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-A - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Rex Browning, Attorney at Law, appeared on behalf of Georgianne Browning.

Davies, Roberts & Reid, by Bruce Heller, Attorney at Law, appeared for the union.

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 the complainant discharged from her employment with the City of Seattle, based on an alleged failure to pay union dues and fees.

In a preliminary ruling letter issued pursuant to WAC 391-45-110 on December 20, 1990, the Executive Director of the Commission found a cause of action to exist only on certain limited allegations concerning reprisal for the complainant's involvement in a decertification effort. On the same date, the case was assigned to the undersigned Examiner to make findings of fact, conclusions of law, and order.

Prior to the date set for hearing on the matter, the complainant notified the Examiner that it wished to withdraw the allegations that had been found by the Executive Director to state a cause of action, and that it intended to petition for review of the Executive Director's ruling that certain other allegations failed to state a cause of action. The petition for review was filed with the Commission on May 22, 1991.

On September 26, 1991, the Commission issued its decision on the complainant's petition for review of the preliminary ruling issued by the Executive Director. City of Seattle, Decision 3872 (PECB, 1991).[1] The Commission affirmed the Executive Director's conclusion that claims of enforcement of union security obligations in violation of the union's own by-laws failed to state a cause of action, but it reversed the Executive Director's preliminary ruling on allegations that the union had sought enforcement of union security obligations for the period of a hiatus between contracts, and concerning a failure to comply with the notice requirements of WAC 391-95-010.

The matter was then remanded to Examiner Rex L. Lacy for further proceedings under Chapter 391-45 WAC. A hearing was held the examiner at Kirkland, Washington, on February 4, 1992. The parties filed post-hearing briefs.

BACKGROUND

The City of Seattle is a "public employer" within the meaning of RCW 41.56.030(1). Among other services, the employer operates a Department of Licenses and Consumer Affairs. The Enforcement

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[1] The allegations of the original complaint are fully set forth in the Commission's decision.

Section within that department has employees working under the titles of: "license and standards inspector" and "warrant server".

Teamsters Union, Local 763, AFL-CIO, and a "bargaining representative" within the meaning of RCW 41.56.030(3), is one of 13 unions that make up a "Joint Crafts Council" that represents various employees of the City of Seattle. As a part of the Joint Crafts Council, Local 763 is the exclusive bargaining representative of a bargaining unit which includes the "license and standards inspector" and "warrant server" classifications in the Enforcement Section of the Department of Licenses and Consumer Affairs. Jon Rabine is both the secretary-treasurer of Local 763 and the president of the Joint Crafts Council. Tom Krett is a business agent for the union.

The City of Seattle and the Joint Crafts Council were signatory to a collective bargaining agreement that was effective from September 1, 1986 through August 31, 1989. That contract contained a union security provision that required members of the affected bargaining unit to become and remain members of Local 763.

Section 17 of Local 763's by-laws contains provisions governing initiation fees, reinstatement fees, and assessments. At the time this matter arose in 1989, the initiation fee was set at $100.00, and regular union dues for the members of the affected bargaining unit were set at $27.00 per month. The union's by-laws required that bargaining unit members who became delinquent three months or more must pay a reinitiation fee of $100.00.

Georgianne Browning is an employee of the City of Seattle, working in the Enforcement Section within the Department of Licenses and Consumer Affairs. She was hired into her current position approximately 10 years ago, and she came under union security obligations of the collective bargaining agreement then in effect. Within 30

days after the commencement of her employment, Browning authorized the employer to make payroll deductions for her union dues. At the same time, she authorized payment to the union in the amount of $100.00, to be applied to her initiation fee. Thereafter, Browning continued to pay her union dues through payroll deductions.

Negotiations for a successor agreement were not concluded prior to the August 31, 1989 expiration date of the 1986-89 contract between the City of Seattle and the Joint Crafts Council. On August 29, 1989, the parties to that contract signed a Memorandum of Understanding that provided for the extension of all the terms and conditions of the collective bargaining agreement until a successor agreement was negotiated and implemented.[2]

On April 20, 1991, Browning rescinded her authorization for payroll deduction of her union dues, and discontinued making dues payments to the union.[3]

Browning did not make a payment of union dues during the month of May, 1990. During that month, members of the bargaining unit represented by Local 763 ratified a successor contract. Browning asserts that she did not attend the ratification meeting, because she was not informed of the date, time, and place of the ratification meeting. Krett testified that notice of the ratification meeting was posted on bulletin boards on the employer's premises.

Browning did not make a payment of union dues during the month of June, 1990. On June 22, 1990, the employer and the Joint Crafts

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[2] The existence of this contract extension was not among the facts alleged by Browning in her complaint. At the hearing, she testified that she did not know anything about the contract extension.

[3] She apparently believed at that time that there was a hiatus between contracts. The record does not contain evidence of the extent of her investigation as to the status of the contract between the employer and union.

Council signed their successor collective bargaining agreement. That contract was nominally in effect for the period from September 1, 1989 through August 31, 1991. That contract contained a union security provision, as follows:

ARTICLE III - UNION MEMBERSHIP AND DUES

3.1 It shall be a condition of employment that each employee covered by this Agreement who voluntarily is or who voluntarily becomes a member of said Union shall remain a member of same during the term of this agreement. ... Any employee hired or permanently assigned into a bargaining unit covered by this Agreement on or after January 1, 1972, shall on or before the thirtieth (30th) day following the beginning of such employment join the appropriate Union. Failure by any such employee to apply for and/or maintain such membership in accordance with this provision shall constitute cause for discharge of such employee; provided however, 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.

...

3.1.2 Employees who are determined by the Public Employment Relations Commission to satisfy the religious exemption requirements of RCW 41.56.122 shall contribute an amount equivalent to regular union dues and initiation fees to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the regular monthly dues.

3.2 Failure by an employee to abide by the afore-referenced provisions of the Article shall constitute cause for discharge of such employee; provided however, it shall be the responsibility of the Union to notify the City in writing when it is

seeking discharge of an employee for noncompliance with Sections 3.1 or 3.1.1 or 3.1.2 of this Article. When an employee fails to fulfill the union security obligations set forth within this Article, the Union shall forward a "Request For Discharge Letter" to the affected Department Head (with copies to the affected employee and the City Director of Labor Relations). Accompanying the Discharge Letter shall be a copy of the letter to the employee from the Union explaining the employee's obligation under Article III, Sections 3.1 or 3.1.1. or 3.1.2.

3.2.1 The contents of the "Request For Discharge Letter" shall specifically request the discharge of the employee for failure to abide by Sections 3.1 or 3.1.1 or 3.1.2 of Article III, but provide the employee and the City with thirty (30) calendar days written notification of the Union's intent to initiate discharge action, during which time the employee may make restitution in the amount which is overdue. Upon receipt of the Union's request, the affected Department Head shall give notice in writing to the employee, with a copy to the Union and the City Director of Labor Relations that the employee faces discharge upon the request of the Union at the end of the thirty (30) calendar day period to present to the affected department any information relevant to why the Department should not act upon the Union's written request for the employee's discharge.

3.2.2 In the event the employee has not yet fulfilled the obligation set forth within Sections 3.1 or 3.1.1 or 3.1.2 of this Article within the thirty (30) calendar day period noted in the Request For Discharge Letter, the Union shall thereafter reaffirm in writing to the affected Department Head, with copies to the affected employee and the Director of Labor Relations, its original written request for discharge of such employee. Unless sufficient legal

> explanation or reason is presented by the employee why discharge is not appropriate or unless the Union rescinds its request for the discharge the City shall, as soon as possible thereafter, effectuate the discharge of such employee. If the employee has fulfilled the union security obligation within the thirty (30) calendar day period, the Union shall so notify the affected Department Head in writing, with a copy to the City Director of Labor Relations and the affected employee. If the Union has reaffirmed its request for discharge, the affected Department Head shall notify the Union in writing, with a copy to the City Director of Labor Relations and the affected employee, that the Department effectuated the discharge and the specific date such discharge was setting forth the reasons why it has not done so.
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> 3.3 The City shall deduct from the pay check of each employee who has so authorized it, the regular initiation fee and regular monthly dues uniformly required of members of the Union. The amounts deducted shall be transmitted monthly to the Union on behalf of the employees involved. The Union shall indemnify and save harmless the City from any and all liability resulting from dues deductions. Authorization by the employee shall be on a form approved by the parties hereto and may be revoked by the employee upon request.

Effective July 1, 1990, Local 763 increased its monthly dues for the bargaining unit involved here to $29.00 per month.

Browning did not make a payment of union dues during the month of July, 1990. On July 19, 1990, the union held a membership meeting at the employer's Charles Street Facility, for the purposes of distributing copies of the new labor agreement to bargaining unit members, and of electing a shop steward. Krett testified that

notice of the meeting was posted in the usual places. Browning testified that she did not attend that meeting.

Browning did not make a payment of union dues during the first part of August, 1990. On August 17, 1990, Local 763 notified Browning that she was delinquent in paying her union security obligations. At that time, the union demanded payment in the amount of $158.00, computed as follows:

$ 100.00 - Reinitiation fee
$ 54.00 - Dues for June, 1990 - July, 1990 Dues[4]
$ 4.00 - Assessments
$ 158.00 - TOTAL

The union requested payment by August 31, 1990, and provided a telephone number for Browning to contact the union.

Browning responded in a letter dated August 27, 1990, wherein she protested the union's demand for payment. Browning therein requested full documentation of the "reinitiation fee" and "assessments" demanded by the union. As to the monthly dues demanded by the union, Browning made reference to a nine month period when the local was "without a contract", and demanded a refund of dues she had paid during that period.

The record indicates that Browning had a telephone conversation with Krett, wherein the amount owed by Browning was discussed.

On August 31, 1990, Browning paid the union $85.00. A receipt was issued by the union office, apparently computing monthly dues and assessments as follows:

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[4] The union appears to have computed Browning's dues obligation for July at $27.00, notwithstanding the increase to $29.00 effective July 1, 1990, as described above.

$ 27.00 - June dues
$ 27.00 - July dues
$ 27.00 - August dues[5]
$ 81.00 - Total June, July & August Dues
$ 4.00 - Late fee
$ 85.00 - TOTAL

At that time, Browning refused to pay the $100.00 requested by the union as a reinitiation fee.[6]

On August 31, 1990, Krett sent a letter to Browning concerning the reinitiation fee dispute, as follows:

> In response to your letter dated August 27, 1990, which was received in our office yesterday, I phoned you to advise you that your letter did not waive the requirement that payment for outstanding dues and fees be paid by the close of business this date. You advised me that you would pay the dues owed but were refusing to pay any reinstatement fee.
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> I spoke with you later today when you were in our office to make the dues payment. At that time I gave you a copy of the Local Union Bylaws and International Union Constitution. Once again you stated you were refusing to pay the reinitiation fee. I informed you that the union would therefore find it necessary to institute procedures for your discharge from employment.
>
> The reinitiation fee you have been charged is due to your failure to secure a honorary withdrawal card from the union once you elected to no longer pay union dues for the period from April of 1990 to present, a period exceeding three months. Honorary withdrawal cards are issued only to individuals who become unemployed in the jurisdiction of the

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[5] The union appears to have accepted Browning's payment for August dues at $27.00, notwithstanding the increase to $29.00 effective July 1, 1990, as described above.

[6] It is inferred that Browning re-authorized payroll deduction of her union dues at about this same time.

> Local Union. Because you continue to be employed within the jurisdiction of this Local Union you were ineligible for receipt of an honorary withdrawal card which would have alleviated the need for the payment of a new initiation fee. As a result, once you were again required by the Labor Agreement to become and remain a member of the Union, you were assessed a new initiation fee.
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> A reminder regarding late fees and reinitiation fees is contained within the Local 763 column of the Washington Teamsters Newspaper which is mailed to your home address quarterly.
>
> Please be advised that should you fail to pay to our office the full amount owed for the reinitiation fee ($100.00) by September 12, 1990, the Union shall find it necessary to institute proceedings for your discharge in accordance with the terms of your Labor Agreement.

There is no indication of an immediate reply from Browning, and she did not pay the requested amount by September 12, 1990.

The payroll stub issued to Browning on September 7, 1990, for the pay period ending August 28, 1990, indicates that a $29.00 deduction was made for union dues in that payroll.[7]

On September 14, 1990, the union wrote to the director of the Department of Licenses and Consumer Affairs, requesting that Browning be discharged for noncompliance with Article III, Section 3.1 of the collective bargaining agreement. Copies were sent to Browning and to the employer's director of labor relations.

On September 18, 1990, Browning sent a letter to the employer's director of labor relations, asserting that dues were not owed for May of 1990 because of a contract hiatus, and further asserting

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[7] A copy of the pay stub is in evidence as an attachment to Exhibit 11 in this record. The pay stub does not indicate the month for which the dues were deducted.

that she did not owe a reinitiation fee.[8] She requested a response from the employer by October 5, 1990.

On September 25, 1990, an official of the Department of Licenses and Consumer Affairs notified Browning, in writing, that her discharge had been requested for failure to comply with her union security obligations under the collective bargaining agreement. Browning was encouraged to comply or be discharged. Copies of that letter were sent to the union and to the employer's director of labor relations.

On September 26, 1990, Browning sent a letter to Krett, asking that the payroll deduction reflected on her September 7, 1990 pay stub be credited to her September, 1990 dues. At the same time, she requested a copy of her original "membership agreement" and copies of the union's quarterly financial reports for the past year.

On October 3, 1990, the employer's director of labor relations sent a letter to Browning, responding to her letter of September 18, 1990. The employer official opined that her situation did not involve a "contract hiatus", but was controlled by the requirement of the union's by-laws that a reinitiation fee becomes due if a member fails to pay dues for three months. A copy was sent to the departmental official, but not to the union.

On October 5, 1990, Browning filed her unfair labor practice complaint with the Commission. On the same date, she paid the union $100.00, but requested that the funds be held in escrow pending the outcome of the unfair labor practice proceedings.

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[8] Other arguments advanced by Browning in that letter concerned interpretation of the union's by-laws which, pursuant to the Commission's remand order, are not a matter before the Examiner in this case.

On October 12, 1990, the union withdrew its request for Browning's discharge.

POSITIONS OF THE PARTIES

Georgianne Browning contends that Local 763 has unlawfully discriminated against her in the method of collection of dues and reinitiation fees; that union members cannot be required to pay union dues during a contract hiatus; and that the union did not give her proper notification of the amounts of monies owed to the union pursuant to WAC 391-95-010.[9]

Local 763 contends that it has not discriminated against Browning in calculating the amounts of dues, reinitiation fees, or assessments. Further, the union contends that Browning was properly assessed a reinitiation fee in 1990, because she failed to pay dues for a period exceeding three months.

DISCUSSION

Chapter 41.56 RCW defines unfair labor practices for bargaining representatives as follows:

> **41.56.150 UNFAIR LABOR PRACTICES FOR BARGAINING REPRESENTATIVES ENUMERATED.** It shall be an unfair labor practice for a bargaining representative:
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> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights granted by this chapter;

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[9] Notwithstanding the Commission's ruling that such allegations fail to state a cause of action before the Commission, Browning continued to argue before the Examiner that she was not in arrears for three months under a proper interpretation of the union's by-laws.

> (2) To induce the public employer to commit an unfair labor practice; ....

Among the types of conduct defined as an unfair labor practice by a public employer is:

> **RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED.** It shall be an unfair labor practice for a public employer:
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; ...

That leads, in turn, to the provisions of the statute which specify the rights of employees and permit union security arrangements, as follows:

> **RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE.** No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.
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> ...
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> **RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS -- AUTHORIZED PROVISIONS.** A collective bargaining agreement may:
> (1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision ...

Thus, a union commits an unfair labor practice under Chapter 41.56 RCW either by: (1) Direct interference with public employees in the exercise of their rights, by threatening enforcement of union security obligations in an unlawful manner; or (2) indirect discrimination through the employer, by seeking enforcement of

union security obligations in an unlawful manner. See, Spokane Fire District 9 (International Association of Fire Fighters, Local 2916, Decision 3773-A (PECB, 1992); Snohomish County (Washington State Council of County and City Employees), Decision 3705 (PECB, 1991); Mukilteo School District (Mukilteo Education Association), Decision 1122-A (EDUC, 1981).

The authority and duty of the Public Employment Relations Commission to prevent unfair labor practices is set forth in Chapter 41.56 RCW, as follows:

> **RCW 41.56.160 COMMISSION TO PREVENT UNFAIR LABOR PRACTICES AND ISSUE REMEDIAL ORDERS.** The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

The Commission has adopted Chapter 391-45 WAC as rules for the processing of unfair labor practice cases. As the moving party, Georgianne Browning has the burden of proving that the union treated her differently than other bargaining unit employees in the administration of the union security provision of the contract, or that the payments demanded from her under the union security provision were fundamentally unlawful. WAC 391-45-270.

Other than the union security enforcement at issue in this case, the record is devoid of any other incidents where the union took any action against Browning. Browning previously withdrew all allegations of union actions in reprisal for her support of a decertification effort. Nothing in the record indicates that Local

763 considered or treated Browning's situation as anything more than a bookkeeping transaction.

The Effect of the Contract Extension

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, does not grant or protect a right of public employees to strike,[10] or a right of public employers to lock out their employees in connection with a labor dispute. RCW 41.56.070 contains a three-year limit on the duration of collective bargaining agreements, and it is expected that contracts will be opened for negotiations at periodic intervals.

Union security arrangements are authorized by RCW 41.56.122 only in the context of a collective bargaining agreement. Although the question had not been finally resolved at the time of the events giving rise to this case, it is now clear that the union security obligations of bargaining unit employees cease during a hiatus between contracts. City of Seattle (International Brotherhood of Electrical Workers, Local 46), Decision 3169-A et al. (PECB, 1990).

Faced with impending expiration of an existing collective bargaining agreement and unresolved contract negotiations, employers and unions commonly enter into extension agreements to preserve the fundamental aspects of their contractual relationship, including union security and grievance arbitration mechanisms. While RCW 41.56.070 prohibits "automatic" renewal or extension of a collective bargaining agreement, nothing in the statute precludes an employer and union from extending their agreement by a volitional action as the contract expiration approaches.[11] Contradicting the

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[10] See, RCW 41.56.120.

[11] See, for example, Highline School District, Decision 1507 (PECB, 1982), where a fixed-term extension signed by the employer and incumbent union was found sufficient to bar the representation petition of another organization.

type of crisis normally associated with a "no contract - no work" stance by either labor or management, RCW 41.56.950 encourages peaceful negotiations beyond contract expiration by specifically authorizing the making of wage adjustments retroactive to the expiration date of a previous collective bargaining agreement between the same parties.[12]

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[12] The Legislature further reduced the potential for a hiatus between contracts in 1989, when it enacted an amendment to Chapter 41.56 RCW which has the effect of extending the provisions of a collective bargaining agreement for a period of one year after the stated expiration date of the contract:

> **41.56.123 Collective bargaining agreements --Effect of termination --- Application of section.** (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.
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> (2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.
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> (3) This section shall not apply to the following:
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> (a) Bargaining units covered by RCW 43.52-.430 et seq. for factfinding and interest arbitration;
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> (b) Collective bargaining agreements authorized by chapter 53.18 RCW;
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> (c) Security forces established under RCW 53.52.520; or
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> (d) Collective bargaining agreements authorized by chapter 54.04 RCW.
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> **(4) This section shall not apply to collective bargaining agreements in effect or being bargained on July 23, 1989. [1989 c 46.]**

This case is not affected by that amendment, since the contract involved was being bargained in July of 1989.

Most, if not all, of Browning's actions and arguments in this case, beginning with the cancellation of her dues checkoff in April of 1990, were based on the incorrect belief that there was a contract hiatus in existence. It came out during the hearing in this matter that, in fact, no contract hiatus ever existed.

On August 29, 1990, the employer and the Joint Crafts Council entered into a memorandum of understanding to extend the wages, hours, and working conditions of the parties' expiring collective bargaining agreement until such time that a successor agreement was negotiated.[13] That extension agreement was not "automatic", so as to conflict with the prohibition found in RCW 41.56.070, but was agreed to by the contracting parties on the day before their 1986-89 contract was to expire. Further, the extension agreement was in writing, thereby conforming to the requirement of State ex. rel. Bain v. Clallam County, 77 Wn.2d 542 (1970), that collective bargaining agreements under Chapter 41.56 RCW be preserved in written form.

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[13] The full text of the extension agreement is as follows:

> THIS MEMORANDUM is supplemental to the AGREEMENT by and between the CITY OF SEATTLE hereinafter referred to as the City and the JOINT CRAFTS COUNCIL, hereinafter referred to as the Council.
>
> It is understood and agreed by and between the City and the Council that notwithstanding the provisions of Section 22.1 of the Agreement dated November 4, 1987 by and between the City of Seattle and the Joint Crafts Council, that in the event that negotiations for a new Agreement extend beyond the anniversary date of this Agreement, all of the terms and provisions of this Agreement shall continue to remain in full force and effect during the course of collective bargaining until such time as the new terms of a new Agreement have been consummated or unless either party serves the other party with ten (10) days written notice of intent to terminate the existing Agreement.

As regards this case, the direct effect of the extension agreement was to legally extend all of the obligations of the 1986-89 collective bargaining agreement, including the union security obligations of employees subject to that agreement.[14] Employees covered by that lawfully extended collective bargaining agreement could not opt to cease paying dues during the extension period without placing their employment in jeopardy.

Browning appears to have exercised a statutory right when she took action in April of 1990 to discontinue her dues checkoff, but that does not resolve the matter. RCW 41.56.110 makes "dues checkoff" a statutory right of the incumbent exclusive bargaining representative of a bargaining unit, to be implemented upon the voluntary authorization of bargaining unit employees. Thus, while Browning could have chosen at any time to make her dues payments directly to the union,[15] her union security obligations continued under the contract extension.

Browning's failure to pay dues in May of 1990 appears to have been based on incorrect facts, and put her in breach of her obligations under the union security provisions of the extended contract.[16]

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[14] Because the memorandum of understanding was not for a "fixed" period of time, it would not have served as a "contract bar" to a petition for investigation of a question concerning representation. West Valley School District, Decision 2913 (PECB, 1988). No such petition was filed in this instance, however.

[15] This is contrasted with the situation of employees under the Educational Employment Relations Act. Under RCW 41.59.100, dues checkoff is mandatory if a union security arrangement is agreed upon by the employer and union.

[16] The record indicates that Browning made inquiry to the Commission's staff about her obligations during a hiatus between contracts. Answers given in response to such an inquiry would obviously be inapplicable if there was no actual hiatus between contracts.

It does not appear from this record that she has ever paid union dues for that month.

Browning's failure to pay dues in June and July of 1990 put her in breach of her union security obligations for three consecutive months. From the union's perspective, it also could have triggered her obligation to pay another initiation fee.[17] The semantic debate about whether an "initiation fee", "reinstatement fee" or "reinitiation fee" was demanded by the union is pointless. The $100 amount requested by the union was never any more or less than the $100 initiation fee uniformly applied to members of this bargaining unit.

Inconsistent Enforcement of Union Security

There is precedent for finding an unfair labor practice where a union's administration of union security obligations is erratic and inconsistent, as between employees. Pierce County (Teamsters Local

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[17] For unknown reasons, the fact of the contract extension did not come out in the proceedings in City of Seattle (Teamsters Local 763), Decision 3835 (PECB, 1991), where the undersigned Examiner decided the parallel claim of another employee in the department where Browning is employed. Assuming a contract hiatus, it was stated:

> Walter Washington then exercised his right to drop out of the union during a hiatus between contracts. ...
>
> The exercise of a "right" is not necessarily free of all risks or costs. Apart from being a source of revenue to the organization which levies it, an "initiation fee" arrangement tends to encourage prompt and consistent payment of periodic dues thereafter. Whether the decision involves a health studio, a labor union or some other type of organization, a member who contemplates dropping out must weigh the cost of re-joining against the savings to be achieved. Walter Washington stood to save $27.00 per month by dropping out of the union, but incurred a $100.00 reinitiation fee by doing so.

461), Decision 1840-A (PECB, 1985). In this case, the communications sent to Browning appear to be form letters that are routinely mailed to union members who have become delinquent in paying dues. There is no evidence to support a finding that Browning was singled out for discriminatory treatment.

Erroneous Demands for Union Security Payments

The focus of this inquiry must be on the actual content of the union's August 17 and August 31 letters to Browning, as well as on the union's September 14 letters to Browning and the employer. The August 17, 1990 letter was the first occasion when enforcement of the union security obligation by discharge was threatened. The later letters are important because they sought Browning's discharge to enforce the union security obligation; they went beyond union/member relationships, and brought the employer and the employee's job security into the situation.

Browning's reliance on the Commission's decision in City of Seattle (IBEW Local 46), Decision 3169-A, supra, is misplaced. That case would be controlling if the cases were factually similar, but they are not. The Seattle case is precedent for situations where a union demands that employees pay dues for a period when no contract is in effect, and the union does not show that the previous contract had been lawfully extended. Neither of those circumstances apply to this matter. In fact, the union did not at any time seek to collect dues for the month of May, 1990, even though it may have been entitled to do so under the terms of the contract extension.

The "Reinitiation" Fee

The union sought to collect a $100.00 fee on and after August 17, 1990, when it calculated that Browning had gone for more than three months without paying any union dues. Browning's principal

objection lies with the union's demand for that fee. A determination on the legitimacy of that fee requires a review of the history surrounding Browning's membership relations with the union during her employment with the City of Seattle.

Browning was hired into a bargaining unit position approximately 10 years ago, and she complied with the union security provisions of the contract then in effect. She authorized the employer to make payroll deductions for her initiation fee, as well as for regular monthly dues. Browning kept her membership in good standing, by continuing to pay monthly dues until she discontinued payroll deduction in April of 1990. She could have protected her investment in her "initiation fee" by making direct payments of monthly dues to the union thereafter, but she did not choose to do so.

The best that can be said for Browning is that she **believed** that there was a hiatus between contracts. Even assuming that to be the case, her decision to cease paying union dues was at some risk. Like the situation of the complainant in City of Seattle, Decision 3835, supra, the financial benefit of Browning's decision to cease dues payments was dependent on the remaining duration of any contract hiatus. A footnote in Decision 3835 outlined the financial realities:

> Had the hiatus between contracts lasted less than four months, the complainant would have been better off to remain a dues-paying member and preserve his original initiation fee. Since the hiatus actually lasted more than nine months, the complainant had a net savings even after payment of the reinitiation fee.

Unlike the employee involved in Decision 3835, who dropped out of the union in the first month after the stated expiration date of the collective bargaining agreement, Browning waited until the eighth month following the stated expiration date of the contract before acting to drop out of the union. With settlement of the

contract negotiations coming less than two months thereafter, in June of 1990, the remaining contract hiatus would not have been long enough for Browning to achieve a net economic gain.

Apart from any obligations under the union security provisions of the collective bargaining agreement, Browning had not paid dues for three months (May, June and July of 1990) by the time that the union's August 17, 1990 letter demanded a "reinitiation fee" from her. The union demanded payment for the reinitiation fee by August 31, 1990. Browning resisted payment of the $100.00 fee, and her August 31 payment of $85.00 for June, July and August did not overcome the "three months" problem already in existence from May, June and July.

In a recent decision, Operating Engineers, Local 501, v. Vince Lignowski, 306 NLRB 124 (March 9, 1992), the National Labor Relations Board upheld the right of unions to collect reinstatement fees from bargaining unit employees who are in arrears because they elected to cease paying dues during a contract hiatus.[18] Browning made a decision to drop out of the union, and she is not in a position to complain about the union's demand for a reinitiation fee. She was not entitled to be considered a "member" of the union or "in good standing" without payment of that reinitiation fee.

Sufficiency of Notice

Union security arrangements established under Chapter 41.56 RCW are statutorily made subject to a "right of nonassociation" of employees who assert religious-based objections to payment of union dues. The Commission is authorized to hear and determine disputes concerning the eligibility of employees to assert the "right of

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[18] The same decision had held, consistent with the Commission's holding in City of Seattle, Decision 3169-A, supra, that a union cannot demand dues payments for a period when no contract was in effect.

nonassociation", and also concerning the designation of the charity which is to receive alternative payments from employees who successfully assert the "right of nonassociation". The Commission has adopted Chapter 391-95 WAC as administrative rules for the processing of such disputes.

In remanding the instant case for hearing, the Commission addressed a claim of "insufficient notice" made by Browning, as follows:

> Codifying National Labor Relations Board precedent setting forth certain minimum "notice" requirements imposed on a union that desires to enforce union security obligations, [footnote citing International Association of Machinists & Aerospace Workers, District No. 15, AFL-CIO, 231 NLRB 103 (1977).] 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. ...
>
> Paragraph 16 [of the complaint] 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). [footnote citing Pierce County, Decision 1840-A.] ...

Browning has not asserted any religious-based "right of non-association" in this case, and she has not filed a petition under Chapter 391-95 WAC.

Employees subject to a union security obligation are responsible for keeping their union dues payments current. This is particularly true for employees who choose to make direct payments to the union, rather than enrolling for dues check-off under RCW 41.56-.110. Such an employee must be informed of his or her obligations under WAC 391-95-010, but is not statutorily entitled to monthly billings from the union such as are commonly received from credit card firms, department stores and public utilities.

The record does not support Browning's contentions that she was not informed of the amounts of monies she owed, and that she did not receive notification that she was in danger of becoming delinquent in her dues. The union's August 17, 1990 letter notified Browning that she was in arrears, and set forth the specific amounts then being demanded by the union. The notification process used in the case of Georgianne Browning is the same as is used for all other members of the union. She did not dispute the amounts requested for monthly dues, or even for the "late charge" assessed by the union.[19] The record in this matter clearly indicates that the complainant was aware of her union security obligations, and that she was aware that the union considered her dues payments to be delinquent. She responded in writing, setting forth detailed reasons for her resistance to paying the reinitiation fee.

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[19] As noted above, the union may even have short-changed itself in accepting payments of $27.00 per month from Browning for July and August of 1990.

FINDINGS OF FACT

1. The City of Seattle is a "municipal corporation" within the meaning of RCW 41.56.020, and is a "public employer" within the meaning of RCW 41.56.030(1). The employer operates a Department of Licenses and Consumer Affairs which employs "license and standards inspectors".

2. Teamsters Union, Local 763, a "bargaining representative" within the meaning of RCW 41.56.030(2), is one of 13 labor unions who make up a Joint Crafts Council representing employees of the City of Seattle. Local 763 is the exclusive bargaining representative of certain employees in the Department of Licenses and Consumer Affairs.

3. The City of Seattle and the Joint Crafts Council were parties to a collective bargaining agreement that was effective from September 1, 1986 through August 31, 1989. That contract contained a union security provision which required bargaining unit employees to become and remain members in good standing. The contract provided that failure to comply with the union security provision may result in termination from employment with the City of Seattle.

4. On August 30, 1989, the City of Seattle and the Joint Crafts Council entered into a memorandum of understanding, extending their 1986-89 collective bargaining agreement pending the conclusion of negotiations on a successor contract.

5. Georgianne Browning, a "public employee" within the meaning of RCW 41.56.030(2), is an employee of the City of Seattle who was, at all times pertinent hereto, within the bargaining unit represented by Local 763 as part of the Joint Crafts Council. Under the terms of the 1986-89 collective bargaining agreement

and predecessor agreements, Browning had become and remained a member of Local 763.

6. In April of 1990, while the contract extension described in paragraph 4 of these findings of fact was in effect, Browning rescinded her authorization for payroll deduction of union dues. Browning made no dues payments to Local 763 during the months of May, June or July of 1990.

7. On June 22, 1990, the City of Seattle and the Joint Crafts Council effectuated and implemented a successor contract effective from September 1, 1989 through August 31, 1991. The union security obligations specified in Article III of that contract are similar to those which had been contained in the 1986-89 contract, as extended by the memorandum of understanding described in paragraph 4 of these findings of fact.

8. On August 17, 1990, Local 763 notified Browning that she was in arrears in payments under her union security obligations. That letter demanded $54.00 for regular monthly dues for the months of June and July, 1990, demanded $4.00 for a late charge assessment, and demanded $100.00 for a reinitiation fee. The letter warned that enforcement of the union security obligation could result in termination of Browning's employment with the City of Seattle.

9. Browning thereafter disputed the reinitiation fee demanded by the union in the letter dated August 17, 1990, but did not take issue with the monthly dues or late fee demanded by the union. Browning stated her objections in a letter she sent to the union on August 27, 1990, and in conversations with the business representative of the union.

10. On August 31, 1990, Browning made a payment to the union in the amount of $85.00, representing her regular monthly dues

for the months to June, July, and August of 1990, plus the $4.00 late fee demanded by the union. Browning refused to pay the $100.00 reinitiation fee demanded by the union.

11. On September 14, 1990, Local 763 notified Browning that the union was initiating discharge proceedings against her, in accordance with Article III, Section 3.1 of the collective bargaining agreement applicable to his employment. On the same date, the union made a request of the employer for the discharge of Georgianne Browning, citing her non-compliance with Article III, Section 3.1 of the collective bargaining agreement.

12. On October 12, 1990, Browning paid the $100.00 reinitiation fee. Thereafter, Local 763 withdrew the request for her termination.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. Georgianne Browning has not sustained her burden of proof with regards to the allegation that the union has discriminated and retaliated against her, in violation of RCW 41.56.150(1), with regards to the manner the union has assessed a "reinitiation fee" in August of 1990.

3. Georgianne Browning has not sustained her burden of proof that the union has sought unlawful enforcement of union security obligations against her, in violation of RCW 41.56.150(2), by its demand for payment of a reinitiation fee after Browning failed to pay union dues for a period of more than three consecutive months.

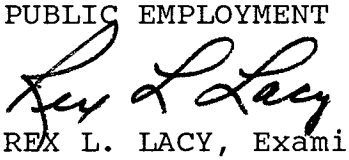
4. Georgianne Browning has not sustained her burden of proof that the union has sought unlawful enforcement of union security obligations against her, in violation of RCW 41.56.150(2), by giving her insufficient notice under the requirements of WAC 391-95-010.

ORDER

The complaint charging unfair labor practices in the above-entitled matter is DISMISSED.

ENTERED at Olympia, Washington, this 19th day of November, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Examiner

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