STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, Complainant,	)	CASE 7007-U-87-1425
vs.	)	DECISION 3079-A - PECB
CITY OF SEATTLE, Respondent.	)	DECISION OF COMMISSION

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

Douglas N. Jewett, City Attorney, by Patrick J. Oshie, Assistant City Attorney, appeared on behalf of the employer.

On September 8, 1987, 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 its employees, by refusing to allow Local 17 to assist members of the bargaining unit it represents in processing of equal employment opportunity (EEO) complaints under the employer's internal procedures, while permitting employees other than union representatives to assist employees making such complaints. The union cited RCW 41.56.140(1) and (2). A hearing was conducted on April 15, 1988, by Examiner William A. Lang, and the Examiner issued a decision on December 20, 1988, upholding the union's complaint. The city filed a timely petition for review, bringing the case before the Commission.

ISSUES RAISED BY THE PETITION FOR REVIEW

The employer advances three arguments in its petition for review. The point of each argument is that employees are not entitled to union representation in its EEO procedures. The arguments are:

1. An employee who voluntarily utilizes a remedial avenue other than the contractually recognized grievance procedure is not entitled to union representation in that alternative procedure.

2. The Examiner erred in his reliance upon the decision in City of Seattle, Decision 809-A, 809-B (PECB, 1980).

3. An employee does not have a right to be represented in an internal EEO investigation conducted by the employer when the employee is not the target of the investigation.

The union agrees with the Examiner's decision and requests that it be affirmed.

BACKGROUND

The City of Seattle has established an "internal" process for its employees to obtain investigation of and remedy for affirmative action, sexual harassment and discrimination problems they encounter in the course of their employment. An affirmative benefit is thereby provided to the employees, in the form of advocacy and an avenue of relief above and beyond formal proceedings through federal, state or local "human rights" agencies.

In March of 1987, an employee represented by Local 17 invoked the employer's "internal" EEO process. An investigation and exchange of offered and requested remedies ensued. On August 28, 1987, the employer's EEO officer took the position that the employer would no longer allow the union to represent bargaining unit employees in the processing of internal EEO complaints. This unfair labor

practice case was filed primarily on the basis of that refusal by the employer to permit employees union representation.

The underlying situation (i.e., the problem initiated under the EEO procedure in March of 1987) appears to have been fully resolved later in 1987, through the grievance procedure of the parties' collective bargaining agreement. Although the union assisted the employee in the contractual grievance process, it does not appear that the "right to union representation in the EEO process" issue was resolved. Thus, the union has pursued the "right to union representation" issue (as framed by the employer's April 28, 1987 position and, by other evidence, as potentially being an ongoing policy of the employer) in this proceeding.

DISCUSSION

The employees of the City of Seattle have a statutory right under Chapter 41.56 RCW to union representation in all matters affecting their "working conditions". The employee(s) involved here have implemented their statutory collective bargaining rights by choosing Local 17 as their exclusive bargaining representative. The City of Seattle is thereby obligated to deal with Local 17 on all matters of "working conditions", to the exclusion of direct dealings with employees or with other representatives. RCW 41.56.030(4); RCW 41.56.140(4). The union has a statutory right to notice and opportunity to be present when employees present their employment problems to their employer. RCW 41.56.090. Although the dispute which underlies this case has been resolved, we do not feel that the issue before us is moot. Rather, there is a substantial question of public interest to be resolved with respect to the right of employees to union representation in non-traditional dispute resolution processes.

The employer has unilaterally put in place a forum for employees to obtain investigation of and relief for problems that are encountered by employees in their work environment. That EEO process provides a substantive benefit to the employees, above and beyond those specified in the collective bargaining agreement. The unilateral origin of the EEO process does not make it any less a part of the working conditions of the employees, or any less subject to the obligations of the collective bargaining statute.[1] Nevertheless, the evidence establishes that this employer precluded union representation on at least one occasion, and further establishes that the policy preference of at least some of its officials would be to exclude the union from the internal EEO process.

This is not the first instance in which the City of Seattle has objected to union efforts to implement employment benefits created by the employer parallel to collective bargaining rights. In City of Seattle (International Brotherhood of Boilermakers, et al.), Decision 2737 (PECB, 1987), the Executive Director dismissed the employer's complaint against a union, observing:

> In essence, the employer faults the union for making use ... of [substantive rights provided for employees the City of Seattle's current personnel system] ... which the employer itself has put in place ... Having chosen to do so, the employer is hardly in a position to complain under Chapter 41.56 RCW because represented employees (or the union on their behalf) have made claims asserting the benefits of that system. ... Having invoked the rights established by the employer's personnel system, nothing in Chapter 41.56 RCW or the

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1 By way of comparison, an employer's unilateral, but long-standing, practice of providing things of benefit to its employees (e.g., a Christmas bonus or a turkey at Thanksgiving time) can become a substantive benefit protected by the obligation to maintain the status quo, and a subject for bargaining, when employees choose to organize. See, generally, I Morris, The Developing Labor Law, BNA Books, 2d Edition, 1983, at pp 774, ff.

> duty to bargain would preclude the employees, with or without the assistance of their union, from pursuit of those rights.

City of Seattle, Decision 809, 809-B (PECB, 1980) concerned the right of employees to union representation in pursuing substantive rights made available by the employer through it's "civil service" system in effect at that time. The Examiner correctly applied the broad implications of Decision 809-B as precedent here.

We are not persuaded that City of Mercer Island, Decision 1460 (PECB, 1982) requires a different result, and would in any case limit that decision to its facts. The employee involved in the Mercer Island case had exhausted his substantive rights under civil service procedures adopted pursuant to state law and/or the collective bargaining agreement covering his employment. He then sought to invoke a "grievance procedure" that had been promulgated unilaterally by the employer, to obtain further discussion of the discipline which had been sustained in other forums. That "grievance procedure" provided no more than a right to have a series of discussions with various representatives of the management. The management had undertaken to listen, but had not undertaken to investigate, or to guarantee the employees any particular set of rights or benefits. We distinguish the case at hand from Mercer Island because of the actual or implied availability to City of Seattle employees of investigation and pro-active assistance for relief of their employment problems through the EEO process.

In NLRB v. Weingarten, 420 U.S. 251 (1975), the Supreme Court agreed with the National Labor Relations Board that an employee was entitled to union representation at an "investigatory" interview where the employee reasonably believes that the session might result in disciplinary action against him. The same principles have been adopted under Chapter 41.56 RCW. Okanogan County, Decision 2252-A (PECB, 1986); City of Seattle, Decision 2773 (PECB,

1987). Weingarten principles do not apply at all to this case, however, and the employer's fear of extension of the Weingarten doctrine is unfounded. The EEO program provides relief for the employees who invoke it, and may be more an attempt by the employer to limit its own liability than a vehicle for employee discipline. As with any other "benefit" to them, employees are entitled to union representation in their pursuit of those rights.

Remedy

We do differ from the Examiner as to the appropriate remedy in the unique circumstances of this case.

It appears that the April 28, 1987 position taken by a City of Seattle EEO official may have been an isolated incident, and that the employer may not have actually acted upon the policy preferences indicated by the admissions of-record in this case. We therefore confine the remedy to a "cease and desist" order which will prevent recurrence of this type of conduct in the future. We have elected to dispense with the customary requirement for posting of a notice to employees by the party found guilty of an unfair labor practice, since this case appears to concern an isolated incident that occurred more than two years ago.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact and conclusions of law issued in the above-captioned matter by Examiner William A. Lang are affirmed and adopted as the findings of fact and conclusions of law of the Commission.

2. The order issued in the above-captioned matter by Examiner William A. Lang is amended as follows:

   a. City of Seattle, its officers and agents, shall immediately:

      1. Cease and desist from refusing to permit employees in bargaining units 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 matters under the employer's internal "EEO" processes concerning affirmative action, discrimination and sexual harassment.

      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 all matters with the employer concerning their wages, hours and working conditions.

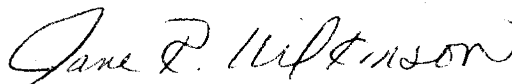
         (b) Notify International Federation of Professional and Technical Engineers, Local 17, in writing, within thirty (30) days following the date of this order, of the steps taken to comply with this order.

         (c) Notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date of

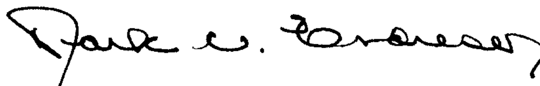
this order, of the steps taken to comply with this order.

Issued at Olympia, Washington, this 29th day of September, 1989.

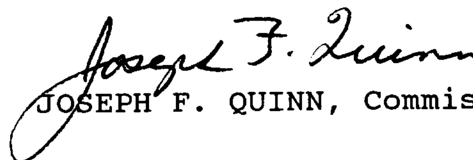
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



MARK C. ENDRESEN, Commissioner



JOSEPH F. QUINN, Commissioner