

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY
AND CITY EMPLOYEES, LOCAL 2083,

Complainant,

vs.

CITY OF SEATTLE, WASHINGTON,

Respondent,

CASE No. 817-U-77-92

DECISION NO. 534 PECB

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

APPEARANCES:

PETER D. FRANCIS, Attorney at Law, appearing for and upon behalf of
Complainant.

SUSAN R. SAMPSON, Attorney at Law, appearing for and upon behalf of
Respondent.

The Washington State Council of County and City Employees, Local 2083 (hereinafter referred to as the "complainant" or "union") filed a "Complaint of Unfair Labor Practices" with the Public Employment Relations Commission on March 7, 1977. The complaint alleges that the City of Seattle, Washington and Seattle Public Library (hereinafter referred to as the "respondent" or the "city") has committed certain unfair practices by and through its agent, Mr. Ronald A. Dubberly, City Librarian, as follows:

"7. Respondent City, by and through its agent Ronald Dubberly, has violated RCW 41.56.040 and RCW 41.56.140 (1) and (2) by flagrantly interfering with the union in its choice of bargaining representatives, by attempting to circumvent the bargaining representatives during mediation sessions, and by attempting to control the position of the bargaining representative.

A. Specifically, on June 3, 1976, (the second day of mediation sessions between respondent City of Seattle, and Complainant, Local 2083) Mr. Dubberly told Nancy Wright, an administrator in charge of Community Relations, that his door would be open all afternoon, and that he would like to talk to any librarians about possible solutions to the bargaining impasse. Ms. Wright on behalf of Mr. Dubberly then approached Norma Arnold, a member of complainant Local 2083's Executive Board, about the possibility of achieving a solution of the problem through "right thinking" members of Local 2083's bargaining unit. Complainant has no knowledge of any instances where members of the bargaining unit responded to Mr. Dubberly's request.

8. Respondent City, by and through its agents Ronald Dubberly and its duly appointed representatives to the Seattle Public Library Board have violated RCW 41.56.140 (1) and (4) by consistently failing to bargain in good faith with the duly recognized bargaining representative, by violating their continuing obligation, under the Labor Agreement signed September 7, 1976, to bargain in good faith with respect to matters in the Agreement, and by unilaterally attempting to change the manner and method by which employees use and enjoy vacation benefits.

A. Specifically, Mr. Dubberly and the Library Board have engaged in a pattern of behavior designed to thwart Local 2083 in its representation of employees who are part of the bargaining unit.

On May 12, 1976, Elke Boettcher, President of City Librarians Union Local 2083 requested on behalf of the union that they be provided with information concerning Personnel Planning and Staffing Patterns so that union members could be informed and kept abreast of possible lay-offs and staffing changes. A copy of this request is attached hereto and marked Attachment A. On June 16, 1976, the request was again renewed. A copy of this second request is attached and designated Attachment B. Despite repeated oral requests subsequent to these dates, not one piece of information has been provided the union on this critical question.

B. Mr. Dubberly has consistently ignored the existence and rights of Local 2083 to bargain on behalf of City Librarians. Mr. Dubberly's memorandum of December 15, 1976, to members of the Library Board is illustrative of his attitude and anti-union animus. Said memorandum is hereby attached and designated Attachment C.

During the past contract negotiations, a letter was sent to Sidney Volinn on June 14, 1976, requesting that meetings be held to resolve the bargaining impasse, a copy of said letter is attached and designated Attachment D. Mr. Volinn's reply was received on June 16, 1976; a copy of this reply is attached as Attachment E. In his reply, he assured complainants that the City Librarian was prepared to meet and negotiate any time.

In point of fact, Mr. Dubberly thereafter refused to attend a number of bargaining and mediation sessions held to resolve the contract impasse. Mr. Dubberly consistently dispatched midmanagement personnel without authority to make decisions to these meetings. As a result of this failure to meet and negotiate, a final settlement on several contract matters was delayed and the final agreement was not signed until September 7, 1976.

C. The most flagrant example of respondent's attitude towards complainant Local 2083 was demonstrated by respondent's recent attempt to lay-off library personnel. During such lay-off period, respondent unilaterally changed the method by which employees of the bargaining unit were to use and enjoy vacation benefits. A copy of said Notice of Reduction in Force is attached as Attachment F.

Specifically, as part of the manner and method of lay-offs, those layed off would have been forced to take 1977 vacations, recompensed at 1976 rates. A manner and method of use not provided for in the bargaining agreement either under Article VIII, Annual Vacation or under Article XIX Lay-Off and Recall. Both

Articles are attached and made a part hereof, and designated as Attachments G and H. Despite repeated requests by complainants, respondent City and its agents refused to bargain on this issue and on the entire broader question of the manner and method of lay-offs.

The general purpose of Article VIII, Annual Vacations, of complainant Local 2083's bargaining agreement with respondent City, is to allow employees to earn their vacation allowance in one year and then expend them after January 1st of the following calendar year, with special provisions covering those employees who have completed six consecutive months of employment in their first year. There is no reference made in this section regarding payment of vacation benefits in anticipation of lay-offs. Respondent City, unilaterally attempted to force a method upon complainants.

On December 20, 1976, respondent, Library Board, in the face of intense public and political pressure, voted to rescind all lay-offs of Library personnel. Complainants, however, cite this incident as one more example of respondent City's failure to recognize and bargain with the designated representatives of Complainant Local 2083. The lay-off incident is a clear example of respondent City's violation of its ongoing obligation to bargain in good faith with respect to matters in the bargaining agreement.

It further demonstrates the anti-union animus of respondent City's agent, Ronald Dubberly and the Seattle Public Library Board and their total refusal to recognize complainants as a legitimate bargaining representative for Seattle Librarians."

Complainant requests a remedial order be issued by the Commission which would include the following:

- "1. Reprimanding respondent City's agent, Ronald Dubberly, for tampering with and interfering with complainant Local 2083's role as the designated bargaining representative of Seattle Librarians.
2. For a cease and desist order prohibiting Ronald Dubberly, from further tampering or interference with complainant Local 2083 as the designated bargaining representative of Seattle Librarians.
3. Reprimanding, respondent City, for failing to bargain in good faith with complainants.
4. For a cease and desist order prohibiting further instances or failures on the part of respondent to bargain in good faith.
5. Requiring, respondent City to bargain on the issue of the manner and method by which employees are paid vacation benefits when layed off through a reduction in force.
6. For a cease and desist order prohibiting future unilateral action on the part of respondent with respect to the manner and method by which employees are paid vacation benefits when lay-offs are made.
7. Requiring, respondent City to provide complainants with information concerning personnel planning and staffing patterns."

The Executive Director designated Willard G. Olson to act as Examiner and to issue findings of fact, conclusions of law and order. A hearing was conducted before the Examiner on July 21, 1978. The complainant and the respondent both filed post-hearing briefs which were received by the Commission on October 13, 1978.

BACKGROUND

There are four bargaining units at the Seattle Public Library: 1) Bindery, 2) Clerical, 3) Mechanical, and 4) Librarians. Complainant union represents the clerical employees as well as the librarians.

The incidents alleged to be unfair labor practices in the complaint occurred during a period from May through December, 1976. The librarians were in negotiations for a new collective bargaining agreement in 1976. An impasse was reached in June and the parties were in mediation. The negotiations were difficult and an agreement was not reached until September 7, 1976, when the contract was signed.

During this period the relationship between the union and the respondent became very strained. Because of severe budgetary restrictions, the library was faced with the possibility of a lay-off of some twenty-three (23) librarians. Lay-off notices were given to 23 librarians the week of October 25, 1976, but were rescinded on November 22, 1976.

POSITION OF COMPLAINANT

The complainant, in its post-hearing brief, states that there are basically five unfair labor practices committed by respondent: (1) the attempt by Ronald A. Dubberly, City Librarian, through Nancy Wright, Community Relations Assistant, to talk to union members during negotiations on June 3, 1976; (2) Dubberly's criticism of the president of the union for going to the press in September, 1977;* (3) the lay-off notices in October of 1976, coupled with the arrangement for employees to take vacations not in accordance with the contract; (4) the refusal of respondent to provide necessary information to the union in May and June of 1976; and (5) the written report of December 15, 1976 by Dubberly to the Library Board of Trustees on Los Angeles County and Los Angeles City Libraries.

Complainant argues that each of the five incidents constitute an unfair labor practice, and, that taken together they represent a pattern which is unlawful.

* This argument refers to a time period substantially later than other events involved.

POSITION OF RESPONDENT

Respondent's post-hearing brief replied to the four incidents which were contained in the complaint. No response was given to item number two in complainant's brief which occurred in September, 1977.

Respondent claims that none of the actions or inactions complained of in the complaint can be considered an unfair labor practice. Respondent argues that testimony at the hearing failed to substantiate, and in some instances is in direct conflict with, the charges in the complaint.

DISCUSSION

At a staff meeting in September 1977, Dubberly expressed disapproval of employees going to the press. This charge is not contained in the complaint and the meeting was held some six months after the complaint was filed. Testimony on this incident was entered into the record at the hearing with no indication of the time frame. At the end of the testimony, and only then at the probing of the Examiner, was the time period established (Tr., p. 34, l. 13-24). No request or motion was made to amend the complaint. Further, respondent understandably did not respond to this charge. For the above reasons, the Examiner will not address himself to this charge.

The first charge in complainant's brief is to the effect that on June 3, 1976 Dubberly attempted to circumvent the union by having Nancy Wright approach Norma Arnold and tell her his door would be open and he would like to talk to "right thinking" librarians about possible solutions to the bargaining impasse. Arnold is an Executive Board member, one of the union representatives on the Labor/Management Committee and is a back-up member of the union's negotiating team.

Wright's and Arnold's testimony are in sharp conflict. The record shows that Arnold was not "approached" by Wright, but that the conversation in question took place in the lunchroom where a number of employees were on their coffee break. Wright testified that one of the subjects in the general discussion was "that retroactive pay was mounting up and wouldn't it be nice with all the things we could do with it." (Tr., p. 10, l. 2-4).

Wright testified that Dubberly was fairly new with the administration and that staff relations had been more formal than with the previous administration (Tr., p. 17). She stated that there appeared to be a need for improving communications and therefore her comments on the door being open to Dubberly for communication with the staff (Tr., p. 18-19). Wright denied relating that Dubberly wanted to talk about "retroactive pay" (Tr., p. 11, l. 17-24) or

"possible solutions" to the bargaining impasse (Tr., p. 13, l. 19-24). She stated that her position is one of public relations and she was in no way involved in negotiations. Wright testified it is not part of her job to carry messages from Dubberly to the staff, and denied that Dubberly had ever asked her to convey to the staff that he was available for communications (Tr., p. 16, l. 3-12). Arnold confirmed that Wright had never before carried messages from the administration to her (Tr., p. 26, l. 5-7).

Norma Arnold's version of the conversation was that Dubberly wanted to talk to the staff regarding "possible solutions" to the bargaining impasse and that the door to his office would be open in the afternoon (Tr., p. 21-23). She did not recall the words "right thinking" which are quoted in the complaint (Tr., p. 23, l. 8-14). She states that Wright asked her to contact other members of the staff and give them the message. Arnold did contact Ann Hsiao and "related to her what Nancy had just told me." (Tr., p. 24, l. 2-14) There is no allegation that Dubberly spoke to any staff member regarding negotiations. Dubberly denies he authorized Wright to communicate to union members (Tr., p. 66, l. 8-11).

The complaint specifically states the above incident occurred on June 3, 1976. Arnold was very positive in her testimony that the date was June 3, 1976 (Tr., p. 21, l. 2-3; p. 25, l. 23). Dubberly testified that on June 3, 1976 he was in Walla Walla, Washington attending the Washington State Advisory Council on Libraries (Tr., p. 61, l. 6-19). Respondent introduced into evidence as Exhibit No. 2 the minutes of that meeting which shows the members attending, including Dubberly. Dubberly testified that he drove to Walla Walla on the afternoon of June 2, 1976 and returned late on June 4, 1976.

The testimony of Ann Hsiao was very indefinite and confusing. This witness was called to testify regarding her conversation with Arnold on this matter:

"Q Did she come in and talk with you on that day?

"A I don't remember the exact date, but I do know it was the date following; we had a union meeting to vote on some kind of proposal -- contract proposal; and I remember it was in the summertime and it was early in the morning, Norma came to me -- apparently we had some disagreement at our meeting and Norma -- I, as everybody felt the same -- I don't remember exactly the wording, but she said it -- Mr. Dubberly's available or willing or whatever talking to people who are not too happy with -- or something like that, I don't know, maybe my own interpretation because we had some disagreement and the --

"Q (Interposing) You started to say 'are not too happy with' then you didn't finish your sentence.

"A No, because we had a discussion about our vote and our account of the night before and I just assumed that Norma came to me because of that; and she came in -- very quiet

voice because there were other people around and I think she didn't want people to know -- said Mr. Dubberly -- 'Nancy Wright just told me that Mr. Dubberly will have his door open, feel free to go in and talk to him.' I said 'oh, no, because I feel my duty --

"Q (Interposing) Well, before you get to what your response was, did she say in that initial statement talk to him about what -- did she mention what about?

"A No, she just said Mr. -- I just assumed, I feel at this time, I'm not too clear -- that maybe because we had impasse or something to do with the union contract because it was the early morning after I -- we had a union meeting.

"Q Are you sure that you assumed it was about the impasse or could she have said it at that time?

"A I don't know. I couldn't say for sure. Lots of times I just assume some people say something, but I just assumed that that was what she was talking about..."

Hsiao's testimony is extremely vague and does little to corroborate the testimony of Arnold. Hsiao did not mention anything specific that Dubberly supposedly was willing to discuss such as "proposed solutions" and she never did talk directly to Wright. Further, she was not one of those present during the complained-of conversation.

It is significant that even though the Wright-Arnold conversation took place in the lunchroom during a break, in front of and with a group of people (Tr., p. 10, l. 19-20) complainant did not produce one witness to verify Arnold's version or interpretation of same. The record shows that Arnold was in error as to the date of the occurrence.

Evidently Arnold misunderstood, misheard, or, more likely, misinterpreted an attempt at improved staff communications as interference in the bargaining process. The evidence and testimony completely fail to support a finding of unlawful interference in this episode.

The next charge to be discussed relates to the lay-off notices and is referred to as the third charge in complainants brief. The lay-off notice to the union was dated October 25, 1976 and speaks for itself (Complaint, Attachment F). The library felt it had to lay off employees because of budget restrictions and the right of management to do so is not denied by complainant (Complainant brief, p. 7 and 8). The contract provides that vacations be taken in the calendar year following the year in which they are earned. The library, however, attempted to lessen the financial impact of the then-impending lay-off by proposing that employees use their 1976 vacation at the end of 1976 so that their medical benefits would remain in effect and they would continue to accumulate vacation time. All lay-off notices were rescinded on November 22, 1976.

Complainant alleges that the proposed use of vacation time in the notice was in violation of the contract and therefore was an unfair labor practice. Seniority lists and lay-off lists were provided to the union and a number of meetings were held regarding the lay-offs (Tr., p. 46, l. 23-25; p. 51, l. 1-6; p. 106, l. 21-25; p. 107, l. 1-13). The lay-off notice to the union contained the following final paragraph:

"The administration is committed to working with the Labor/Management Committees and the officers of the Unions to insure adherence to the collective bargaining agreements and to insure fair, equitable and consistent treatment for all employees within legal constraints imposed by Federal and State laws."

There were no formal complaints or grievances filed regarding the lay-off notices or the use of vacation (Tr., p. 82, l. 19-25; p. 83, l. 11-13) until some four (4) months later when the complaint was filed.

The Commission has previously dismissed unfair labor practice cases on the basis that it does not have "violation of contract" jurisdiction through the unfair labor practice provisions of RCW 41.56 (City of Richland, Decision No. 246, PECB, 1977; City of Kennewick, Decision No. 334, PECB, 1977). In these and other decisions, the Commission has followed the precedent of the NLRB in Collyer Insulated Wire, 192 NLRB 837 (1971) and has deferred violation of contract complaints to the grievance procedure of the contract. It is clearly appropriate to so do in this case.

The third charge to be discussed (fourth in complainant's brief) is the allegation that the library refused to provide necessary information to the union on May 12, 1976 and again on June 16, 1976. On those dates Elke Boettcher, president of the union, requested copies of a "comprehensive personnel plan", and that same be issued regularly by the administration. Both Dubberly and Ken Raglund, personnel director, testified that no such document existed and that personnel plans were transmitted to the union as soon as they were available, in the form of budget proposals. The union was told that it would be furnished specific documents upon request, but nothing specific was requested on either date. Further, Dubberly testified that he was not at all sure of what a "comprehensive personnel plan" would consist of (Tr., p. 80, 81, 82). Clearly the library was under no duty to generate a plan in response to the union request and its failure to do so was not an unfair labor practice.

The fourth charge to be discussed (number five in complainant's brief) is the memorandum of December 15, 1976 to the Library Board of Trustees. The four-page memorandum is a report by Dubberly on the Los Angeles County and Los Angeles City Library systems (Complaint, Attachment C). The second paragraph on page four of the report is that which is objected to by the Union:

"The Library has eleven unions. An inordinate amount of time apparently is consumed in the labor/management relationships. The professional union is militant. Relation-

ships, therefore, are formal and handled by professional personnel officers within the administration. It appears that after several conciliatory efforts directly from the Board to the union were turned against the Board by union members, the Board has returned to administration channels for labor/management relationships. The more militant the union becomes, it seems that the staff becomes more permanently divided between labor and management. Some individuals transcend the gulf to become managers."

Complainant argues that the above shows an anti-union bias that is bound to restrain or coerce Seattle library employees. The complained-of document speaks for itself: it is a factual report on the situation in Los Angeles County and City, as the writer saw it, and nothing more. There is no threat of reprisal or force or promise of benefit to Seattle librarians that could possibly be construed as unlawful interference. It is completely absurd to believe that the library administration would intend this buried paragraph in an obscure report as an "implied threat" to union members (Tr., p. 44, l. 8-15). The memorandum was not even distributed to bargaining unit members but was available to them only because it is of public record.

Based upon the foregoing and having considered the evidence, testimony, arguments and post-hearing briefs, the Examiner now makes the following:

FINDINGS OF FACT

I

The City of Seattle, Washington is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030 (1).

II

The Washington State Council of County and City Employees, Local 2083 is a "labor organization" within the meaning of 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030 (3).

III

The complained-of conversation between Wright and Arnold wherein Complainant alleges Dubberly attempted to negotiate directly with the employees could not have taken place on June 3, 1976. Complainant's version of this discussion with a group of employees on coffee break is uncorroborated and there is no substantiation of an attempt at individual bargaining.

IV

The October 25, 1976 lay-off notices were authorized by, and in compliance with the contract with the possible exception of the vacation arrangement. No objections or grievances were submitted nor was a complaint filed until March 7, 1977, more than three months after said notices were rescinded on November 22, 1976. The respondent acted in good faith and no unfair labor practice was committed.

V

Respondent had no "comprehensive personnel plan"; nor any duty to generate such a plan upon demand. Respondent furnished requested specific information to complainant.

VI

The memorandum of December 15, 1976 to the Library Board of Trustees regarding two California library systems contained no threats, express or implied, of coercion of Seattle library employees.

CONCLUSIONS OF LAW

I

The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56. RCW.

II

The Respondent, City of Seattle, has not interfered with, restrained or coerced employees in the exercise of their rights guaranteed by RCW 41.56; has not refused to bargain with the complainant; and has not engaged in unfair labor practices within the meaning of RCW 41.56.140.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner now makes the following:

ORDER

It is ordered that the complaint filed by the Washington State Council of County and City Employees, Local 2083, against the City of Seattle, Washington is dismissed.

Dated at Olympia, Washington this 9th day of November, 1978.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

Williard G. Olson

WILLIARD G. OLSON
Examiner