

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 262,	)	CASE NO. 3098-U-80-438
Complainant,	)	DECISION NO. 1224 - PECB
vs.	)	
PORT ANGELES SCHOOL DISTRICT NO. 121,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.	)	

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Victor E. Bober, Secretary-Treasurer of Local 262,  
appeared on behalf of the complainant.

James J. Dionne, Attorney at Law, appeared on behalf of  
the respondent.

By complaint filed October 16, 1980, Service Employees International Union, Local 262 (complainant), alleged that Port Angeles School District No. 121 (respondent) committed an unfair labor practice within the meaning of RCW 41.56.140(1) by unilaterally changing the terms of a collective bargaining agreement negotiated in September, 1979. A formal hearing was conducted in Port Angeles, Washington on April 24, 1981. The parties submitted post-hearing briefs.

BACKGROUND:

Complainant, Service Employees International Union, Local 262, is the exclusive bargaining representative of a unit of school bus drivers and custodians, one of four bargaining units of classified employees employed by Port Angeles School District No. 121. Vic Bober, Secretary-Treasurer of Local 262, met with school district representatives on September 29, 1979, to begin negotiations for a successor collective bargaining agreement. By the time the parties met, contracts with the other bargaining units of classified employees had already been settled. At the meeting, complainant presented 15 proposals for modifications of the prior collective bargaining agreement. Respondent countered with an offer which increased wages by 9½% for the 1979-1980 school year and 7½% for the 1980-1981 school year. The offer was made contingent upon complainant's withdrawal of its proposed changes in the collective bargaining agreement. Donald Sleeper, school district business manager, participated in the negotiations. Sleeper testified that respondent's offer was framed in terms of state imposed guidelines for

classified school employee salary increases. Under the guidelines, the state provided sufficient funds to increase base salaries by 8% for 1979-1980 and 6% for 1980-1981. In addition to state moneys, local school districts could use local funds to grant additional increases of 1½% for each of the two years. Sleeper testified that the offer made on September 29th was identical to that made to other classified bargaining units. John Loomis, a bargaining unit member who attended the negotiations, testified that the unit's primary concern was to receive the same wage settlement that the other classified bargaining units had already received. In the other units, the final salary settlement included increments within the wage increases.

The parties reached tentative agreement on a new two year collective bargaining agreement at the September 29, 1979 meeting. The tentative agreement was reached on the basis of respondent's offer.<sup>1/</sup> Complainant notified respondent that bargaining unit members ratified the contract, and the Port Angeles School Board ratified the agreement on October 8, 1979. The negotiated wage increases took effect in the October, 1979 paycheck. When bargaining unit employees received the checks, several individuals complained that the increases did not equal 9½%.

In November, 1979, Bober and Sleeper discussed the salary increase issue. Sleeper testified that he reminded Bober that wage increases were calculated to include increments, and that each employee would not necessarily receive a 9½% increase. Bober testified that he did not recall Sleeper's explanation, but Bober was aware of the state guidelines and remembered discussions of the wage settlement in terms of the guidelines.

The record does not reflect further complaints about the wage increase for several months. In January, 1980, a final copy of the collective bargaining agreement was sent to complainant for signatures, but the contract was not signed. In June, 1980, Bober again met with district representatives to express disagreement about the calculation of salary increases. At that meeting, Bober denied that he had been informed that wage increases would include increments. The parties did not reach agreement on the dispute. The record does not reflect further meetings on the issue. On October 16, 1980, complainant filed the complaint of unfair labor practices which is the subject of these proceedings.

#### POSITIONS OF THE PARTIES:

Complainant argues that respondent unilaterally changed the terms of a collective bargaining agreement by deducting increments from negotiated

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<sup>1/</sup> Respondent's offer also increased insurance benefits for bargaining unit members. The amount and application of insurance benefit increases are not at issue.

salary increases. Complainant contends that respondent never explained that its salary proposal made on September 29, 1979 included increments, and complainant maintains that respondent had discretion in applying state guidelines to proposed salary increases.

Respondent denies that a unilateral change has occurred in this case. Respondent contends that the salary increase always included increments, and that complainant was made aware of this during negotiations and at several subsequent meetings. Respondent further contends that the salary offer made to complainant was identical to that made to other classified bargaining units and complainant was aware of the terms in the other settlements. As an affirmative defense, respondent maintains that complainant has enjoyed benefits under the agreement for over a year before the unfair labor practice complaint was filed, and complainant should be barred from bringing this action under the doctrine of laches.

#### DISCUSSION:

##### Laches

Respondent maintains that the unfair labor practice complaint should be barred under the doctrine of laches. The Public Employees Collective Bargaining Act does not contain a specific statute of limitations for unfair labor practice complaints, as does the National Labor Relations Act. While the complaint in this case was filed more than a year after the parties reached tentative agreement on a new contract, respondent has not shown that it has been prejudiced or otherwise harmed by the delay in filing the action.

##### Unilateral Change

Complainant's allegations deal with the computation of a wage offer made by respondent on September 29, 1979. Although the allegations deal only with the issue of computation, the facts presented indicate that the issue to be decided by the Examiner is whether respondent made a unilateral change of wages in violation of RCW 41.56.140(1).

An employer can commit an unfair labor practice by unilaterally changing wages, hours or working conditions during the term of a collective bargaining agreement. See: NLRB v. Katz, 369 US 736 (1962). The Public Employment Relations Commission has found a variety of unilateral actions taken by public employers to be violative of RCW 41.56. Violations have been found where an employer unilaterally changed pay periods, City of Auburn, Decision No. 455 (PECB, 1978) as well as where an employer reduced the amount of overtime compensation, City of Seattle, Decision No. 787 (PECB, 1979). In this case, respondent implemented a new wage rate prior to the time that the complainant signed the collective bargaining agreement. On its face, it

appears that respondent could have violated RCW 41.56 by making the unilateral change. However, the situation must be examined in its totality, and when such examination is made, it becomes evident that an unfair labor practice was not committed.

A bargaining unit member who participated in the only negotiation session testified that the only major concern among bargaining unit employees was to receive what other bargaining units did. The record clearly reflects that respondent made complainant an offer for wage increases which was consistent with offers made to other bargaining units. In all of the other settlements, wage increases included increments, and it thus appears that respondent's position was consistent among bargaining units. In addition, respondent took reasonable steps to inform complainant of the terms of its offer. Apart from the presentation of the offer at the September 29, 1979 negotiation session, respondent explained the salary computations in November, 1979, which was before the final copy of the collective bargaining agreement was submitted to complainant.

Respondent made a single offer regarding salary increases and never changed its position on the matter. By words and actions, the union appeared to accept the employer's offer. Acting in reliance on the settlement reached on September 29, 1979, respondent made appropriate adjustments in the employees' paychecks. After reviewing the record as a whole, the Examiner is convinced that the adjustments reflected the full agreement between the parties on the issue of salary increases, and that the employer acted in good faith to implement that agreement.

#### FINDINGS OF FACT

1. Port Angeles School District No. 121 is a "public employer" within the meaning of RCW 41.56.030(1). The district negotiates collective bargaining agreements with four collective bargaining units of classified school employees.
2. Service Employees International Union, Local 262 is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents a bargaining unit of custodians and bus drivers employed by Port Angeles School District.
3. On September 29, 1979, representatives of the district and union met to negotiate a successor collective bargaining agreement. By the time the parties met, agreements had been reached with the other classified bargaining agreements. At the September 29th meeting, the parties reached tentative agreement on a two year collective bargaining agreement.

4. The agreement called for salary increases of 9½% in the 1979-1980 school year and 7½% in the 1980-1981 school year. The increases were based on guidelines established by the state for salary increases. The salary increases were identical to those provided for other classified bargaining units in the district. The settlements in the other units included increments within the salary increase.

5. The agreement was ratified by the union, and upon learning of the union's acceptance, the Port Angeles School Board ratified on October 8, 1979. Salary increases went into effect in the October, 1979 paycheck. In November, 1979, representatives of the parties discussed the issue of salaries, and the district reminded the union that the salary increase included increments.

6. The parties discussed the issue again in June, 1980. The union complained that the district never informed it that increments would be included in the salary increase.

7. The district did not change its position in relation to salary increases from the initial offer made on September 29, 1979.

#### CONCLUSIONS OF LAW

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


2. By events described in findings of fact No. 3 through 6 above, the district did not commit an unfair labor practice within the meaning of RCW 41.56.140(1).

#### ORDER

The complaint charging unfair labor practices is hereby dismissed.

DATED at Olympia, Washington this 29th day of September, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
KENNETH J. LATSCH, Examiner