

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF NEWPORT, ) an affiliate of PUBLIC SCHOOL ) EMPLOYEES OF WASHINGTON, )  Complainant, )  vs. )  NEWPORT SCHOOL DISTRICT NO. 56-415, )  Respondent. )	CASE NO. 4737-U-83-791  DECISION NO. 2153 - PECB    FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
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Gail Fujita, Staff Attorney, Public School Employees of Washington, appeared on behalf of the complainant.

Robert W. Winston, Attorney at Law, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on August 2, 1983, wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4). George G. Miller was designated as Examiner to make and issue findings of fact, conclusions of law and order. Pursuant to notice issued by the Examiner, hearing on the matter was held in Spokane, Washington, on February 7, 1984. The parties filed post-hearing briefs.

The unfair labor practices complaint makes the following allegations:

The Newport School District Board of Directors voted on Monday, July 18, 1983 to contract out the District's transportation operation. The District has refused to negotiate with PSE representatives regarding this action and its impact on bargaining unit employees represented by PSE. Requests to bargain were made as early as March, 1983 on this issue but no meaningful negotiations were held prior to the decision of the Board.

BACKGROUND:

Newport School District No. 56-415 is located in northeast Washington, in Pend Oreille County. It has a high school and an elementary school. The district serves approximately 1100 students. Among other services, it provides school bus transportation for its students. Darrell R. Olson was superintendent of schools at the time of the hearing in this matter.

Public School Employees of Newport is the recognized exclusive bargaining representative of classified employees of Newport School District No. 56-415. Mary Lou Kimberling was president of the union at the time of the hearing. Jeffrey Thimsen was field representative for Public School Employees of Washington (PSE) until April, 1983. Bill Gray was the PSE Field Representative for the unit after April 1983.

The present dispute arose while the parties had a three-year collective bargaining agreement which was effective through August 31, 1983. The collective bargaining agreement's recognition clause included employees employed as aides, food service, secretarial-clerical, custodial-maintenance, and transportation employees. On July 6, 1983, the school board authorized entering into a five year contract for pupil transportation services with the Dorsey Bus Company (Dorsey), effective September 1, 1983. The subcontracting issue in this matter was restricted to transportation employees. No other employees were affected.

#### POSITIONS OF THE PARTIES:

Public School Employees of Newport contends that subcontracting is a mandatory subject of bargaining; that the union demanded, in writing, to bargain the impact of the district's decision to subcontract out pupil transportation services; that the district never seriously considered the union's proposed contract concessions to reduce transportation costs; and that the district unilaterally implemented the method of providing transportation services without consent from PSE.

Newport School District contends that the district did not refuse to bargain the subcontracting issue; that the district repeatedly requested PSE to provide the district with proposed contract concessions to reduce the transportation costs; that PSE knew throughout the process of the time constraints faced by the district; that the district entered into the contract with Dorsey in July, 1983 after failing to receive contract concessions from PSE; and that PSE's July 18, 1983 proposal was too little and too late, since the district had already entered into a contract with Dorsey for services commencing September 1, 1983.

#### DISCUSSION:

##### The Duty to Bargain

RCW 41.56.030(4) defines collective bargaining as follows:

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith,

and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

The district does not seriously dispute that it had a duty to bargain collectively with the union concerning its decision to contract out school bus services formerly provided by bargaining unit employees. Numerous decisions of PERC have dealt with the duty of a public employer to bargain with the exclusive bargaining representative of its employees before making a decision which takes work away from bargaining unit employees and gives it to employees of a different employer (subcontracting), as in City of Kennewick, Decision 482-B (PECB, 1980) and City of Vancouver, Decision 808 (PECB, 1980), or gives the work to employees in a different bargaining unit of the same employer (skimming of unit work), as in South Kitsap School District, Decision 472 (PECB, 1978) and City of Mercer Island, Decision 1026-A (PECB, 1981). There is a distinction between bargaining of a decision and bargaining of the impact, or effects, of such a decision on bargaining unit employees. Even where there is no duty to bargain the decision, or where bargaining on the decision has been conceded or waived by the union, as in Entiat School District, Decision 1361 (PECB, 1982), there is still duty to bargain on the effects of the decision.

#### Sufficiency of Notice

The collective bargaining agreement in effect between the parties during the 1982-83 school year was silent on the subject of subcontracting, so there was a duty to bargain. The first question to be answered in this matter is whether or not the union had notification of the employer's intent to subcontract out the pupil transportation services being provided by the district. The Commission has stated:

The collective bargaining process is activated by the notification by one of the parties of its desire to alter or amend a contractual provision or an existing practice. Notification of a proposed change from status quo then raises the obligation on the other party to request bargaining about the substance and effects of the proposal alteration. The party affected by the change must be afforded the opportunity to explore all the possibilities and offer alternative solutions to the issue raised by the proposed amendment. The length of time necessary to resolve the issue is directly related to the nature of the need for the alteration. . . .

City of Centralia, Decision 1534 (PECB, 1982)

In this situation, the union was aware that the district had contemplated subcontracting bus services at least as early as August, 1982. In February, 1983, the union's representative, convinced that the district was serious, sent a letter to the district, as follows:

I have been informed that your school district is considering contracting out services presently being performed by members of the bargaining unit represented by Public School Employees of Washington.

As you are aware, a proposal to contract out work currently being performed by members of the bargaining unit is a mandatory subject of collective bargaining.

This letter will serve as a formal demand to bargain the impact on the bargaining unit, of any decision by the District to contract services.

The limitation of the bargaining demand to the "impact" of the decision was misleading, at best.

The district consented to the union's request to negotiate. On February 22, 1983, Olson responded to Thimsen's letter demanding bargaining, and to their subsequent conversation regarding generalities that could reduce costs of the transportation department. In that letter Olson indicated that no subcontracting of transportation services would occur prior to the expiration of the existing agreement with PSE. Further, Olson indicated the district was willing to discuss possible concessions in the contract which would reduce transportation costs.

On February 22, 1983, Greg Horn, a Dorsey representative, presented a preliminary proposal at the regular open public meeting of the school district board of directors. The proposal dealt with providing pupil transportation to the district by Dorsey and included the following:

1. Employment will be offered to current employees of Newport School District.
2. A savings of \$203,063 to the School District over a period of five years.
3. The Board of Directors will be in charge of transportation, as they are now.
4. Dorsey Bus Co. will present a monthly itemized statement to the District.
5. District may leave buses to Dorsey. The District will receive depreciation for replaced buses and buses that Dorsey owns. At the end of the five years, if the contract is not renewed, buses still owned by the District will be returned to the District.
6. All record keeping, and hiring and dismissing of employees will be the responsibility of Dorsey.

7. Bus routes will not be changed without the Board's knowledge and approval. Bus stops will remain the same.
8. Bus Supervisor will make recommendation to the Superintendent of Newport School District during inclement weather.
9. Transportation for a student will not be denied without going through the School District.
10. Most district shop facilities are rented by Dorsey. If facilities are unsatisfactory, Dorsey will build a facility.
11. Dorsey Bus Company will purchase tools and parts from the District at fair market price.
12. All extracurricular trips must be Board authorized.
13. District Office, Newspaper, and Principals will be furnished bus scheduled.
14. Ten and one-half million dollar liability coverage will be provided to the District by Dorsey Bus Company.
15. A performance bond will be provided to the District if desired.
16. It is common to have a five-year contract.
17. The District has the option to cancel the contract at the end of any year without cause.
18. At the end of five years, the District would have the option of buying back the buses from Dorsey at fair market price.
19. District buses leased by Dorsey would be returned to the District at the end of the contract.
20. Dorsey Bus Co. will replace worn out buses with new vehicles which the District can buy at the end of the contract or buy and own during the contract period.
21. There is no disadvantage to the District financially (through SPI, etc.) by contracting transportation service.
22. Employees can organize under a bargaining unit. They may stay with their present Union (P.S.E.).
23. Wages and benefits would be addressed in a formal bid. There is a retirement program. Dorsey medical insurance covers all route drivers regardless of hours worked.

The entire proposal was set forth in the minutes of the meeting.

At the March 21, 1983 school board meeting, Gary Yeaw, a member of the school board, reported at a public meeting on his visits to the Battleground and Rochester school districts regarding the transportation services of both districts.

A meeting was held between district and PSE representatives in March, 1983 to identify the areas wherein concessions by the bargaining unit and, more specifically, by transportation department employees, could provide an acceptable economic package that would enable the district to refrain from contracting busing services. It is, therefore, concluded that the union had ample notification of the possibility of subcontracting the pupil transportation service to allow PSE to effectuate negotiations on the issue.

#### The Course of Bargaining

The next requirement for the collective bargaining process is that the party affected by the proposed change to the status quo be afforded the opportunity to explore all the possibilities pertinent to the situation, and to offer alternative solutions to the problem. Olsen, on behalf of the district, had quickly responded to PSE's demand to bargain the impact of the employer's decision to subcontract busing services by offering to negotiate cost reductions for the bargaining unit. Between February 17, 1983 and April 1, 1983, Olson and Thimsen had several conversations, and at least one meeting, to discuss the transportation cost reduction issue. Initially, their conversations were in generalities. By late March, 1983, Olson requested that PSE submit specific proposals for cost concessions that enumerated areas wherein the union membership was willing to effectuate reductions in current services.

On April 1, 1983, Thimsen ceased his representation of the union and began employment as a labor relations consultant by the Washington State School Directors' Association. He was assigned to represent the Newport School District in its labor relations with unions representing the employees of the district. Thimsen was replaced by Bill Gray as PSE's representative for the Newport School District. Gray, individually and collectively with Kimberling, had additional discussions with Olson regarding the subcontracting issue. Thimsen, Kimberling and Gray were aware of the time constraints facing the union and the district.

Open public school board meetings were conducted in March, April, May and June. The issue of subcontracting pupil transportation was addressed in some degree at all the meetings. Representatives of PSE attended some, or all, those school board meetings. PSE's representatives did not provide any specific proposals for cost reductions that provided the school board members a viable alternative to contracting for busing services.

On April 18, 1983, the school board delayed calling for specifications and bids for contracting out busing of pupils. The call for bids was approved at the May 16, 1983 school board meeting.

At the June 7, 1983 school board meeting, attended by approximately 100 interested persons of the community, including PSE bargaining unit members, several suggestions were considered for reducing costs in the education program to provide monies for transportation services, as follows:

1. Reduce bus stops.
2. Reduce certain programs such as:
  - a. Newspaper (eleven people)
  - b. Annual (eleven people)
  - c. Drama (sixteen people)
3. Change High School computerized report cards to the same type issued by the Grade School.
4. Install video games with Building Fund money.
5. Reduction in mailing.
6. Run a \$50,000 levy.
7. Convert to propane in the buses.
8. Change to a four-day week and request a waiver from the State.
9. Rent out the buses.
10. Run school buses four days a week only.
11. Contract for school transportation.
12. Rent out the tennis courts.

On June 20, 1983, bids for contracting out transportation services were opened at the regular school board meeting. By that time, the 1982-83 school year was at an end and normal school bus operations were shut down for the balance of the period covered by the collective bargaining agreement. Only one bid, that from Dorsey Bus Company, was received. The school board deferred action on the bid until a special school board meeting scheduled for July 6, 1983. On July 6, 1983, when the school board entered into a five year contract with Dorsey Bus Company, the union still had not provided any proposals to effectively reduce transportation costs. The initial savings for contracting transportation services was estimated at approximately \$15,000.

On July 18, 1983, PSE provided the district, for the first time, with a proposal to reduce transportation costs. The proposal was designed to continue transportation services by the district. The proposal read as follows:

July 18, 1983

P.S.E. Proposal for 1983\*\*1984 contract

To assist the Newport (sic) School Dist. in there (sic) attempt to reduce transportation cost and maintain local control of transportation service, the transportation employees offer the following salary slash (sic) benefit concessions for the 1983-1984 school year;

1. No pay for three holidays
2. Maintain curent (sic) pay
3. Insurance benefits F.E.T. (sic)
4. eliminate 1 hour clean up

the above agreement is for the 1983-1984 school year only. Next year P.S.E and Distric (sic) will meet to evaluate the transportation service. It is the intent of transportation employees to do what is necessary to insure continued local control of distric (sic) transportation service.

Between February 17, 1983 and July 6, 1983, Thimsen, Gray and Kimberling discussed the subcontracting matter with Olson on several occasions. Throughout that time, Olson continually sought contract concessions from PSE to reduce transportation costs. PSE, until July 18, 1983, did not make any specific proposal for reducing transportation costs. The district considered the proposals as being insufficient to effectuate the needed cost reductions. The district, thereafter, implemented the contract with Dorsey Bus Company. effective September 1, 1983.

The union was afforded ample opportunity, approximately six months, to make specific proposals to reduce costs to encourage the employer to refrain from contracting out pupil transportation services. The union's inaction and/or refusal to make specific proposals created an impasse in negotiations regarding the issue of subcontracting. Upon reaching impasse, the employer could implement its decision to contract out pupil transportation services without violating the statute.

#### FINDINGS OF FACT

1. Newport School District No. 56-415 is a school district of the state of Washington, and a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Newport, an affiliate of Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(3), is the recognized collective bargaining representative of an appropriate bargaining unit of classified employees of Newport School District No. 56-415. The classified employees bargaining unit included employees engaged in pupil transportation.
3. Public School Employees of Newport and Newport School District No. 56.415 were parties to a three-year collective bargaining agreement effective from September 1, 1980 to August 31, 1983.

4. PSE became aware of the district's desire to subcontract pupil transportation services. The union responded by notifying the employer of its desire to negotiate the impact of the employer's decision on bargaining unit members. The employer agreed to negotiate the subcontracting issues with the union.
5. PSE's representative met with the superintendent of schools. They discussed in generalities the financial shortfall leading to the decision to investigate subcontracting pupil transportation services. The district requested that the union provide the employer with specific proposals identifying areas wherein the union would agree to cost reductions in the transportation department.
6. The topic of subcontracting pupil transportation services was discussed at school board meetings in March, April, May, June and July. Representatives of the union attended those meetings, but did not offer any specific proposals for reducing transportation costs.
7. Between February 17, 1983 and July 6, 1983 representatives of PSE held several conversations and meetings with the superintendent regarding the subcontracting issue. The union did not provide any specific cost reduction proposals for the transportation department.
8. On July 6, 1983, the Newport School District board of directors accepted the bid submitted by the Dorsey Bus Company to provide pupil transportation for students of the district. The contract was for five years commencing September 1, 1983.
9. On July 18, 1983, the union provided its first specific proposals to effectuate cost reductions in the transportation department. The employer did not accept the union's proposals and implemented its contract with the Dorsey Bus Company effective September 1, 1983.
10. The inaction and/or refusal by PSE to provide specific cost reductions proposals created an impasse in negotiations with regard to the subcontracting of pupil transportation services.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. Public School Employees of Newport, an affiliate of Public School Employees of Washington, and Newport School District 56-415 have engaged

in collective bargaining sufficient to satisfy the statutory responsibilities of the parties as set forth in RCW 41.56.030(4) and the employer has not violated RCW 41.56.030(4).

ORDER

The unfair labor practice allegations set forth in the complaint are denied, and, further, the complaint is hereby dismissed.

DATED at Olympia, Washington, this 19th day of February, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
GEORGE G. MILLER, Examiner

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