STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF SEATTLE, Employer. ------------------------------------ GEORGIANNE BROWNING, Complainant, vs. TEAMSTERS UNION, LOCAL 763, Respondent.	CASE 8818-U-90-1932 DECISION 3872 - PECB DECISION OF COMMISSION

Georgianne Browning, pro se, and Perkins Coie, by Rex C. Browning, Attorney at Law, appeared on behalf of the complainant.

Davies, Roberts & Reid, by Bruce E. Heller, Attorney at Law, appeared on behalf of the union.

This case comes before the Commission on a petition for review filed by Georgianne Browning, seeking to overturn a preliminary ruling issued by Executive Director Marvin L. Schurke.

BACKGROUND

On October 8, 1990, Georgianne Browning filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Teamsters Union, Local 763, had violated RCW 41.56.150(1) and (2), by attempting to have her discharged based on an alleged failure to pay dues or fees under a union security provision. The statement of facts filed with the complaint was as follows:

1. On or about August 31, 1989, the Labor Agreement between the City of Seattle and the Joint Crafts Council expired. That Agreement governed the terms and conditions of my employment until its date of expiration. That Agreement had a union security clause requiring that I maintain membership in the Union, but stating that said membership requirement would be satisfied if I paid the regular initiation fee and the regular dues.

2. By my memorandum to the City Payroll Department dated April 26, 1990, I requested the City to stop auromatic [sic] deductions from my paycheck for union dues. Dues were automatically deducted up through April, 1990. No dues were deducted for May, June, July, or August.

3. The new Labor Agreement between the City of Seattle and the Joint Crafts Council, which governs the terms and conditions of my employment, was executed on June 22, 1990. It has a union security clause imposing the same requirements as was contained in the preceding Agreement.

4. On or about August 17, I received a "reminder" letter from Local 763 saying that I was "delinquent in your Union dues payments and that the following amounts are now due: $100.00 Reinitiation Fee, $54.00 June, 1990 - July, 1990 Dues, $4.00 Assessments." The letter made no reference or claim that more than two months dues were delinquent. On the contrary, the letter stated that I was only two months delinquent.

5. On August 31, 1990, I paid the June and July dues plus the $4 "Assessment," which the Union at that time explained to me was a $2 per month late charge.

6. Thomas J. Krett, Business Representative for Local Union No. 763, demanded $2 late charge for the month of August. I pointed out that my August dues payment, being made on the last day of the month, was timely. Mr. Krett then acknowledged that no late charge was due for the month of August, and no request was made for a late charge for any other month.

7. I refused to pay the reinitiation fee because I was not "three months delinquent in his/her dues", and my Labor Agreement does not require me to pay "reinitiation" fees.

8. My current Labor Agreement (paragraph 3.1) requires me to maintain membership in the Union, but also states that "the requirements to apply for Union membership and/or maintain union membership shall be satisfied by the employee's payment of the regular initiation fee and the regular dues uniformly required by the Union of its members."

9. In the By-laws of Local 763, the "regular dues" required are set forth in Paragraph 17A. and the "regular initiation fee" is set forth in Paragraph 17B. This is all my contract requires me to pay, and there is nothing requiring a $100 "reinitiation" fee in either paragraph. I am therefore not required to pay the "reinitiation" fee demanded.

10. In addition and in the alternative, the "reinitiation" fee is not owing, even under the terms of the By-laws themselves.

11. The prerequisite for a reinitiation fee is described in Paragraph 17C. of the By-laws: "A member who becomes three months delinquent in his/her dues shall be subject to a re-initiation fee in addition to any delinquent dues and/or fines."

12. While I admittedly was delinquent for two months (June and July), I did not owe any dues for May and so was not "delinquent in his/her dues" for that month. All other months were paid when due.

13. On August 31, 1990, I attempted to explain to Mr. Krett that I was not three months delinquent and thus did not owe any reinitiation fee. My husband, in a telephone call to Mr. Krett shortly thereafter, did the same. Mr. Krett insisted that even though I did not owe the May dues, I was nonetheless "delinquent" for not paying them.

14. We asked Mr. Krett if there was some way we could put the claimed reinitiation fee in escrow and obtain some judicial or other type

> of review of his claim that the reinitiation fee was owing. Mr. Krett said that my only "option" was to pay the reinitiation fee, or else the Union would demand that the City fire me.
>
> 15. By letter dated September 14, 1990 to Dale Tiffany, Director of the Department of the City of Seattle where I work, Local Union No. 763 requested that the City discharge me "for failure to abide by Section 3.1 of the Labor Agreement by and between the City of Seattle and the Joint Crafts Council."
>
> 16. Said letter requesting my discharge stated that "Ms. Browning has been advised of her obligations under Section 3.1." The letter purportedly so advising me did not adequately, correctly and/or properly do so.
>
> 17. Shortly before the expiration of the prior Labor Agreement on or about August 31, 1989, I was active in attempting to decertify Local Union No. 763 as our bargaining representative. Local 763's demand that I pay the $100 reinitiation fee, and its attempt to have me fired for failing to pay that fee, is in retribution for my efforts to have Local 763 decertified.

In a preliminary ruling made under WAC 391-45-110, the Executive Director found that the complaint stated a cause of action only concerning the alleged retaliation for decertification efforts. The Executive Director viewed the other allegations of the complaint as essentially asserting breach of a collective bargaining agreement, and he concluded that those allegations could not be processed further, because the Commission does not remedy violations of collective bargaining agreements through the unfair labor practice provisions of Chapter 41.56 RCW.

The matter was assigned to Examiner Rex L. Lacy, and a hearing was set for May 2, 1991. Prior to that date, the parties agreed, with the approval of Examiner Lacy, that: (a) The complainant would withdraw paragraph 17 of her complaint, which contained allegations

of retaliation for decertification efforts; and (b) the period for complainant or any other party to file a petition for review of the preliminary ruling dated December 20, 1990 with respect to the remainder of the complaint, should run from May 2, 1991.

On May 22, 1991, complainant petitioned for review of the Executive Director's ruling that the facts alleged in paragraphs 1 through 16 of her complaint do not constitute unfair labor practices.

POSITION OF THE PARTIES

The complainant alleges that the union is asserting a delinquency based on Browning's failure to pay dues for a month during the contract hiatus (i.e., May of 1990). The complainant believes the union then violated RCW 41.56.150(1), by threatening to seek, and actually seeking, her discharge because of that claimed delinquency. In the complainant's view, the union's demand for payment of a re-initiation fee, based on non-payment of dues during a contract hiatus, is the practical equivalent of the retroactive collection of dues during a contract hiatus, which was barred in City of Seattle (International Brotherhood of Electrical Workers, Local 46), Decisions 3169-A, et seq. (PECB, 1990). The complainant also contends that the union has attempted to enforce the union security provision without meeting the requirements of WAC 391-95-010.

The union denies the complainant's allegations, but does not oppose the exercise of jurisdiction by the Commission or remand of her allegations for hearing.

DISCUSSION

For the purposes of preliminary rulings made pursuant to WAC 391-45-110, all of the facts alleged in a complaint are deemed to be

true and provable. The question is whether those facts state a claim for relief available through unfair labor practice proceedings before the Commission.

Alleged "Interference" Violation

The complaint asserts that there was a contract hiatus during the period between August 31, 1988, when a collective bargaining agreement between the City of Seattle and the Joint Crafts Council expired, and June 22, 1990, when a new labor contract was signed. Both contracts had union security clauses requiring that bargaining unit employees maintain membership in the union, by paying a "regular initiation fee" and "regular dues". Ms. Browning is employed in the bargaining unit represented by the union, and she admits that she stopped automatic dues deduction at one point during the hiatus between contracts.

Consistent with the Commission's decision in City of Seattle, supra, the union has not directly sought payment from Browning of dues for May of 1990, when no collective bargaining agreement or union security clause was in effect. Browning has now paid her union dues for the months since the new contract was signed, so that only her liability for a "re-initiation" fee remains at issue.

Browning's complaint is somewhat confusing, in that it initially asserts that no dues were deducted for May, June, July, or August, 1990,[1] but later asserts that she made a timely payment on the last day of August, 1990.[2] If Browning's dues were in fact timely for August of 1990, which we must assume to be true, then the only three months for which a re-initiation fee could be assessed on the basis of a "three months in arrears" theory were May, June and July

---

1 Paragraph 2 of the statement of facts.

2 Paragraph 6 of the statement of facts.

of 1990. According to the complaint, however, the union has based its demand for a re-initiation fee from Browning on a claim that she was three months delinquent. The union has requested Browning's discharge on the basis of this claimed delinquency.

A cause of action exists for unfair labor practice proceedings before the Public Employment Relations Commission against an employer and/or union that negotiate an unlawful union security clause, or that administer an otherwise lawful union security clause in an unlawful manner.[3] In this case, we find that the alleged facts, assuming they can be proven, raise an issue as to whether the union's demand for a "re-initiation fee" was lawful. We thus agree with Browning that she is entitled to a hearing on her allegation of an "interference" in violation of RCW 41.56.150(1).

Contract/Bylaw Defenses to Payment

In addition to asserting that the union's attempted enforcement of the union security provision is unlawful, the complainant also seems to contend that the union's actions violated both the intent of paragraph 3.1 of the labor contract between the City of Seattle and the Joint Crafts Council,[4] and the wording of the union's own bylaws.[5] We share the Executive Director's concern that these

---

[3] Mukilteo School District (Mukilteo Education Association), Decision 1122 (EDUC, 1981) involved allegations that the union security clause itself was unlawful. Pierce County (Teamsters Local 461), Decision 1840 (PECB, 1985) involved erratic administration of union security obligations by both the employer and union. Brewster School District, Decision 2779 et seq. (EDUC, 1987) and Snohomish County (Washington State Council of County and City Employees), Decision 3705 (PECB, 1991) involved alleged enforcement of union security obligations in contravention of constitutional safeguards set forth in Chicago Teachers v. Hudson, 475 U.S. 209 (1986).

[4] Paragraph 8 of the statement of facts.

[5] Paragraph 9 of the statement of facts.

contentions are not properly matters for resolution by the Commission.

The Commission does not exercise jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute.[6] The Commission has previously declined to take on additional decision-making responsibilities merely because the underlying dispute involves union security.[7] In this case, any dispute as to whether the contractual union security clause was intended to require the payment of a "re-initiation fee", as distinct from a "regular initiation fee" must properly be litigated between the parties to the contract, one of whom (the employer) is not a party before us.

Nor is the Commission the proper forum to resolve disputes concerning the interpretation and application of a union's constitution and bylaws. In this case, any dispute as to whether the local union was improperly administering the "initiation fee" and "re-initiation fee" provisions of the bylaws must properly be pursued under internal appeal procedures established by the union, or be litigated between the parties in court.

The focus of the proceedings before our Examiner on remand should be limited to whether the union's demand for a re-initiation fee indirectly violated the Commission's ruling in City of Seattle, supra, and thus constitutes unlawful interference. Should a

---

[6] Pierce County, Decision 1671-A (PECB, 1983); City of Walla Walla, Decision 104 (PECB, 1976).

[7] In Clallam County, Decision 607-A (PECB, 1979), the Commission stated that it would not "arrogate to itself the role of arbitrator by interpreting an ambiguity in the parties' contract". See, also, Pierce County, Decision 1671-A (PECB, 1983). Similarly, in Brewster, supra, it was made clear that the Commission would enforce the availability of constitutional protections, but would not itself become the arbiter of dues apportionment issues.

violation of RCW 41.56.150(1) and/or (2) be found, the other two defenses to payment of the re-initiation fee become moot. Should the demand for a re-initiation fee be found lawful under Chapter 41.56 RCW, Ms. Browning's remaining allegations, i.e., breach of the collective bargaining agreement and/or the union's bylaws, will not be determined by the Examiner.

Alleged Violation of WAC 391-95-010

Codifying National Labor Relations Board precedent setting forth certain minimum "notice" requirements imposed on a union that desires to enforce union security obligations,[8] the Commission has adopted WAC 391-95-010 as part of a chapter of the Washington Administrative Code setting forth "Union Security Dispute Rules":

> **WAC 391-95-010 UNION SECURITY--OBLIGATION OF EXCLUSIVE BARGAINING REPRESENTATIVE.** An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of chapter 28B.52, 41.56, or 41.59 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay. [Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045, 41.56.122 and 41.59.100. 90-06-075, §391-95-010, filed 3/7/90, effective 4/7/90. Statutory Authority: ...RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. 88-12-058 (Order 88-10), §391-95-010, filed 5/31/88. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.0-50, 41.59.110 and 47.64.040. 80-14-051 (Order 80-10), §391-95-010, filed 9/30/80, effective 11/1/80.]

---

8 International Association of Machinists & Aerospace Workers, District No. 15, AFL-CIO, 231 NLRB 103 (1977).

Paragraph 16 alleges, albeit vaguely, that the union has not given the complainant proper notice of her obligations. The complainant's reliance on WAC 391-95-010 in this regard is made clear in her appeal brief. Enforcement of union security in violation of WAC 391-95-010 could arguably give rise to a finding of an "interference" violation under RCW 41.56.150(1) and/or (2).[9] The issue will be remanded to the Examiner for further proceedings.

NOW, THEREFORE, it is

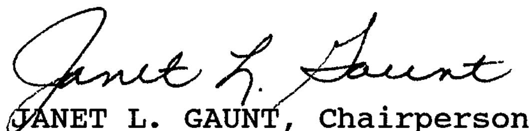
ORDERED

1. The preliminary ruling issued by the Executive Director is reversed as to the conclusion that paragraphs 1 through 16 of the statement of facts fail to state a claim for relief for violation of RCW 41.56.150(1) and (2).

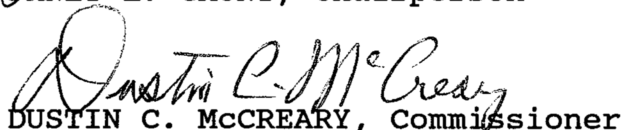
2. The case is remanded to Examiner Rex L. Lacy for hearing pursuant to Chapter 391-45 WAC and this decision.

Issued at Olympia, Washington, the 26th day of September, 1991.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



DUSTIN C. McCREARY, Commissioner

Commissioner Mark C. Endresen did not take part in the consideration or decision of this case.

---

9 Pierce County, Decision 1840-A, supra.