

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF SEATTLE,)	
Employer)	
_____)	
GENE MINETTI,)	CASE NO. 6184-U-86-1171
Complainant,)	
vs.)	DECISION 2549-C - PECB
INTERNATIONAL LONGSHOREMENS AND)	
WAREHOUSEMENS UNION, LOCAL 9,)	ORDER OF DISMISSAL
Respondent.)	
_____)	

Gene Minetti filed the complaint in the above-captioned matter with the Public Employment Relations Commission on January 21, 1986.¹ The complainant alleges that International Longshoremen and Warehousemen Union, Local 9, has committed unfair labor practices within the meaning of RCW 41.56.150 in connection with a ratification vote taken by the union on a revision of the contract between the union and the Port of Seattle. In

¹ The complainant made three separate filings with the Commission during the period between January 21 and February 3, 1986. On each occasion, initial examination of the documents suggested possible claims against both the Port of Seattle and International Longshoremen and Warehousemen Union, Local 9. Accordingly, six separate cases were docketed. The companion case to the above-captioned matter was previously dismissed for failure to state a cause of action against the employer. Port of Seattle, Decision 2548 (PECB, 1986). The four remaining cases have been assigned to an examiner for further proceedings.

particular, the complainant takes issue with union procedures which restricted voting to employees (who are equated with "union members") having "seniority status" out of a larger group of Port of Seattle employees, and with procedures by which the ballots of a majority of those voting (alleged to be 29) were determinative.

The complaint in this matter was reviewed by the Executive Director, along with other cases filed by the same complainant, pursuant to WAC 391-45-110, and was found to be insufficient to state a cause of action. A preliminary ruling was issued on October 10, 1986,² wherein the complainant was allowed fourteen (14) days in which to file an amended complaint.

Nothing was received from the complainant within the time specified in the preliminary ruling, and an order of dismissal was issued on October 31, 1986.³

On November 4, 1986, within the time specified in the rules for withdrawal or modification of a decision, the complainant filed a request for additional time, indicating that he desired to obtain the assistance of legal counsel.

An order was issued on November 10, 1986, setting aside the order of dismissal and allowing the complainant:

. . . until December 1, 1986 to file additional facts sufficient to state a cause of action against the union for its limitation of the group of employees eligible to vote on ratification of an agreement reached in collective bargaining.

² Decision 2549 - PECB.

³ Decision 2549-A - PECB.

In the absence of an amended complaint filed in the office of the Commission by that date, Case No. 6184-U-86-1171 will again be dismissed for failure to state a cause of action.

Port of Seattle (ILWU Local 9), Decision 2549-B (PECB, 1986).

On December 1, 1986, the complainant filed a letter with the Commission consisting of three handwritten pages.⁴ With reference to the allegations in the above-captioned complaint, the letter states:

The complaint concerning the voting restrictions is possibly sustainable on the basis of violating the union's own bylaws and constitution. Unfortunately these are somewhat vaguely worded.

The implication underlining all three of my complaints is that the union violated its obligation of fair representation.

This right to fair representation is imposed by RCW 41.56.150(4). Even more stringent requirements are imputed by the union's relationship to the Port of Seattle. When the POS delegates its hiring prerogatives to a union, that union "assumes the mantle" of being responsible for fair hiring in the same ways that the POS is obligated.

The letter goes on to detail effects of the contract revision which are at issue in the four cases which have been assigned to an examiner for hearing.

⁴ No attorney has noted an appearance of record on behalf of the complainant, nor is reference made to legal counsel in the December 1 communication.

The above-captioned case is again before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110. At this stage of the proceedings, it must be assumed that all of the facts alleged in the complaint are true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

The initial preliminary ruling in Case No. 6184-U-86-1171 noted the possibility of a defect because the complaint alleged conduct "sometime previous to September 4, 1985" without establishing that the conduct was within the six months prior to the filing of the complaint. In his December 1, 1986 letter, the complainant alleges that the conduct complained of occurred after July 21, 1985. It thus appears that no "statute of limitations" problem is present.

With respect to the substance of the complaint, however, the December 1, 1986 letter fails to cure the problem. As was noted in the initial preliminary ruling issued in this case:

There is no explicit requirement in the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, that requires a vote of bargaining unit members on matters such as the ratification of a collective bargaining agreement. Pierce County, Decision 2209 (PECB, 1985); Stelling v. IBEW Local 1547, 587 F.2d 1379, 100 LRRM 2366 (9th Cir. 1978); American Postal Workers Union Local 6885 v. American Postal Workers Union, 665 F.2d 1096, 108 LRRM 2105 (D.C. Cir. 1981); Leary v. Western Union Telegraph Co., 117

LRRM 3005 (D.C. NY 1983).⁵ The general rule on such matters is:

No law except, perhaps, its own bylaws directs the bargaining agent as to how to formulate its proposals. It need not consult all, or any, of its own members. It certainly need not consult nonmembers, ...

Lewis County, Decision 556-A (PECB, 1979)

The "majority vote" test used by the union would be regulated, if at all, by the constitution and/or bylaws of the union.

The Public Employment Relations Commission regulates the collective bargaining relationships between unions, employers and employees under state collective bargaining laws. The Commission is not thereby empowered to become the arbiter of disputes concerning the interpretation or enforcement of the constitutions and bylaws of such unions.

The bulk of the materials contained in the complainant's December 1, 1986 letter relate to the complaints filed on February 3, 1986 (which allude to possible collusion between the employer and the union in establishing and implementing supplemental revisions of the collective bargaining agreement which would be discriminatory against the complainant) and to the complaints filed on January 29, 1986 (which allege, in essence, that the employer and the union followed through with implementation of a collusive agreement and thus unlawfully discriminated for or against certain applicants for employ-

⁵ Parties still have to comply with other non-labor statutes, such as the Open Public Meetings Act. See: State Ex Re. Bain v. Clallam County, 77 Wn.2d 542 (1970); Grant County, Decision 1638 (PECB, 1983); Mason County, Decision 2307-A (PECB, 1986).

ment), all of which have been found to state causes of action and have been assigned for hearing. Even as so amended, the complainant in this case does not allege that, by its conduct of the ratification process, the union aligned itself in interest against one or more employees or groups of employees within the bargaining unit, so as to violate its duty of fair representation or put in question the right of the union to enjoy the statutory benefits of "exclusive bargaining representative" status.

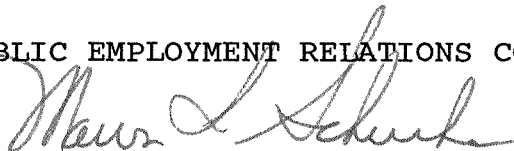
NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter, as amended by the document filed by the complainant on December 1, 1986, is dismissed for failure to state a cause of action for unfair labor practice proceedings before the Public Employment Relations Commission.

DATED at Olympia, Washington, this 5th day of December, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.