STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DAVID M. ESTES, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 8316-U-89-1805 DECISION 3470 - PECB ORDER OF DISMISSAL
CITY OF SEATTLE, Employer	
DAVID M. ESTES, Complainant, vs. SEATTLE POLICE DISPATCHERS GUILD, Respondent.	CASE 8317-U-89-1806 DECISION 3471 - PECB ORDER OF DISMISSAL
CITY OF SEATTLE, Employer	
DAVID M. ESTES, Complainant, vs. SEATTLE POLICE OFFICERS GUILD, Respondent.	CASE 8318-U-89-1807 DECISION 3472 - PECB ORDER OF DISMISSAL

David M. Estes filed documents with the Public Employment Relations Commission on December 6, 1989, alleging that the City of Seattle, the Seattle Police Dispatchers Guild (SPDG) and the Seattle Police Officers Guild (SPOG) have all committed unfair labor practices in violation of Chapter 41.56 RCW. Consistent with Commission

practice in such situations, separate cases were docketed for each of the three named respondents.

All three cases were reviewed by the Executive Director for the purpose of making preliminary rulings pursuant to WAC 391-45-110, and a letter was directed to the complainant on February 1, 1990, pointing out several problems with the complaints. Estes was given a period of time in which to file and serve amended complaints.

Estes filed an amended complaint on February 16, 1990, and the cases are again before the Executive Director under WAC 391-45-110. It is assumed that all of the facts alleged in the complaints are true and provable. The question at hand is whether an unfair labor practice could be found.

Paragraphs I.1. and III.4. of the amended complaint identify Estes as a law enforcement officer employed by the City of Seattle who was assigned to the Police Department's dispatching function for some period of time prior to the events at issue in these cases.

Paragraph I.2. of the amended complaint identifies the City of Seattle as an employer subject to the jurisdiction of the Public Employment Relations Commission. Paragraph III.1. of the amended complaint re-identifies the City of Seattle, differing from the original complaint in its identification of the mayor.

Paragraphs I.3., III.2., and III.5. of the amended complaint identify the Seattle Police Officers Guild as the exclusive bargaining representative of law enforcement officers employed by the City of Seattle.[1] The complainant was within the SPOG bargaining unit while working in the dispatching function.

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[1] Notice is taken of RCW 41.56.030(7) and docket records of the Commission, which indicate that the unit represented by the SPOG consists of "uniformed personnel" eligible for interest arbitration under RCW 41.56.440, et seq.

Paragraphs I.4. and III.3. of the amended complaint identify the Seattle Police Dispatchers Guild as the exclusive bargaining representative of the non-uniformed employees in the Seattle Police Department's dispatching function.

Paragraph II. of the amended complaint invokes the authority of the Public Employment Relations Commission under Chapter 41.56 RCW.

Paragraph III.6 of the amended compliant identifies the president of the SPOG, the wife of the president of the SPOG (who is employed in the dispatching function and is a member and/or official of the SPDG), the attorney who represents both the SPOG and the SPDG, and the employer's chief negotiator as the individuals responsible for the claimed unfair labor practices.

The amended complaint gets into the substance of the acts or events complained of, beginning with Paragraph III.7. The complaints all concern provisions of a collective bargaining agreement negotiated between the Seattle Police Officers Guild and the City of Seattle for the 1989 to 1991 period. The fact that there was "bitter opposition to the contract" within the SPOG membership does not, in and of itself, suggest any violation of Chapter 41.56 RCW.

Paragraph III.8. of the amended complaint takes issue with contract provisions which permit the employer to eliminate ten positions from the SPOG bargaining unit, and to replace them with employees represented by the SPDG.[2] The balance of paragraph III.8. reviews

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[2] Paragraph III.7. of the original complaint had alleged more fully:

> The new agreement reached with the city allowed the city to replace members of the SPOG working in the positions of officer dispatchers and staff officer with members of the SPDG. In addition, the SPDG would be able to relieve members of the SPOG who were working in the capacity of Chief Dispatchers for lunch and breaks.

the procedural history of the filing and service of the original complaints, the preliminary ruling issued by the Executive Director and the filing of the amended complaint.

In apparent response to the February 1, 1990 preliminary ruling letter,[3] Paragraph III.9. of the amended complaint alleges that the applicable collective bargaining agreement calls for arbitration by

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(footnote 2, continued) A contract document filed with the original complaint includes:

> VI. CIVILIANIZATION
> If a minimum of 70 new police officer positions (including the sixteen METRO officers who are currently not being paid by the City) are added to the Seattle Police Department as a result of Proposition 1 or other budgetary means, then the 22 positions delineated in Attachment A which are currently represented by the Guild may be concurrently civilianized. No layoffs will occur as a result of the above civilianization -- those police officers and sergeants affected will be reassigned to new positions within the Seattle Police Department.
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> . . .
>
> SPOG POSITIONS TO BE CIVILIANIZED . . .
> Police Officer Dispatchers 9
> Communications Staff Officer 1
> . . .

[3] The original complaint had described the different tasks performed by the non-uniformed dispatchers, and the police officers assigned to the dispatching function, and alleged that any assignment of work previously done by police officers to non-uniformed dispatchers was a violation of the State Constitution and public policy. The preliminary ruling letter pointed out that the Commission does not have jurisdiction to resolve all issues arising in the work place and, in particular, that it lacks jurisdiction to resolve constitutional, statutory or public policy claims outside of the conduct regulated as "unfair labor practices" by RCW 41.56.140 and 41.56.150. The preliminary ruling also pointed out that the Commission does not assert jurisdiction to determine or remedy "violations of contract" through the unfair labor practice provisions of Chapter 41.56 RCW.

either the American Arbitration Association or by the Commission, and asserts a right to proceed to arbitration before the Commission as a third-party beneficiary to the collective bargaining agreement. The complainant overstates the rights conferred on employees by RCW 41.56.090, however. An employee acting as an individual is not authorized to pursue a grievance to arbitration. See: City of Seattle, Decision 3429 (PECB, February 28, 1990), citing METRO, Decision 2147 (PECB, 1985); Tacoma Public Library, Decision 1679-A, 1680-A (PECB, 1983); Pomeroy School District (Washington Education Association / Uniserv), Decision 1610 (EDUC, 1983) and City of Seattle, Decision 1226 (PECB, 1981). Further, to the extent that the complainant would have this unfair labor practice case filed under Chapter 391-45 WAC converted to a request for appointment of an arbitrator under Chapter 391-65 WAC, WAC 391-65-010 limits "standing" to file a grievance arbitration request to the "employer, the exclusive representative or their agents or by the parties jointly". There is no basis for the Commission to respond to a grievance arbitration request filed by an individual employee.

The February 1, 1990 preliminary ruling letter had specified:

> The duty of fair representation has been defined in the following terms:
>
> > [T]he exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. . . .
>
> Vaca v. Sipes, 386 U.S. 171 (1967), at 177.
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> Absolute equality of treatment is not the standard, however. The Supreme Court of the United States has also stated:
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> > Inevitably differences arise in the manner and degree to which the terms

> of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
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> Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) at 338.

> The complaint does not set forth facts sufficient to support an allegation that the agreement was wholly without basis in fact or wholly unreasoned (i.e., "arbitrary"). Neither does it set forth facts sufficient to suggest that the union was acting "dishonestly" or in bad faith when it agreed to the "civilianization" provision at issue.

Paragraph III.9. of the amended complaint concludes with an assertion that the Commission has jurisdiction to ascertain whether the action of the union representative was arbitrary. The amended complaint then continues with several pages of un-numbered materials under headings of "Arbitrary Conduct" and "Bad Faith".

At page 6, line 12, the amended complaint reiterates that the SPOG and the employer "have violated public policy by allowing non-sworn personnel to act in positions that require police powers and expertise". As already indicated, the question of "public policy" so identified is not for the Commission to decide in this case.

At page 6, line 19 the amended complaint alleges: "[T]he guild acted arbitrarily since the guild has a duty to defend the guild contract", but then goes on, "It is the guild position that the civilination (sic) of the communication center could not be defended in arbitration. . ." The latter statement clearly implies

that some sort of reasoned decision was made by the guild leadership, which is the antithesis of "arbitrary" conduct.[4]

At page 7, line 6, the amended complaint embarks on a recitation of the differences of opinion that existed within city government on the elimination of police officers from the dispatching function. While the duty to bargain obligates an employer to speak with one voice at the bargaining table when dealing with the exclusive bargaining representative of its employees,[5] RCW 41.56.140(4) certainly does not outlaw private, or even public, differences of opinion among employer officials. The amended complaint suggests that the employer proposed elimination of the police officer positions in bargaining, and offers no more than conjecture that the employer might retrench from that demand in arbitration.

At page 7, line 23, the amended complaint alleges that the SPDG supported elimination of the police officer positions as early as a letter written to a city council member in 1988, citing lower cost to the employer and improved conditions for employees in the bargaining unit represented by the SPDG. Consideration of that transaction is barred by the six-month statute of limitations set forth in RCW 41.56.160. Even if the complaint were timely, it is entirely appropriate that the SPDG act as an advocate for improved job opportunities for the employees it represents.

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[4] In the context of contract negotiations between the employer and SPOG, this reference to "arbitration" is taken to mean "interest arbitration" under RCW 41.56.440, et seq. The employer would have been at liberty to propose a transfer of bargaining unit work out of the SPOG unit (a mandatory subject of bargaining under countless Commission decisions) and to seek an arbitrator's award overruling objections put forth by the union.

[5] See, Lewis County, Decision 644 (PECB, 1979), where the Commission stated: "The differing requirements of assignments under . . . various elected officials can be accommodated easily by appropriate consultation and adaptation of procedures within the employer."

At page 8, line 8, the amended complaint makes reference to a conversation that occurred in February of 1990, but dates back to an unspecified time when the current president of the SPOG was the secretary-treasurer of that organization. Absent specification of a date within the six months prior to the filing of the amended complaint, the transaction cannot form the basis for a cause of action. Further, the fact that arguments on the subject in 1989 or 1990 were framed in the same terms as were used as far back as 1988 does not constitute a sufficient basis to conclude that there was an unlawful conspiracy. The collective bargaining process calls forth communication of proposals and rationale. Although parties are obligated to bargain in good faith, they are not obligated to come up with new arguments, or even to cast old arguments in new terms, each time a subject is discussed.

At page 9, the amended complaint delves into the circumstance that the SPOG and the SPDG both use the same attorney. The potential for a conflict of interest certainly exists in such a situation, and the amended complaint alleges that such a potential was even discussed, but the complaint fails to allege any acts or omissions involving the attorney that have an actual bearing on the outcome of the contract negotiations or the elimination of the police officer positions from the communications center.

At page 10, the amended complaint alleges that the complainant has become the "spokesman" for employees opposed to "civilianization" of the communications center, and relates his conversations with various union officials. There appears to have been a genuine difference of opinion between communications center police officers looking at preserving ten "inside" jobs, as against union leaders looking at an overall increase of 70 or more positions in the department and bargaining unit. As noted above in the quotation from Ford Motor v. Huffman, such differences of opinion are not inherently illegal. There may well have been breaches of common courtesy by union officials in dealing with their member, but such

matters are internal union affairs beyond the reach of unfair labor practice litigation unless there is a factual basis on which to conclude that the union has aligned itself in interest against the complainant for reasons which are arbitrary, discriminatory, or in bad faith. Such factual allegations are lacking here. The fact that the president of the SPOG is married to a member and/or officer of the SPDG must be taken in the context of a consultant's report recommending "civilianization" and the employer's bargaining proposals to accomplish such a change.

On page 11, at line 7, the amended complaint suggests that a part of the "civilianization" agreement dealing with breaks taken by the chief dispatcher was not properly submitted to the members of the SPOG for ratification. The contention appears to assume the existence of a statutory right that does not exist. Ratification of contracts by union memberships is an internal affair of the organization, required if at all by the constitution and by-laws of the organization, rather than by any provision of statute. Naches Valley School District, Decision 2516 (EDUC, 1987). Violations by union officials of the founding documents of their organizations is not a matter regulated by Chapter 41.56 RCW.

Beginning at page 11, line 15, the amended complaint describes the complainant's efforts to obtain an internal union remedy after the filing of the original unfair labor practice charges in these cases. There is no indication that the internal union dispute has affected, or threatened to affect, the complainant's continued employment with the City of Seattle.

Conclusions

The original complaint had sought to detail four "causes of action", as follows:

> 1. The City of Seattle by allowing non sworn personnel to assume the duties of sworn

police officers has violated the existing contract between the City of Seattle and the Seattle Police Officers Guild.

2. The Seattle Police Officers Guild by allowing non sworn personnel to assume the duties of sworn police officers and consenting to same has violated its contractual duty to the Plaintiff.

3. By engaging in acts amounting to a conflict of interest, the Seattle Police Guild has violated its duty of fair representation towards the Plaintiff.

4. The Seattle Police Dispatchers Guild by allowing its members to function in and encouraging its members to function in a police investigative role has violated public policy as defined by the Washington State Constitution and interfered with the working relationship between and the contractual relationship between the plaintiff and his employer and his bargaining unit.

The February 1, 1990 preliminary ruling letter had concluded that the complaint failed to state a cause of action against the City of Seattle, citing:

> (1) The absence of jurisdiction over violations of constitutional, statutory or public policy provisions concerning the types of work to be performed by sworn police officers;
>
> (2) The absence of jurisdiction over "violation of contract"; and
>
> (3) The fundamental right of the City of Seattle to negotiate for changes to the collective bargaining agreement between it and the SPOG.

The amended complaint fails to assert any new or different basis for a claim against the City of Seattle, and that case must be dismissed.

The February 1, 1990 preliminary ruling letter had also concluded that the complaint failed to state a cause of action against the Seattle Police Dispatchers Guild, citing:

(1) The absence of jurisdiction over public policy or constitutional provisions concerning the types of work to be performed by sworn police officers;

(2) The absence of any basis to conclude that the Seattle Police Dispatchers Guild owed any duty of fair representation towards the complainant or any other member of the bargaining unit represented by the SPOG.

The amended complaint fails to assert any new or different basis for a claim against the Seattle Police Dispatchers Guild, and that complaint must also be dismissed.

The February 1, 1990 preliminary ruling letter concluded that the complaint failed to state a cause of action against the Seattle Police Officers Guild, citing:

(1) Insufficient facts, including times, dates and participants in occurrences, to form a conclusion that the mere existence of a marital relationship between the president of the SPOG and an officer of the SPDG has given rise to an actual conflict of interest chargeable to the Seattle Police Officers Guild;

(2) Insufficient facts, including times, dates and participants in occurrences, to form a conclusion that the mere existence of a commonality of legal representation between the SPOG and the SPDG has given rise to an actual conflict of interest chargeable to the Seattle Police Officers Guild;

(3) Absence of allegation that the complainant or any of the other employees whose positions were eliminated from the communications center have been or will be discriminated against on account of any of the traditional bases for invidious discrimination (race, creed, sex, national origin, etc.) or because of their union activity or lack thereof;

(4) The Seattle Police Officers Guild owes a duty of fair representation to the complainant and others

similarly situated, but also has a broad range of discretion in its role as the exclusive bargaining representative; and

(5) Absence of Commission jurisdiction to regulate the internal affairs of the SPOG, including implementation of procedures for ratification of contracts.

Paragraph IV. of the amended complaint asks the Commission only to decide:

> [W]hether the SPOG has violated its duty of fair representation by negotiating a questionable contract provision allowing another union to replace SPOG members.

Having reviewed the complaint and amended complaint in light of Chapter 41.56 RCW and Commission precedent, it is concluded that no claim is made for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

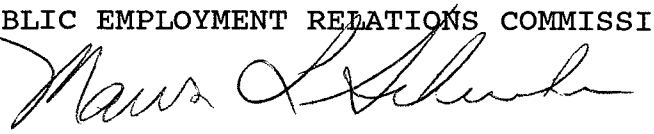
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices in the above-entitled matters are DISMISSED for failure to state a cause of action.

Dated at Olympia, Washington, the 13th day of April, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

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