (1942).

The complainant can fulfill its burden of proof by offering direct evidence, e.g., a witness to the action, or by offering circumstantial evidence which requires a weighing of probabilities as to matters other than the truthfulness of a witness. The evidence must be persuasive enough to convince a reasonable person that the action actually occured. The complainant has not met his burden of proof in this matter.

FINDINGS OF FACT

1. Clark County Public Transportation Area Corporation, d/b/a C-Tran, is a municipal corporation within the meaning of RCW 41.56.020, and a public employer within the meaning of RCW 41.56.030. C-Tran provides public transit services in Clark County, Washington. Leslie R. White is executive director, Mark B. Wells is director of operations, and Ann Arnett is personnel manager.

2. Amalgamated Transit Union, Local 1055, a bargaining representative within the meaning of RCW 41.56.030(3), is the recognized exclusive bargaining representative for an appropriate bargaining unit of C-Tran bus operators. Ed

Perkins is financial secretary of Local 1055. Mark McCoy and Carol Sexton are shop stewards for the union.

3. C-Tran and Amalgamated Transit Union, Local 1055, have entered into a series of collective bargaining agreements, the latest of which is effective from January 1, 1982 to December 31, 1984. Article XXI of the agreement was modified by a mutually agreed to memorandum of agreement signed on November 18, 1982. Essentially, the memorandum of agreement identified the management representatives to consider grievances at Step A and Step B of the grievance procedure. Additionally, the memorandum of agreement added union committee persons to Step A and Step B as individuals who could present grievances at those two levels of the grievance process.

4. Mark McCoy, the complainant, is a bus operator for C-Tran. During a period of two-and-one-half years, McCoy filed in excess of 30 grievances involving himself and other bus operators.

5. On August 8, 1984, McCoy filed a complaint with the Public Employment Relations Commission alleging violations of RCW 41.56.140. The complaint was docketed as two separate cases. Case No. 5395-U-84-982 involved allegations that McCoy had been harassed for filing and processing grievances pursuant to Article XXI of the collective bargaining agreement. Case No. 5396-U-84-983 involved an alleged breach of Local 1055's duty of fair representation for refusing to process McCoy's grievances.

6. On December 19, 1984, a hearing on Case Nos. 5395-U-84-982 and 5396-U-84-983 was convened at Vancouver, Washington. During the course of the hearing, the three parties reached

a settlement of the issues before the examiner under which the parties agreed that grievances would be processed in accordance with Article XXI of the collective bargaining agreement, as amended on November 18, 1982.

7. Subsequent to the December 19, 1984 hearing, McCoy filed several additional grievances. Additionally, he filed an Equal Employment Opportunity complaint with the employer's affirmative action officer, Ann Arnett, personnel manager. Carol Sexton, shop steward, represented McCoy at Step A for at least one grievance.

8. On February 20, 1985, McCoy filed this complaint with the Public Employment Relations Commission wherein he alleged that the employer had violated RCW 41.56.140, the collective bargaining agreement and the December 19, 1984 settlement agreement for Case Nos. 5395-U-84-982 and 5396-U-84-983, by refusing to process grievances filed and processed by Mark McCoy. As was previously done, two separate cases were docketed. The Executive Director assigned Case No. 5692-U-85-1046 against the union, and Case No. 5693-U-85-1047 against the union, to an Examiner for hearing.

9. The employer accepted and processed McCoy's timely grievances, including those on his own behalf as well as those filed by McCoy on behalf of other bus drivers, in accordance with Step A of Article XXI of the 1982-1984 collective bargaining agreement between ATU, Local 1055, and C-Tran, as amended by the parties in November, 1982.

10. Amalgamated Transit Union, Local 1055 did not refuse to file and process McCoy's grievances. The record does not establish that McCoy requested that other union officials present or process grievances filed by McCoy at

Step A or Step B of Article XXI of the 1982-1984 collective bargaining agreement between ATU, Local 1055 and C-Tran.

11. Amalgamated Transit Union, Local 1055 and C-Tran have not discriminated against McCoy on the basis of sex, race, color, religion or national origin for filing and processing grievances pursuant to Article XXI of the 1982-1984 collective bargaining agreement between ATU, Local 1055 and C-Tran.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.160.

2. Amalgamated Transit Union Local 1055 has not violated Chapter 41.56 RCW by its actions in regards to grievances filed or processed by Mark McCoy.

3. Clark County Public Transportation Benefit Area Corporation, d/b/a C-Tran, has not violated Chapter 41.56 RCW by its actions in regard to the processing of grievances filed or processed by Mark McCoy under Article XXI of the collective bargaining agreement between C-Tran and Amalgamated Transit Union, Local 1055.

ORDER

The complaints charging unfair labor practices filed in the above-entitled matters are dismissed.

DATED at Olympia, Washington, this 30th day of December, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Rex L. Lacy

REX L. LACY, Examiner

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