STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RICHARD A. RUSSELL, Complainant, vs. KING COUNTY FIRE DISTRICT NO. 24, Respondent.	CASE NO. 6068-U-85-1136 DECISION NO. 2404 - PECB
RICHARD A. RUSSELL, Complainant. vs. INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2919, Respondent.	CASE NO. 6212-U-86-1181 PRELIMINARY RULING

On October 28, 1985, Richard A. Russell filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complaint listed King County Fire District No. 24 as respondent, but the complainant did not make any marks in the space provided on the complaint form for indication of the sections of statute alleged to have been violated. Extensive materials were filed with the complaint. Upon detailed review of the statement of facts and accompanying materials, it appears that the complaint contains allegations against both the employer and the union which represents firefighter employees of the employer. Since the case docketing procedures of the Commission do not make provision for multiple respondents in unfair labor practice cases, a second case has been docketed to deal with the allegations against the union.

The matters are presently before the Executive Director for preliminary rulings pursuant to WAC 391-45-110. At this stage of the proceedings, it must be assumed that all the facts alleged are true and provable. The question at hand is whether the complaints state claims for relief which can be granted through the unfair labor practice procedures of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

The factual allegations of the complaint are too extensive to be set forth in full, and so are summarized here. The complainant describes himself as a "lieutenant" in the employer's fire department, and he has submitted a number of potential items of evidence which reflect reference to him by (and use by him of) the "lieutenant" title. He alleges that he previously successfully tested for the position, that he became a fully paid lieutenant on April 4, 1983, and that he has maintained a good employment record. The complainant has recently been required to submit a resume and to participate in a promotional examination for the rank of lieutenant. From that background, the complainant appears to set forth four separate theories against the employer and/or union, as described in the paragraphs which follow.

The complainant criticizes the employer's past and present personnel practices, claiming that good personnel practices would entitle him to be "grandfathered" in the lieutenant rank at this time without re-examination. These allegations fail to state a cause of action. The Public Employment Relations Commission does not have general authority to resolve all disputes arising in the workplace between public employees and their employers. The "unfair labor practice" provisions of the statute, RCW 41.56.140 and RCW 41.56.150, set forth specific obligations and limitations on the collective bargaining process. While the complainant may believe it "unfair" to require him to re-apply for a rank which

he believes that he already rightfully holds, that does not mean that the claim is a violation of the "unfair labor practice" provisions of Chapter 41.56 RCW. Although there is a passing reference to "discrimination", the facts alleged in the complaint fall short of suggesting that either the employer or the union have discriminated against the complainant in reprisal for his having engaged in protected union activity or for his exercise of his statutory right to refrain from union activity. There seems, therefore, to be no basis to reach or consider the allegation that the complainant has an unblemished employment record. With these things in mind, the allegations of the complaint and requests for relief which concern interpretation of the employer's past personnel actions, the reasonability of the employer's present personnel practices and the request for "grandfathered" status are beyond the scope of unfair labor practice proceedings.

The complainant alleges that the union and employer engaged in collusion when they negotiated a contract provision which requires competitive examination and a rule of three for promotion. The delineation of ranks or classifications, the procedures for promotions among non-supervisory classifications and any provisions for "acting" status in a rank (or level of compensation) would all be matters at the discretion of the employer in the absence of limitations imposed by statutes. Federal and state laws against discrimination impose some such limitations on employer discretion. Where they exist, civil service procedures may control some or all of these aspects of covered employment relationships. Where, as here, the employees have chosen to organize under an applicable statute for the purposes of collective bargaining, the employer has a duty to bargain in good faith with the union before making any changes in the matters of wages, hours and working conditions which are subject to mandatory bargaining. For its part, a union designated as exclusive bargaining representative of a bargaining unit of employees has a

duty to bargain in good faith with the employer, giving fair representation to all members of the bargaining unit. The role of the Public Employment Relations Commission is to rule on disputes as to the subjects for bargaining and to enforce the good faith bargaining obligations on both the employer and the union. The Commission is not thereby empowered to audit the wisdom of every agreement reached in bargaining, but does consider allegations of collusion between an employer and a union. That type of conduct is subject to scrutiny in unfair labor practice proceedings before the Commission, because a union is prohibited by the statute from acting towards a bargaining unit member or class of bargaining unit members in a manner which is arbitratory, discriminatory or lacking in good faith. In evaluating such allegations, it is necessary to distinguish between "unequal" and "unfair". While a union is not required to bargain provisions of equal benefit to all bargaining unit members, it may not use the role of exclusive bargaining repesentative to obtain special benefits for union officials or otherwise align itself in interest against one or more unit members. The problem in the present case is that the allegations of this complaint are so conclusionary as to prevent forming an opinion as to whether a violation may have been committed. One possible interpretation is that these allegations result only from the fact that the union negotiated an agreement with the employer which opens up the complainant's position to competitive examination. In order to form an opinion as to whether a violation of the law might have occurred, more specific factual allegations are needed.

The complainant alleges that the contract provisions circulated for review were subsequently changed. Enclosed with the complaint are two copies of a collective bargaining agreement, one showing the complainant, by name, in "acting" status and the other without the "acting" designation. The precise events are

not detailed. The duty to bargain and the authority to sign a collective bargaining agreement is vested in the exclusive bargaining representative, not in individual members of the bargaining unit. While the Commission regulates the bargaining relationship between the employer and the union, it has less involvement in the internal affairs of unions. Labor organizations commonly have provisions in their constitutions or by-laws for ratification of contracts by bargaining unit members. Such founding documents may be enforced as the contract among the members for the operation of their union, but the primary authority for deciding disputes concerning violations of such procedures lies within the union or in the courts. Additional facts would be needed to identify any misconduct within the purview of the Public Employment Relations Commission.

Finally are a set of allegations in which the complainant claims that some of the union's leadership is applying for the lieutenant position, so that there is a conflict of interest which deprives him of union representation. Again, more specific factual allegations are needed. The materials now on file are subject to an interpretation which contradicts the claim of a conflict of interest, since it appears that a union official finds himself in a situation similar to that of the complainant, and that the union has unsuccessfully protested to the employer on behalf of both employees. The complaint must be based on operative facts which indicate action by the union representatives to take advantage of their position in the union by negotiating terms which discriminate against the complainant in order to secure advantage for themselves, or for some other unlawful reason. The Commission cannot process complaints which are speculative.

With the direction provided here, the complainant may be able to amend the complaint to focus attention on claims within the

jurisdiction of the Commission.

NOW, THEREFORE, it is

ORDERED

The complainant will be allowed a period of fourteen (14) days following the date of this order to amend the complaints. In the absence of an amendment, the complaints will be dismissed as failing to state a cause of action.

DATED at Olympia, Washington, this 12th day of March, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director