STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON SCHOOL DISTRICT,	)	
	)	
Employer.	)	
----------	)	
CHET MUNRO,	)	CASE 13717-U-98-3358
	)	
Complainant,	)	DECISION 6300 - PECB
	)	
vs.	)	
	)	
UNITED CLASSIFIED WORKERS UNION, LOCAL 1,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
----------	)	
CHET MUNRO,	)	
	)	
Complainant,	)	CASE 13718-U-98-3359
	)	
vs.	)	DECISION 6301 - PECB
	)	
RENTON SCHOOL DISTRICT,	)	
	)	
Respondent.	)	ORDER OF DISMISSAL
	)	
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On February 13, 1998, Chet Munro filed a complaint with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Renton School District (employer) and United Classified Workers Union, Local 1 (union), had committed unfair labor practices against him. In accord with the Commission's practices, a separate case was docketed for each respondent.[1]

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[1] Munro's complaint against the union is being processed as Case 13717-U-98-3358. Munro's complaint against the employer is being processed as Case 13718-U-98-3359.

The crux of the disagreement is whether Munro's work as a school bus mechanic and on-call substitute school bus driver makes him one of those "employees who have regularly scheduled unsupervised access to children ... [who must] undergo a record check through the Washington State Patrol criminal identification system ... and through the federal bureau of investigation" under RCW 28A.400.304. That process includes record and fingerprint checks. Munro acknowledges he refused to be fingerprinted, and his employment was terminated. Munro alleges he filed a grievance and the employer agreed with the union to reinstate him temporarily, but then alleges that the employer ceased processing his grievance and filed a declaratory judgment action in court.

The complaints were reviewed under WAC 391-45-110. At that stage of proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.[2] Separate deficiency notices were issued on these cases, on April 15, 1998.

The deficiency notice issued in the case against the union advised Munro that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute, and does not lightly insert itself into internal union affairs. The deficiency notice in the case against the employer reiterated that the Commission

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[2] WAC 391-45-110 implements RCW 34.05.419(2), which requires administrative agencies to:

> Examine the application, notify the applicant of any obvious errors or omissions, [and] request any additional information the agency wishes to obtain and is permitted by law to require.

does not assert jurisdiction to remedy contract violations, and advised Munro that the Commission lacks jurisdiction to administer Chapter 28A.400 RCW. Munro was given 14 days to file amended complaints that stated a cause of action, or face dismissal. An amended complaint filed on April 21, 1998, is now before the Executive Director for a ruling under WAC 391-45-110.[3]

Mandatory Subjects of Bargaining

Munro asserts that any requirement that he submit to a record and fingerprint check is a working condition, and a mandatory subject of collective bargaining under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The duty to bargain exists under RCW 41.56.030(4), however, only between a public employer and an exclusive bargaining representative. As an individual employee, Munro lacks legal standing to file or pursue a "refusal to bargain" claim under RCW 41.56.140(4).

Apart from the "legal standing" problem, the amended complaint does not address or avoid a fundamental legal issue. The state Legislature both establishes and sets the authority of local government units, including school districts, and it can pre-empt a field that might otherwise be left to employer discretion and/or collective bargaining at the local level. For example, in City of Seattle, Decision 4687-B (PECB, 1997), the Commission concluded that the language and state-wide coverage of the Law Enforcement Officers and Fire Fighters Retirement System created by Chapter 41.26 RCW removes the authority of local governments to have their own pension systems for such personnel, and thus precluded

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[3] Only the case number for the complaint against the employer was listed on the amended complaint, but it is inferred from its content that it was intended to apply equally to the case against the union.

collective bargaining on creation of local systems. The Legislature could easily want to preempt the field of background checks on common school personnel, by adopting 28A.400.304. There is no indication in that statute, and no allegation in these cases, of any local discretion in the matter. It follows that the Legislature may have precluded collective bargaining on that subject.[4]

The Jurisdiction of the Superior Court

The employer has asked the Superior Court for King County to declare the rights, status, and duties of the school district and Munro regarding RCW 28A.400.304. The jurisdiction of the superior courts of the state of Washington was established by the state Constitution, and they are also statutorily empowered to entertain declaratory judgment actions filed to determine a person's rights under any state statute. RCW 7.24.010, 7.24.020.

Although the Public Employment Relations Commission possesses power to interpret and apply certain state collective bargaining laws, and exercises that power concurrent with the superior courts under State v. Northshore School District, 99 Wn.2d 232 (1983), the Commission only has jurisdiction over the laws which have been assigned to its administration by statute, either at the time the Commission was created or by subsequent amendment.[5] Title 28A RCW, the "Common School Provisions", is not among the statutes administered by the Commission. Accordingly, the Commission is not the primary agency to interpret, determine violations of, or enforce

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[4] As noted above, however, a determination on that precise subject could only be made by the Commission in proceedings between an employer and union that had an actual disagreement concerning the scope of bargaining.

[5] See, RCW 41.58.005.

RCW 28A.400.304 or other statutes in that title. See, Tacoma School District, Decision 5086-A (1995).[6]

Even if the Commission had some authority to interpret RCW 28A.400.304 in this situation, the "priority of action" rule set forth by the Supreme Court of the State of Washington in City of Yakima v. IAFF et al., 117 Wn.2d 655 (1991) would deprive the Commission of any authority to act. The employer clearly won the footrace to the courthouse when it filed its declaratory judgment action long before Munro sought to invoke the Commission's authority by filing these cases.

Allegations Against the Union

Munro notes that the collective bargaining agreement between the employer and union is silent on the issues of fingerprint and record checks.[7] That is not inherently unlawful, however. Collective bargaining agreements cannot possibly cover all mandatory subjects of bargaining, and numerous Commission decisions have reiterated the principle that the duty to bargain remains in effect during the life of a contract as to matters not controlled by the contract.

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[6] The Commission does interpret parallel statutes to the extent necessary to determine latent or patent conflicts with the collective bargaining laws. See, Seattle School District, Decision 5237-B (EDUC, 1996); Mansfield School District, Decision 5238-A (EDUC, 1996).

[7] Having the subject covered by the contract would not be helpful to Munro. The Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). Thus, a claim that the disputed checks violated the contract would not state a cause of action.

Even if record/fingerprint checks are a mandatory subject, the union's failure to bargain them is not inherently unlawful:

- Unions have a right to administer their own membership procedures and other internal affairs, so long as they do not alter employees' wages, hours or working conditions on the basis of union membership or lack thereof. Tacoma School District, Decision 5465-C (EDUC, 1996).

- Unions have discretion about what proposals to advance, so long as that discretion is not exercised in a manner which discriminates on the basis of union membership or other invidious grounds. For example, a union that is satisfied with existing wages, hours or working conditions can be content to rely on the employer's obligation to maintain the status quo, and is not obligated to propose either contract language or any change. Similarly, a union which agrees with a principle such as the public policy concern evidenced in RCW 28A.400.304 could lawfully decline to advance proposals which would limit or contradict that principle.

- The Commission has consistently refused to assert jurisdiction over "breach of duty of fair representation" claims arising exclusively out of the processing of contractual grievances. Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982).[8]

There are no allegations that the union's action or inaction at issue here is based upon any unlawful discrimination.

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[8] This is closely related to the absence of "violation of contract" jurisdiction which was stated in both of the deficiency notices issued in these cases.

Munro alleges there was improper collusion when the employer and union agreed that the declaratory judgement would be filed against Munro alone. Such an agreement does not deprive Munro of any right under Chapter 41.56 RCW, or force him into an inappropriate forum for resolution of his disagreement with the employer. Nor do any of the alleged facts support a contention that the union was a necessary party to the declaratory judgment action, since it is only Munro's refusal to comply with the fingerprint check that is in dispute.

Munro claims the union owed him representation in the declaratory judgment action. The fact that this lawsuit may impact his continued employment is not, in itself, sufficient to create a union duty which the Commission enforces. A similar claim was dismissed in Pateros School District, Decision 3744 (EDUC, 1991), where a union refused to represent a teacher in a statutory non-renewal proceeding under Title 28A RCW. The examiner in that case noted that the statutory proceeding fell outside the collective bargaining process, and that the legislature would need to expand the scope of the duty of fair representation before the Commission could require unions to offer representation to all bargaining unit members for such proceedings. See, also, Tacoma School District, Decision 5337-A (PECB, 1995).

The amended complaint fails to state a cause of action against the union.

Allegations Against the Employer

Munro alleged the employer committed unfair labor practices by ceasing to process his grievance, and by filing and pursuing the declaratory judgment action against him individually.

Any claim that the record and fingerprint check requirement violates a collective bargaining agreement would fail to state a cause of action. The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, supra.

Any claim that the employer violated the grievance and arbitration procedures of the collective bargaining agreement similarly fails to state a cause of action. Closely related to the absence of "violation of contract" jurisdiction, the Commission does not assert jurisdiction to enforce the agreement to arbitrate, the procedures for arbitration, or the awards issued by arbitrators on grievance disputes. Thurston County Communications Board, Decision 103 (PECB, 1976).

Munro asserts that the employer's declaratory judgment action is coercive, apparently because he has been forced to pay for his own legal representation in that proceeding. RCW 41.56.040 establishes the collective bargaining rights of public employees:

> 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.

That section and the unfair labor practice provisions of Chapter 41.56 RCW do prohibit employers from ***coercing*** public employees in their exercise of their collective bargaining rights, but that does

not regulate other conduct which might be perceived by employees as coercive. RCW 41.56.140(1) provides only:

> 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**; ...

[Emphasis by **bold** supplied.]

The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment.

Munro does not cite any provision of Chapter 41.56 RCW (nor is any found) which would protect him from record/background check requirements of RCW 28A.400.304, or from the employer's filing of a declaratory judgment action in the superior court. Employers may exercise their legal rights which do not impose on or discourage any union or collective bargaining activity.[9] Employers can also exercise free speech rights to explain their position in ongoing litigation through voluntary meetings or letters to employees,[10] so long as their statements are factual and do not contain any threat

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[9] In Soap Lake School District, Decision 6194 (PECB, 1998), an employer had a right to file a unit clarification petition seeking exclusion of secretaries from a unit.

[10] See, for example, City of Seattle, Decision 3566-A (PECB, 1991) and METRO, Decision 3218-A (PECB, 1990).

of reprisal or force or promise of benefit associated with the employees' exercise of protected union activity.

The amended complaint has not alleged facts sufficient to state a cause of action against the employer.

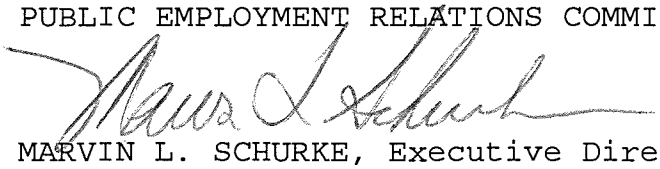
NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, this 20th day of May, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.