STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 17, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE NO. 1114-U-77-145 DECISION NO. 787 PECB DECISION AND ORDER

Michael T. Waske, Business Representative, appeared on behalf of complainant.

Douglas N. Jewett, City Attorney, by P. Stephen DiJulio, Assistant City Attorney, appeared on behalf of respondent.

STATEMENT OF THE CASE:

International Federation of Professional and Technical Engineers, Local 17 (hereinafter called complainant or union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission pursuant to the Public Employees Collective Bargaining Act, RCW 41.56. The issue presented is whether the City of Seattle (hereinafter called respondent or city) made unilateral changes in working conditions during the course of collective bargaining negotiations, and thereby controlled, dominated or interfered with rights guaranteed to public employees in RCW 41.56.140(2).

The Executive Director designated Rex L. Lacy to act as Examiner, and a hearing was conducted on May 21, 1979 at Seattle, Washington. Both parties submitted post-hearing briefs.

POSITIONS OF THE PARTIES:

Complainant alleges that respondent committed an unfair labor practice when it unilaterally reduced overtime compensation received by Cathleen Barry, a bargaining unit employee, from double time to time and a half; and when, through a memorandum issued by a supervisor, it ordered similar reductions for other clerical employees in the bargaining unit represented by the complainant. These actions were contrary to established past practice and are alleged to have tended to have controlled, dominated and interfered with collective bargaining negotiations then in progress.

Respondent argues that a consistent overtime compensation policy was followed in accordance with prevailing city ordinances. It claims that the memorandum issued by the supervisor had no effect on the policy and was the result of a mistake in policy interpretation. Respondent asserts that such an isolated mistake does not constitute an unfair labor practice.

BACKGROUND:

The union was certified as bargaining representative by the Public Employment Relations Commission and entered negotiations with the City of Seattle in July, 1977 on behalf of a bargaining unit composed of clerical employees in the various city departments, including Seattle City Light. Prior to ratification of a collective bargaining agreement in February, 1978, city ordinances controlled wages, hours and conditions of employment. The "salary ordinance" (Ordinance No. 97330 as amended by Ordinance No. 98316) established overtime compensation policy by dividing overtime work into separate categories. "Regular" overtime, resulting from normally heavy work assignments, was compensated at the rate of time and a half. "Extraordinary" overtime, caused by emergency assignments, was compensated at the rate of double time.

On August 4, 1977, Cathleen Barry, a bargaining unit employee assigned as an Administrative Support Assistant in Seattle City Light's Engineering Division, was requested to type a memorandum during her lunch period. The person who made the request, Tom Rocky, Assistant to the Chief Engineer, was not Barry's immediate supervisor. While Barry had worked for Rocky on previous occasions, the August 4 assignment was the first involving overtime. As with her prior overtime assignments, Barry received overtime compensation at the double time rate. However, on August 22, 1977, Barry was ordered to repay a portion of the overtime compensation received for the August 4 assignment. The overtime rate re-computation was not explained. Barry was required to fill out a new time sheet reflecting compensation at the time and a half rate, and she repaid $2.50.

On August 22, 1977, the same day that Barry was required to adjust her overtime compensation, the question of overtime arose in a supervisors' meeting conducted by Seattle City Light's Engineering Division. Chief Engineer Sheean requested Bill Gates, Labor Relations Coordinator for Seattle City Light, to explain overtime compensation policy to the supervisors. Respondent's witnesses gave contradictory testimony about the explanation given at the meeting. Gates testified that he informed the supervisors to follow the "salary ordinance" when computing overtime compensation. However, John Hansen, Supervisor of the Construction Engineering Unit, testified that Gates explained that all overtime compensation for clerical employees would be paid at the time and a half rate regardless of the reason for overtime work. Based upon his impression of the overtime policy, Hansen issued a memorandum

on August 23, 1977, detailing the time and a half rate for all overtime. Upon learning of the memorandum, Gates ordered that it be rescinded, and it was returned the following morning.

DISCUSSION:

Respondent appeared to make unilateral changes in an overtime compensation policy established by city ordinance in 1968. The change was manifested by the actual reduction in overtime compensation received by Barry and by the memorandum ordering prospective exclusion from double time compensation for two other clerical employees. Both incidents arose because of confusion in the application of overtime compensation policy, but the effects of the changes must be analyzed in terms of the impact upon collective bargaining negotiations then in progress. Respondent's contention that Hansen's memorandum could not modify overtime compensation policy is not persuasive. Employed in a supervisory capacity with the ability to regulate the functions of the Construction Engineering Unit, Hansen was in a position to speak on behalf of the city in matters relating to the application of employment policies. Respondent did not adequately demonstrate that the affected employees were aware of Mr. Hansen's lack of authority in ordering changes in the overtime compensation policy. In addition to the memorandum, respondent actually reduced overtime compensation received by a bargaining unit employee. While the reduction was a nominal adjustment in overtime compensation, the amount of money involved is not determinative. Taken together, respondent's actions could reasonably have been understood by employees as a tendency of the city to obstruct or disregard collective bargaining negotiations then in progress.

Complainant alleges that respondent's unilateral changes in working conditions violated RCW 41.56.140(2) in that respondent controlled, dominated or interfered with collective bargaining negotiations. Complainant has apparently misconstrued the kind of employer activity that would sustain such allegations. RCW 41.56.140(2) is similar to Section 8(a)(2) of the National Labor Relations Act. Initially, the prohibition against domination and interference was aimed at employers who had created subjugated unions or "company unions" to prevent organizational efforts by outside labor groups. See Pennsylvania Greyhound Lines, Inc., ILLRM303 (1935), enforced 303 US 261 (1938). The facts of this case do not support an allegation that respondent controlled or dominated the employee bargaining representative within the meaning of RCW 41.56.140(2).

If a violation is present in this case, it arises from RCW 41.56.140(4) which specifies that a public employer commits an unfair labor practice by refusing to engage in collective bargaining. National Labor Relations Board decisions and Public Employment Relations Commission decisions consistently hold that unilateral changes of employment conditions without consultation with the

employees' exclusive bargaining representative constitute a refusal to bargain. Where the employer refuses to negotiate in fact as to mandatory subjects of bargaining, an unfair labor practice has been committed though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargains to that end. NLRB v. Katz, 369 US 736, 50 LRRM 2177 (1962). Prohibited employer activity has been found where existing wages have been increased during collective bargaining negotiations, NLRB v. Mid-West Towel & Linen Service, Inc., 399 F2d 958, 57 LRRM 2433 (CA 7, 1964) as well as where the employer has reduced or discontinued existing employee benefits NLRB v. Citizens Hotel Co., 326 F2d 501, 55 LRRM 2135 (CA 5, 1964). Where the City of Auburn unilaterially changed the pay period established for fire fighters without negotiating with the fire fighters' exclusive bargaining representative, the city was found to be in violation of RCW 41.56.140(4). City of Auburn, Decision No. 455 PECB (1978). A similar violation was found where a public employer unilaterally increased wages while eliminating established sick leave and business leave practices during the course of collective bargaining negotiations. Sunnyside Valley Irrigation District, Decision No. 314 PECB (1977).

FINDINGS OF FACT

1. The City of Seattle is a municipal corporation located in King County and a "public employer" within the meaning of RCW 41.59.030(1). Among other municipal services, the city maintains and operates the City Light Department.

2. The International Federation of Professional and Technical Engineers, Local 17 is a labor organization and a bargaining representative within the meaning of RCW 41.56.030(3).

3. Beginning in July, 1977, the City of Seattle and the International Federation of Professional and Technical Engineers, Local 17 entered negotiations for the first collective bargaining agreement covering clerical employees in the various city departments, including the City Light Department. Cathleen Barry, Alzora Schell and Loaha Hume were bargaining unit employees working in the City Light Department.

4. Prior to contract ratification in February, 1978, City Ordinance No. 97330 as amended by City Ordinance No. 98316 controlled overtime compensation policy. "Regular" overtime was compensated at the rate of time and a half. "Extraordinary" overtime was compensated at the rate of double time.

5. On August 22, 1977, Ms. Barry was ordered to repay a portion of the overtime compensation received for extraordinary work performed on August 4, 1977. On August 23, 1977, John Hansen, Supervisor of the Construction Engineering Unit, issued a memorandum to Schell and Hume informing them that they would be precluded from receiving overtime compensation at the double time rate for all future overtime assignments.

6. Hansen was employed in a supervisory capacity and had authority to administer employment practices within the Construction Engineering Unit.

7. The reduction in Barry's overtime compensation and the changes specified in Hansen's memorandum were contrary to established past practice.

8. The City of Seattle did not notify or negotiate with the International Federation of Professional and Technical Engineers, Local 17 about the changes in existing overtime compensation policy.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. The City of Seattle has violated RCW 41.56.140(4) by making unilateral changes in working conditions during the course of collective bargaining negotiations without bargaining about the changes in overtime compensation policy.

ORDER

IT IS ORDERED that the City of Seattle, its officers and agents, shall immediately;

1. Cease and desist from unilaterally changing overtime compensation policy without giving notice to, and upon request, bargaining with the International Federation of Professional and Technical Engineers, Local 17 about such proposed changes.

2. Take the following affirmative action:

(a) Make Cathleen Barry whole for the loss of overtime compensation she suffered by paying her $2.50 plus interest at an 8% annual rate.

(b) "Post in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the City of Seattle, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Seattle to ensure that said notices are not removed, altered, defaced or covered by other material."

(c) "Notify the Executive Director of the Commission, in writing, within ten (10) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceeding paragraph."

DATED at Olympia, Washington this 28th day of December, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Rex L Lacy

REX L. LACY, Examiner

"Appendix A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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, THE CITY OF SEATTLE HEREBY NOTIFIES ITS EMPLOYEES THAT:

WE WILL NOT make changes of overtime compensation policy for clerical employees unless we have given notice to and bargained collectively with International Federation of Professional and Technical Engineers, Local 17.

DATED:_____ CITY OF SEATTLE

BY:_____
Authorized Representative: City of Seattle

BY:_____
Authorized Representative: Seattle City Light

THIS NOTICE MUST NOT BE ALTERED, DEFACED OR COVERED BY OTHER MATERIAL.