STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SERVICE EMPLOYEES, LOCAL 1239,	)	
Complainant,	)	CASE 13281-U-97-3236
vs.	)	DECISION 6408-A - PECB
CITY OF SEATTLE,	)	FINDING OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Noel McMurtry, Attorney at Law, appeared for the union.

Mark Sidran, City Attorney, by Leigh Ann Collings Tift, Assistant City Attorney, appeared for employer.

On July 2, 1997, Public Service and Industrial Employees, Local 1239 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Seattle (employer) as respondent. A partial dismissal was issued on August 28, 1998.[1] A hearing was held on January 20 and March 1, 1999, before Examiner Vincent M. Helm. The Employer filed a post hearing brief.

On the basis of the procedural history detailed below and the evidence presented at the hearing, the Examiner holds that the

[1] City of Seattle, Decision 6408 (PECB, 1998).

employer did not violate the law by failing or refusing to bargain in good faith. The complaint is dismissed.

PROCEDURAL BACKGROUND

The union's original complaint and first amended complaint were considered by the Executive Director under WAC 391-45-110.[2] A deficiency notice was issued on December 22, 1997. Allegations that two regular part-time employees within a bargaining unit represented by the union were offered full-time employment if they would accept reassignment to a lower paid job classification were found to state a cause of action, on the basis that an employer commits a "refusal to bargain" violation along with a derivative "interference" violation if it bypasses the exclusive bargaining representative and deals directly with individual employees on mandatory subjects of bargaining. Problems were noted as to other allegations, and the union was given a period of 14 days in which to file and serve an amended complaint.

The union filed a second amended complaint on January 21, 1998, but the employer requested that it be rejected as untimely filing and because it was not served on the employer. The employer's motion was denied, as to the timeliness issue, in a letter dated June 16,

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[2] At this stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether the complaint, as filed, could the basis for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

1998. That same letter gave the union 14 days to provide proof of service of the second amended complaint, or face dismissal of all allegations identified as deficient in the December 22, 1997, notice. No response was received from the union, and the Executive Director issued the partial dismissal order. That order was not appealed, and the Examiner proceeded only with the circumvention allegation.

At the conclusion of the hearing, the employer moved to dismiss the allegations of the complaint with respect to Lance Nagasawa, because no evidence was presented to support the complaint. The union indicated no objection, and the Examiner granted the employer's motion.

BACKGROUND

The City of Seattle maintains and operates the Seattle Center. The Key Arena is one of the facilities at the Seattle Center. The work opportunities at the Key Arena are event-driven. There is much more work during the professional basketball and hockey seasons than at other times. Laborers perform clean-up and maintenance as well as changeover functions. The laborers may work any of three shifts, and work can be available on a seven day per week basis. Many events occur on weekends, and those days are particularly busy for laborers. During the period of November through May, nearly all laborers work 40 or more hours per week. During the summer, the hours of work are significantly reduced.

Historical Staffing Patterns

Since it reopened in 1995 after a major remodeling, the Key Arena has been staffed by a complement of full-time and regular part-time employees in the utility laborer and general laborer classifications. The utility laborers are paid approximately $1.00 per hour more than general laborers.[3] By terms of the parties' collective bargaining agreement, full-time employees are guaranteed 40 hours of work per week, regular part-time employees are guaranteed a minimum of 20 hours of work per week, and both of those groups receive full contractual benefits.

The full-time and regular part-time employees are augmented by intermittent employees who have no guarantee of hours of work and receive no benefits. They are paid, however, at an hourly wage rate higher than that received by the full-time and regular part-time utility laborers.

Deborah Bakis became physical assets manager for the Seattle Center in December 1996. In this position, she was ultimately responsible for the laborer workforce throughout Seattle Center, including Key Arena. Upon assuming her position, she began to review labor and budget reports, and to discuss operations with the crew chiefs. Her analysis indicated there was a ratio of one utility laborer per general laborer, where she believed an optimum ratio was one utility laborer per three to eight general laborers. Moreover, she believed the number of regular part-time and intermittent employees

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[3] Utility laborers receive a higher rate of pay because they have unique job skills and/or are crew leaders.

was too high. In order to achieve what she perceived to be economies in operations, Bakis decided to make more full-time positions available throughout the Seattle Center, including the Key Arena.

In staff meetings in the spring of 1997, laborers were told that full-time employment would be available in the general laborer classification, that the employer intended to limit regular part-time employees to 20 hours per week whenever possible, and that the work hours of part-time employees would be concentrated on weekends when the workload was heaviest and there was greater need to supplement the full-time workforce. By the end of April, all regular part-time employees except Gert Gruenwoldt had indicated an intent to switch to the full-time general laborer position.

Gruenwoldt had been a regular part-time utility laborer, but he had been working 40 or more hours per week with Friday and Saturday as days off. During a meeting held on or about May 8, 1997, Bakis advised Gruenwoldt that she desired to have as many laborers as possible employed on a full-time basis, but that he would have to accept demotion to the general laborer classification and the related hourly pay reduction in order to receive full-time employment. She also advised Gruenwoldt that she intended to utilize him on weekends and to restrict his hours of work to 20 per week, if possible, if he remained in regular part-time status. Gruenwoldt refused to change his classification.

The union was not given notice of the May 8 meeting, and no union representative was present at that meeting. Laborer Crew Chief

Lenny Hull, who is a union member, was present at the meeting, but he was present in his capacity as a crewchief rather than as a union official.

POSITIONS OF THE PARTIES

The union contends that the meeting between Bakis and Gruenwoldt constituted direct dealings with the bargaining unit employee on terms and conditions of employment in derogation of the union's status as exclusive bargaining representative.

The employer contends the discussion did not constitute negotiation, but was merely an attempt by the employer to inform the employee of its intentions with respect to assigning work, and to obtain the employee's intentions for purposes of scheduling both the work and employees.

DISCUSSION

The Duty to Bargain

Where employees have exercised their right to be represented for the purposes of collective bargaining, the organization selected by the majority of the employees in an appropriate bargaining unit is the "exclusive bargaining representative" of all bargaining unit employees. RCW 41.56.080. Accordingly, it is unlawful for an employer to circumvent the exclusive bargaining representative of

its employees by dealing directly with one or more employees on the mandatory subjects of bargaining detailed in RCW 41.56.030(4). This case involves employee "wages" and "hours", both of which are clearly mandatory subjects of bargaining.

Not every direct contact between an employer official and a bargaining unit employee constitutes circumvention prohibited by the statute. Where discussions concern an employee's compliance with established standards or practices, there is no violation of the statute so long as such discussions are not accompanied by threats of reprisal or promises of benefit in connection with union activity. City of Seattle, Decision 6357 (PECB, 1998). Circumvention concerns do arise, however, where any changes of employee wages, hours, or working conditions are proposed as tradeoffs.

Meeting Did Not Violate Statute

The sole issue to be resolved in this case is whether the meeting between Bakis and Gruenwoldt in May of 1997 constituted prohibited direct negotiations with a bargaining unit employee. As the moving party, the union bears the burden of proof. Spokane County Fire District 9, Decision 3021-A (PECB 1990).

The evidence in the instant case establishes that the employer met with Gruenwoldt to ascertain whether he wished to accept full-time employment as a general laborer. He was advised of the employer's intent to limit the hours worked by regular part-time employees to the minimum required by the contract, and to concentrate those hours on weekends where staffing requirements were the highest.

This discussion did not represent an attempt to alter contractual terms and conditions applicable to Gruenwoldt and other bargaining unit employees. Further, the discussion did not involve threats of reprisal or promises of benefit with respect to union activity. The evidence, thus, falls far short of demonstrating the employer violated its bargaining obligations under the statute.

FINDING OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(1).

2. Public Service and Industrial Employees, Local 1239, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the City of Seattle classified as utility laborers and general laborers.

3. At all times relevant herein, the employer and union were parties to a collective bargaining agreement covering the utility laborer and general laborer classifications. That contract provided for full-time positions, with a guarantee of 40 hours per week of employment, and for regular part-time positions, with a guarantee of 20 hours per week of employment. Employees in both full-time and part-time positions received the same contractual fringe benefits. Employees classified as utility laborers were paid approximately $1.00 per hour more than employees classified as general laborers.

The contract precluded the employer from involuntarily changing the job classifications of bargaining unit employees, and precluded the employer from involuntarily changing the full-time or regular part-time status of bargaining unit employees.

4. At all times relevant herein, Gert Gruenwoldt was classified as a regular part-time utility laborer. He had, in fact, been working more than the minimum hours required for a regular part-time employee, and had been scheduled with Fridays and Saturdays as his days off.

5. In early 1997, the employer determined that, from economic and efficiency standpoints, the ratio of lead employees to other employees was too high and that the number of part-time employees was too high.

6. In staff meetings during the winter and spring of 1997, the employer advised bargaining unit employees that it would offer full-time general laborer positions to all part-time employees, that those who chose to remain in part-time status would be limited as much as possible to 20 hours of work per week, and that those who chose to remain in part-time status would principally be scheduled to work on weekends where higher staffing levels were required. Employees were advised to notify their employer as to their desires with respect to the offer of full-time employment.

7. Gruenwoldt did not communicate his intentions with respect to full-time employment.

8. On or about May 8, 1997, an employer official held a meeting with Gruenwoldt to learn his intentions with respect to full-time employment. The options set forth in paragraph 6 of these Findings of Fact were described to him. At that time, Gruenwoldt stated that he was not interested in full-time employment and elected to continue in his part-time position.

9. There is no evidence that the employer made any threats of reprisal or force or any promises of benefit to Gruenwoldt in connection with the meeting described in paragraph 8 of these Findings of Fact, or that he was offered any consideration or terms different from those available to all bargaining unit employees under the collective bargaining agreement.

10. No evidence was introduced at the hearing in this proceeding concerning employee Lance Nagasawa.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. The discussion between Gruenwoldt and his supervisors on May 8, 1997 did not alter the status quo concerning wages, hours, and terms and conditions of employment in the bargaining unit

represented by the union so as to constitute negotiation of any mandatory subject of collective bargaining under RCW 41.56.030(4).

3. By its discussion with a bargaining unit employee concerning his part-time status, as described in paragraphs 8 and 9 of the foregoing Findings of Fact and paragraph 2 of these Conclusions of Law, the City of Seattle did not circumvent the union in contravention of its bargaining obligations under RCW 41.56.030(4), and did not commit any violation of RCW 41.56.140(4) or (1).

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-captioned case is DISMISSED.

Issued at Olympia, Washington, on this 4th day of June, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

VINCENT M. HELM, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.