STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, Complainant, vs. CITY OF SEATTLE, Respondent. | CASE NO. 7007-U-87-1425<br>DECISION 3079 - PECB<br>FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

Paul M. Grace, Business Representative, appeared on behalf of the complainant.

Patrick J. Oshie, Assistant City Attorney, appeared on behalf of the respondent.

On September 8, 1987, the International Federation of Professional and Technical Engineers, Local 17, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had interfered with the rights of the exclusive bargaining agent, by refusing to allow Local 17 to represent employees in its bargaining unit in internal Equal Employment Opportunity (EEO) complaints. The union cites RCW 41.56.140(1) and (2). On October 16, 1987, and on April 15, 1988, Local 17 amended its complaint to allege that the city discriminated in violation of RCW 41.56.140(1) and (2), by permitting employees other than union representatives to represent employees making EEO complaints. A hearing was conducted on April 15, 1988, by Examiner William A. Lang. Post-hearing briefs were filed on July 15, 1988.

FACTS

International Federation of Professional and Technical Engineers, Local 17, is the exclusive bargaining representative of employees in various departments of the City of Seattle, including the City Light Department.

The various departments of the City of Seattle have adopted Equal Employment Opportunity policies, pursuant to an Executive Order issued by Mayor Charles Royer on December 11, 1981. The Executive Order made the department directors responsible for developing and administering departmental policies for dealing with sexual harassment in the city's work force. The Executive Order outlined the formal and informal steps in pursuing a complaint. Those steps did not specify the complainant's right to be represented by a exclusive bargaining representative.

On July 12, 1984, the Seattle City Light Department forwarded draft copies of Policies on Affirmative Action, Discrimination and Sexual Harassment and an EEO Office Internal Complaint Process to Local 17, together with a request for comment. In a letter directed to City Light under date of July 25, 1984, Local 17 asserted that bargaining unit employees should be informed of their right to union representation when filing a complaint and during the pre-investigation stage, to fully insure that a victim's rights are protected.[1]

The City Light Department's Policy and Procedure for Sexual Harassment and a complaint form were approved on April 12,

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[1] The copy of the document which is in evidence contains a handwritten notation "no way" in the margin, opposite this suggestion. The notation is attributed to Carole Coe-Hauskins, Director of the Administrative Services Division of City Light.

1985.[2] The EEO office is directed to conduct a thorough interview, and must advise the complainant of the right to file a complaint with the regulatory agencies and a grievance with their union. Employees are encouraged to use the internal process and the union grievance procedures. All parties to the investigation are specifically afforded union representation. Under these policies the City Light Department reserved the right to vary from or modify the procedural guidelines. The form initially had a section under which the employee could check whether a union was to be notified, but City Light subsequently changed the form to eliminate the union notification section.

Ellie Brazel was the City Light "EEO Officer" initially involved in this situation. Brazel's successor as EEO Officer was Kathy McFall.

On March 4, 1987, Ms. Velda Gordon, a City Light employee within the bargaining unit represented by Local 17, submitted a complaint under the City Light Departmental EEO procedures, alleging she had been sexually harassed by another City Light employee. Gordon asked Local 17 to represent her in the processing of her complaint.

Between April and August, 1987, Paul Grace, a business agent for Local 17, and Dee Smiley, a shop steward for Local 17, met with City Light EEO Officers concerning the investigation and settlement of Gordon's complaint. On August 28, 1987, McFall informed Grace that City Light had made its final settlement offer and would not negotiate with the union further.

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[2] Similar policies and guidelines were issued on that date covering discrimination complaints.

On August 31, 1987, Grace wrote to McFall, to confirm her August 28 statement that the department would not allow a union to represent employees in the processing of internal EEO complaints.

On September 3, 1987, Grace initiated a grievance at Step 3 of the grievance procedure contained in the collective bargaining agreement between the union and the city. The grievance was filed with William Hauskins, the city's Director of Labor Relations. Violations of Article I, Section 1, (relating to Non-Discrimination) and Article XXVI, Sections 1 and 2, (relating to Subordination of the Agreement) were claimed. The union alleged in the grievance that Gordon had been sexually harassed over a period of years, that the internal EEO complaint process had been exhausted, and that the remedy offered by McFall did not go far enough. Local 17 requested Gordon's immediate permanent transfer to the position where she was temporarily assigned. Grace stated in that document that McFall said on August 28, "the Department had made its final offer and would not negotiate with Ms. Gordon or her union representative any further".

On September 8, 1987, Carole Coe-Hauskins wrote to Grace, denying that the internal complaint process had been exhausted and denying that City Light would no longer negotiate with the union to settle Gordon's complaint.[3]

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[3] Coe-Hauskins also contended that this grievance should have been filed at the Step One level. She seems to have believed that the Grace's reference to "internal complaint" was to a grievance under the contractual grievance process, while the Examiner concludes that the reference was, in fact, to the EEO process.

Grace responded on September 16, clarifying that his statement concerning "internal procedure" referred to EEO process, and stating that the grievance was properly filed at the level which had the authority to resolve it. Grace also expressed the hope that Coe-Hauskins' letter reflected a change of policy regarding permitting Local 17 to represent bargaining unit employees on EEO complaints.

On September 29, 1987, Grace wrote a letter to David Orcutt, Labor Relations Coordinator for City Light, stating that Local 17 would accept a settlement of the Gordon grievance and would withdraw the grievance. The settlement was executed by the parties on October 7, 1987, as "a full and final settlement to the issues giving rise to the grievance."

While Grace seems to have overstated the City Light position on union representation with respect to the Gordon complaint, other admissions of-record establish the existence of a City Light policy to exclude the type of union representation which Gordon enjoyed from Local 17 in the processing of her EEO complaint.

## POSITIONS OF THE PARTIES

Local 17 argues that, as the exclusive bargaining representative, its right to represent bargaining unit employees extends to the employer's personnel processes external to the collective bargaining agreement. It thus contends that the employer commits an unfair labor practice by precluding union representation of employees in their processing of complaints under the city's internal EEO procedures.[4]

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[4] Allegations of violations of other statutes or internal city regulations are beyond the Commission's authority, and will not be addressed. In addition,

The City of Seattle contends that an employee who files an "EEO" complaint is not the subject of an investigatory interview which may lead to discipline, and so is not entitled to union representation. It points out that an employee who initiates a complaint is not compelled to be at the interview.[5]

DISCUSSION

Under RCW 41.56.140(1) and (2), it is an unfair labor practice for a public employer to interfere with or restrain public employees in the exercise of their rights guaranteed by the Public Employees' Collective Bargaining Act, or to interfere with a bargaining representative. Among the enumerated rights is the right, under RCW 41.56.080, to be represented by the exclusive bargaining representative regardless of membership or nonmembership in the union, if the employee so requests.

RCW 41.56.030(3) defines a "bargaining representative" as any lawful organizations which has as one of its primary purposes the representation of employees in their employment relations with employers. There is no question that Local 17 conforms to that definition, and that it was the exclusive bargaining representative of Gordon under RCW 41.56.080.

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Local 17 arguments in post-hearing brief alleging unilateral change and refusal to bargain go beyond the pleadings and will not be addressed.

5 Respondent also moved to dismiss the charges at the hearing because the complaint was settled as a grievance. The motion was denied, because the grievance did not resolve the question at issue in these proceedings regarding the right to union representation in proceedings on EEO complainants. The deferral argument was not re-asserted in the employer's post-hearing brief.

In City of Seattle, Decision 809-A, 809-B (PECB, 1980), the Commission found that the City of Seattle committed an unfair labor practice by refusing to permit Local 17's business representative to appear before a city-operated civil service commission, to address reclassification matters raised by bargaining unit employees. The rationale for the city's refusal to deal with the business representative in that case was that the business representative would be engaged in an unlawful practice of law.[6] Now the city contends a union business representative cannot represent bargaining unit employees before its EEO officer under internal procedures which the department controls, because to do so would "expand Weingarten rights". The argument is specious. It is clear from the record that policies on sexual harassment are employment matters within the context of statute. The policies were established by City Light and are specifically under its control. The questions at hand in the EEO proceedings do not concern the right of an employee to be represented in interviews which may lead to discipline. The question at issue is whether the employee may have union representation when the employer is alleged to have violated his or her employment rights under the employer's personnel policy. That question has been answered in the affirmative of the previous case.

## FINDINGS OF FACT

1. The City of Seattle is a municipal corporation located in King County and is a "public employer" within the meaning of the meaning of RCW 41.56.030(1).

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[6] The city's current director of labor relations was the business representative for the Local 17 who was involved in City of Seattle, Decision 809-B.

2. International Federation of Professional and Technical Engineers, Local 17, is a labor organization and a bargaining representative within the meaning of RCW 41.56.030(3). Local 17 is the exclusive bargaining representative for a bargaining unit including employees of the City Light Department of the City of Seattle.

3. On April 12, 1985, City Light established internal policies and procedures relating to sexual harassment. Even though the policies nominally permit affected bargaining unit employees to have union representation in the processing of complaints under those procedures, department managers have denied employees union representation including access to documents relating to the investigation of the complaint.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The City of Seattle has violated RCW 41.56.140(1) and (2), by refusing to permit the business representative of Local 17 to represent bargaining unit employees in the processing of complaints under the employer's internal procedures for sexual harassment.

## ORDER

IT IS ORDERED that the City of Seattle, its officers and agents shall immediately:

1. Cease and desist from refusing to permit employees in the bargaining unit for which International Federation of Professional and Technical Engineers, Local 17, is the exclusive bargaining representative to have representation by union officials in the processing of complaints or grievances under the city's internal policies on sexual harassment or discrimination.

2. Take the following affirmative action:

   a) Upon request, permit employees in bargaining units represented by International Federation of Professional and Technical Engineers, Local 17, to have union representation in the processing of matters concerning their wages, hours and working conditions.

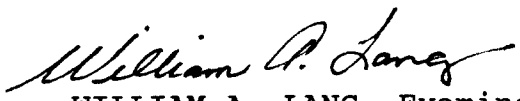
   b) Post, in conspicuous places on the employer's premises where notices to bargaining unit employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized representative of the City of Seattle, be and remain posted for a period of sixty (60) days. Reasonable steps shall be taken by the City of Seattle to ensure that such notices are not removed, altered, defaced or covered by other material.

   c) Notify International Federation of Professional and Technical Engineers, Local 17, in writing within twenty (20) days of the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide Local 17 with a signed copy of the notice required by the previous paragraph.

d) Notify the Executive Director of the Commission, in writing within twenty (20) days of the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

DATED at Olympia, Washington, this 20th day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

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

APPENDIX

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to permit the International Federation of Professional and Technical Engineers, Local 17, to represent bargaining unit employees in the processing of complaints under internal procedures relating to sexual harassment or discrimination.

CITY OF SEATTLE

BY:_____
Authorized Representative

DATED_____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.