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STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

Laborers Local Union No. 614,)
)
Complainant)
)
vs.)
)
Sunnyside Valley Irrigation)
District,)
)
Respondent)
)

CASE NO. 492-U-76-59

Sunnyside Valley Irrigation)
District,)
)
Complainant)
)
vs.)
)
Laborers Local Union No. 614,)
)
Respondent)
)

CASE NO. 511-U-76-61
DECISION NO. 314-PECB
CONSOLIDATED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND ORDER

APPEARANCES:

LAWRENCE SCHWERIN, Attorney at Law, for the Complainant.
WESLEY M. WILSON, Attorney at Law, for the Respondent.

The above named labor organization, hereinafter referred to as the Union, filed a complaint with the Public Employment Relations Commission on September 16, 1976, wherein it alleged that Sunnyside Valley Irrigation District, hereinafter referred to as the Employer, had committed unfair labor practices within the meaning of RCW 41.56. The above named Employer filed a complaint with the Public Employment Relations Commission on September 24, 1976, wherein it alleged that the

1 above named Union had committed unfair labor practices within
2 the meaning of RCW 41.56. The two complaints were consolidated
3 and the Executive Director designated Val Spangler, then a
4 member of the PERC staff, to act as Examiner and to make and
5 issue Findings of Fact, Conclusions of Law and Order. Pur-
6 suant to notice, a hearing was held at Yakima, Washington, on
7 April 12 and 13, 1977, before the Examiner. Subsequently, the
8 Examiner left employment with PERC. The proceedings have been
9 transferred to the Commission, which has considered the evi-
10 dence and arguments, and makes the following Findings of
11 Fact, Conclusions of Law and Order.

12
13 POSITIONS OF THE PARTIES

14 The Union alleges that the Employer has committed unfair
15 labor practices by attempting to delegate its duty to bargain
16 to its District Manager and his attorney when those persons
17 do not have the authority to make and implement agreements on
18 behalf of the District; by implementing unilateral wage
19 increases; by engaging in surface bargaining without intent
20 to reach agreement; by conditioning bargaining on the
21 Employer's demands; and by reducing pre-existing benefits and
22 terms and conditions of employment without agreement.

23 The Employer alleges that the Union has committed unfair
24 labor practices by bargaining in bad faith; by failing to be
25 represented in negotiations by bargaining representatives who
26 can effectively recommend a settlement; by retracting agree-
27 ments on language and other items agreed to by the parties
28 during bargaining sessions; by changing its position to add
29 proposals, thus increasing its demands; and by failing to

1 provide its representatives with authority to make binding
2 agreements.

3

4 STATUTORY AUTHORITY:

5 Statutory provisions relating to unfair labor practices
6 are set forth in RCW 41.56.140 through RCW 41.56.190 as imple-
7 mented by WAC 391-20-301 through 391-20-380.

8

9

DISCUSSION

10 Both parties were represented for collective bargaining by
11 representatives who had ample authority to negotiate and to
12 recommend settlements. Both parties were represented by able
13 and experienced legal counsel who had access to the same legal
14 authorities and who fully understood the obligation to bargain
15 in good faith.

16 By imposing upon public employers and organized public
17 employees the duty to bargain collectively, the legislature
18 clearly established that parties such as these are obligated
19 to deal with one another in good faith and to refrain from
20 making any unilateral changes of existing wages, hours and
21 conditions of employment unless the bargaining obligation has
22 been satisfied. The record made here demonstrates that those
23 obligations have not been met by either party.

24 The Employer unilaterally adopted wage increases totaling
25 25 cents per hour during the course of negotiations. The first
26 of those changes, a raise of 10 cents per hour made effective
27 on July 1, 1976, led to the filing of the original charges by
28 the Union. The second increase, a raise of 15 cents per hour,
29 was implemented following the filing of the Union's charges in
30

1 these unfair labor practice proceedings. The parties continued
2 to meet, under the auspices of a mediator, during the
3 interim between the unilateral wage increases and for some time
4 following the second increase. A cessation of negotiation did
5 not occur until March, 1977. Even if one assumes that the
6 first of these unilateral changes was made by the Employer in
7 good faith at a point where it perceived an impasse to exist,
8 there is no room for doubt as to the position of the Union
9 concerning the subsequent wage increase. Particularly when
10 viewed with the other factors present in this case, the
11 Employer's unilateral actions are found to be in violation of
12 RCW 41.56.140(4).

13 Early in the negotiations between the parties, the Employer
14 adopted a stance that retroactivity, particularly as related to
15 wages, was precluded by State law, as interpreted by the
16 Attorney General in AGO 1974, No. 19. The Employer continued
17 to maintain that posture throughout the 14 months of bargaining
18 between the parties. The Employer did not furnish the Union
19 with a copy of the Attorney General's Opinion on which it relied,
20 and the Union apparently went on for some time accepting the
21 Employer's interpretation of the Attorney General's Opinion.
22 Closer scrutiny shows that the Opinion specifically addresses
23 the subject as permissive where an interim agreement is adopted
24 by the parties stating that wages paid for work performed is not
25 necessarily the full compensation for that work. Had the Union
26 representatives desired to do so, they could easily have
27 procured a copy of the Attorney General's Opinion. The failure
28 of the Union to verify independently the interpretation
29 reported to it by the Employer leaves the Union in a situation

1 of its own creation.

2 However, the testimony of employees that they were
3 informed by the Employer at the outset of negotiations that the
4 negotiations would be prolonged (to an estimate of 18 to 24
5 months), we suggest that the Employer at the outset embarked on
6 a course of delay which continued throughout negotiations.

7 Unilateral action may also occur where existing benefits
8 are discontinued. Prior to the onset of collective activity
9 among the employees, the Employer had policies relating to
10 social security contributions, health and welfare contributions,
11 business leave, sick leave, and bad weather days. Social
12 security contributions and health and welfare contributions
13 became a matter of agreement between the parties, and are not
14 of concern here. However, the other policies were altered or
15 discontinued by the Employer following the onset of collective
16 activity among the employees, without the agreement of the
17 Union. Proposals by the Union to bargain continuation of the
18 deleted policies were rejected summarily by the Employer as
19 matters which were necessarily changed when the Employer came
20 under federal wage/hour laws, and which were not bargainable.
21 The Union continued to submit proposals on these matters
22 throughout numerous bargaining sessions, and they remained as
23 items in contention at the last bargaining session held between
24 the parties in March, 1977. The Employer now admits that it is
25 exempt from the coverage of the federal wage/hour law by virtue
26 of its status as a public body.^{1/} The unilateral alteration or
27 elimination of pre-existing practices, and the subsequent

28
29 1/ National League of Cities v. Usury, 96 S. Ct. 2465 (1976)

1 refusals to bargain with the Union thereon, were in violation of
2 RCW 41.56.140(4).

3 The Employer has bargained directly with the employees,
4 thereby circumventing the bargaining representative chosen by
5 the employees. The Employer admits in its brief that the offer
6 which it submitted to the employees at an Employer-called
7 meeting held on August 18, 1976 differed from the last offer
8 which the Employer had submitted to the Union across the
9 bargaining table. The changes consisted of a 10 cents per
10 hour increase in the Employer's wage offer and a change of the
11 sick leave accumulation maximum from 75 to 80 days. Both
12 changes relate to mandatory subjects of collective bargaining
13 which were in dispute at the bargaining table. We do not
14 regard the Employer's offer of these changes to the Union by
15 letter to be sufficient, since the letter containing the
16 changes was mailed without sufficient time for the Union to
17 give the changes consideration and make a reply prior to the
18 meeting conducted by the Employer with the employees. The
19 Employer cites Oneita Knitting Mills, 205 NLRB 500 (1973) as
20 establishing the right of the Employer to hold such meetings
21 with employees as an extension of the right of free speech.
22 That the Employer is entitled to exercise of freedom of speech
23 is undeniable. However, Oneita does not authorize disregard
24 of the obligations of the bargaining process, and the employer
25 in Oneita was found in violation of the NLRA for making
26 unilateral changes.

27 The Employer contends that the Union had failed to inform
28 the employees of the terms of the Employer's previous offer
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1 submitted for membership ratification, resulting in rejection
2 by the employees. The testimony establishes that the absence
3 of an affirmative recommendation by the Union's negotiators had
4 a significant impact on the ratification vote and rejection.
5 The timing of the Employer's last minute changes in its offer
6 effectively deprived the Union of its opportunity to accept and
7 recommend the Employer's offer if it desired to do so, and it
8 is that evil which the circumvention cases seek to prevent.
9 Whether or not the offered changes would have been accepted,
10 the manner of their presentation was in violation of RCW 41.56.
11 140(4).

12 Any practice of increasing demands during bargaining or
13 adding new demands assuredly hinders achievement of a complete
14 agreement, and one must be suspect of the good faith of a
15 party which "moves the target" during bargaining or as the
16 moment of agreement approaches. The record demonstrates that
17 the Union engaged in such conduct here on no less than two
18 occasions, without any showing of outside factors influencing
19 its action. Even though not obligated to come to the table
20 with authority to bind its membership, the Union, as the rep-
21 resentative of its members, must be expected to determine at
22 the outset what they desire. In practice, collective bargain-
23 ing negotiations generally result through give-and-take of
24 bargaining in some compromise agreement between the parties,
25 but it is no less destructive to the process if one party or
26 the other refuses acceptance and asserts new demands. Such
27 conduct on the part of the Union here is deemed to be a breach
28 of its obligation of good faith in attempting to reach an agree-
29 ment, and in violation of RCW 41.56.150(4).

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31 Page Seven

FINDINGS OF FACT

1
2 1. Sunnyside Valley Irrigation District is a Public
3 Employer within the meaning of RCW 41.56. Among other services,
4 the District regulates the distribution of irrigation water and
5 operates a maintenance department.

6 2. Laborers Union Local 614 is a labor organization and
7 Orville Trepanier is the Business Manager of Local 614. Labor-
8 ers Union Local 614 was certified as the exclusive bargaining
9 representative of a bargaining unit consisting of "all employees
10 including working foreman employed by the employer, excluding
11 all supervisors and office-clerical employees" by the Department
12 of Labor and Industries, State of Washington, on December 31,
13 1975.

14 3. The parties entered into bargaining in January, 1976.
15 Their respective representatives had the authority to negotiate
16 required by law. Proposals were exchanged and numerous
17 sessions were held until June, 1976 when the Employer declared
18 negotiations were at "Impasse." The Employer, after declaring
19 impasse, unilaterally implemented a 10 cents per hour increase
20 effective July 1, 1976.

21 4. The parties subsequently resumed negotiations.

22 5. The Employer conducted a meeting with bargaining unit
23 employees on August 18, 1976. Employees were then presented
24 copies of an Employer's offer which contained two changes
25 from the last offer presented to the Union at the bargaining
26 table. The changes were provided to the Union by letter with-
27 out sufficient time for the Union to act upon the proposed
28 changes prior to the meeting between the Employer and the
29 employees.

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31 Page Eight

1 6. On September 16, 1976, the Union filed a complaint
2 with PERC alleging unfair labor practices by refusal to
3 bargain.

4 7. On September 24, 1976, the Employer filed a complaint
5 with PERC alleging unfair labor practices by refusal to
6 bargain.

7 8. Bargaining sessions continued with the assistance of
8 a PERC Mediator, until January, 1977, when the Employer again
9 declared "Impasse." The Employer then unilaterally implemented
10 a 15 cents per hour wage increase.

11 9. Bargaining sessions were again resumed with the assis-
12 tance of the PERC Mediator and continued until the hearing in
13 these proceedings.

14 10. The Employer initially refused to bargain with the
15 Union concerning bad weather days, business leave, Social
16 Security contributions, sick leave, and retroactivity of wage
17 increases. Thereafter, the parties did bargain on and reach
18 agreement on Social Security contributions; but the remaining
19 items were still unresolved at the time of the hearing in these
20 proceedings.

21 11. The Employer unilaterally terminated a vehicle allow-
22 ance paid to employees as compensation for the use of their
23 vehicles in the course of their employment and thereafter pro-
24 vided transportation to the affected employees, without
25 bargaining with the Union concerning the change of practice or
26 the effects thereof.

27 12. The Employer embarked at the outset of the negotia-
28 tions between the parties on a course of delay and has failed
29 to meet, confer and negotiate with the Union in a good faith
30 effort to reach an agreement.

31 Page Nine

1 13. During the course of bargaining between the parties,
2 the Union has advanced new proposals and increased its demands
3 and, thereby, has failed to meet, confer and negotiate with the
4 Employer in a good faith effort to reach an agreement.

5
6 CONCLUSIONS OF LAW

7 1. The Employer, Sunnyside Valley Irrigation District,
8 has committed and is committing unfair labor practices in
9 violation of RCW 41.56.140(4) and (1) by refusing to bargain
10 collectively with Laborer's Local Union No. 614, by making
11 unilateral changes in wages and other terms and conditions of
12 employment, by conditioning bargaining on compliance with its
13 demand that the Union's negotiators be authorized to reach a
14 binding agreement without ratification of such agreement by
15 bargaining unit employees, by circumvention of the Union and
16 direct dealings with bargaining unit employees and by failing
17 to meet, confer and negotiate with the Union in a good faith
18 effort to reach an agreement.

19 2. The Union, Laborer's Local No. 614, has committed
20 and is committing unfair labor practices in violation of
21 RCW 41.56.150(4) by refusing to bargain collectively with
22 Sunnyside Valley Irrigation District, by failing to meet,
23 confer and negotiate with the Employer in a good faith effort
24 to reach an agreement.

ORDER

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1. Sunnyside Irrigation District, its officers and agents, shall immediately

- (a) Cease and desist from refusing to bargain collectively with Laborers Local Union No. 614 on mandatory subjects of bargaining;
- (b) Cease and desist from making changes of wages, hours or working conditions unless it has given notice to and bargained collectively with Laborers Local Union No. 614;
- (c) Cease and desist from dealing directly with employees on mandatory subjects of collective bargaining, in circumvention of the rights of Laborers Local Union No. 614 as the bargaining representative of its employees;
- (d) Upon request, bargain collectively with Laborers Local Union No. 614 as the representative of its employees in good faith in an effort to reach an agreement;
- (e) Post, in conspicuous places on its premises where notices to employees are usually posted, copies of the notice attached hereto and marked Appendix "A". Such notice shall be signed by the Chairman of the Board and Manager of the District and shall remain posted for sixty (60) days.
- (f) Notify the PERC, within ten (10) days following the date of this Order, as to what steps have been taken to comply herewith.

1 2. Laborers Local Union No. 614, its officers and agents,
2 shall immediately:

- 3 (a) Cease and desist from making alterations in
4 proposals or engaging in other conduct calculated
5 to frustrate or prevent agreement in collective
6 bargaining with Sunnyside Irrigation District;
7 (b) Upon request, bargain collectively with Sunnyside
8 Irrigation District in good faith in an effort
9 to reach agreement;
10 (c) Post, in conspicuous places on the employers
11 premises where notices under paragraph 1(e) above
12 are posted, copies of the notice attached hereto
13 and marked Appendix "B". Such notice shall be
14 signed by the President and Business Manager of
15 the Union and shall remain posted for sixty (60)
16 days;
17 (d) Notify the PERC within ten (10) days following
18 the date of this Order as to what steps have been
19 taken to comply herewith.

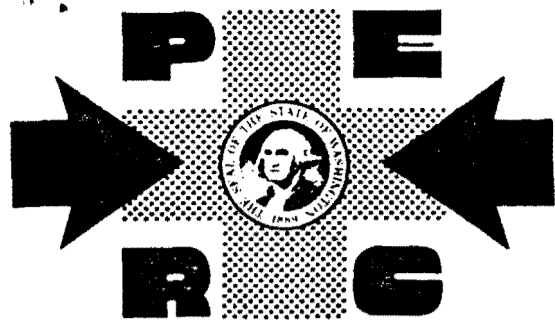
20 DATED: This 13th day of December, 1977.

21 PUBLIC EMPLOYMENT RELATIONS COMMISSION

22 by Mary Ellen Krug
23 MARY ELLEN KRUG, Chairman

24 by Michael H. Beck
25 MICHAEL H. BECK, Commissioner

26 by Paul A. Roberts
27 PAUL A. ROBERTS, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No. 492-U-76-59**NOTICE**

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE PURPOSES OF THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING ACT, SUNNYSIDE VALLEY IRRIGATION DISTRICT HEREBY NOTIFIES ITS EMPLOYEES THAT:

WE WILL bargain collectively with Laborers Local Union No. 614 in a good faith effort to reach an agreement.

WE WILL NOT make changes of wages, hours or working conditions unless we have given notice to and bargained collectively with Laborers Local Union No. 614.

WE WILL NOT circumvent our obligation to bargain collectively with Laborers Local Union No. 614 by dealing directly with employees on matters of wages, hours or working conditions.

DATED: _____

SUNNYSIDE VALLEY IRRIGATION DISTRICT

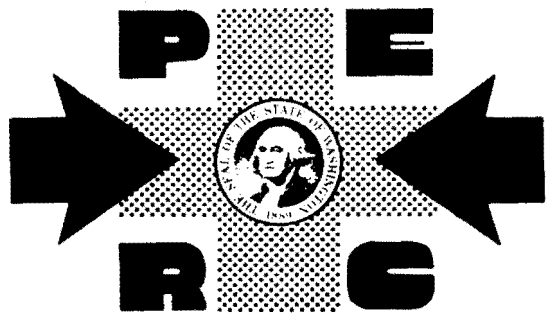
BY: _____

Chairman of the Board

BY: _____

Manager

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the PUBLIC EMPLOYMENT RELATIONS COMMISSION, 603 Evergreen Plaza Building, Olympia, Washington. phone (206) 753-3444.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DATED: _____

SUNNYSIDE VALLEY IRRIGATION DISTRICT

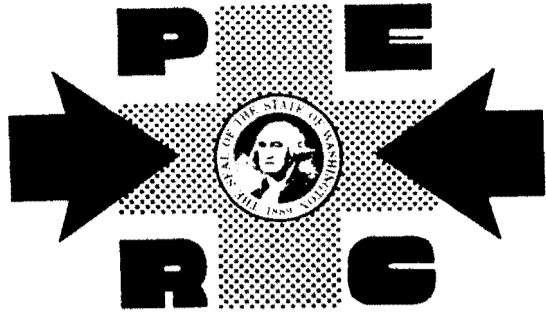
BY: _____

Chairman of the Board

BY: _____

Manager

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WE WILL bargain collectively with Sunnyside Valley Irrigation District in a good faith effort to reach agreement on matters of wages, hours and working conditions.

WE WILL NOT make alterations of proposals in bargaining or engage in other conduct calculated to frustrate or prevent agreement in collective bargaining between this local union and Sunnyside Valley Irrigation District.

DATED: _____

LABORERS' LOCAL UNION NO. 614

BY: _____

President

BY: _____

Business Manager

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WE WILL NOT make alterations of proposals in bargaining or engage in other conduct calculated to frustrate or prevent agreement in collective bargaining between this local union and Sunnyside Valley Irrigation District.

DATED: _____

LABORERS' LOCAL UNION NO. 614

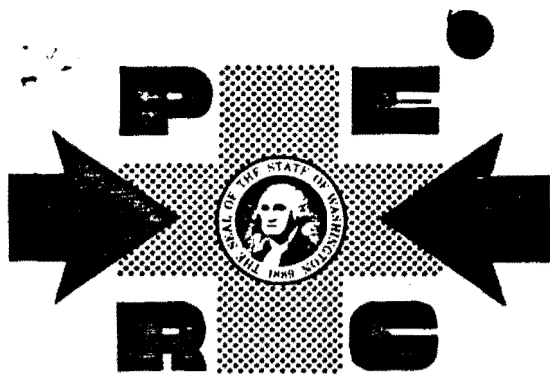
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President

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

603 Evergreen Plaza, Olympia, Washington 98504 (206) 753-3444

Mary Ellen Krug, Chairman
Michael H. Beck, Commissioner
Paul A. Roberts, Commissioner

Marvin L. Schurke, Executive Director

December 28, 1977

Mr. Wesley M. Wilson
Attorney at Law
605 Miller Building
Yakima, Washington 98901

Mr. Lawrence Schwerin
Hafer, Cassidy & Price
Suite 400 - 2701 First Avenue
Seattle, Washington 98121

Re: Sunnyside Irrigation District
Case No. 492-U-76-59
Case No. 511-U-76-61

Gentlemen:

I am herewith forwarding a copy of Mr. Wilson's December 16, 1977 letter to the Union and its Counsel. The first paragraph of Mr. Wilson's letter is quite general in its allegation that the Commission failed to follow the statutory procedure, but prompted me to re-check our files on these matters. In doing so, I note that some or all of the copies of Decision No. 314 - PECB issued on December 13, 1977 may be missing the page containing finding of fact number 13 and the conclusions of law. If this has occurred it is due to a clerical error in numbering of pages. We are herewith issuing to each of you a complete copy of the decision.

Very truly yours,

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

MARVIN L. SCHURKE
Executive Director

MLS/bbw
Enclosure
cc: Sunnyside Irrigation District
Laborers' Local #614