

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 92,	)	
	)	CASE NO. 3686-U-81-554
Complainant,	)	DECISION NO. 1443 - PECB
vs.	)	
WAHKIAKUM SCHOOL DISTRICT NO. 200,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.	)	

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Les Hayes, Business Representative, appeared on behalf of the complainant.

George F. Hanigan, Attorney at Law, appeared on behalf of the respondent.

On September 18, 1981, Service Employees International Union, Local 92 (complainant) filed an unfair labor practice complaint charging that Wahkiakum School District No. 200 (respondent) violated RCW 41.56.140(1), (2) and (4) by circumventing the exclusive bargaining representative and negotiating directly with bargaining unit employees. A formal hearing was conducted on December 1, 1981. The parties did not submit post-hearing briefs.

BACKGROUND:

On May 8, 1981, in Decision No. 1152 (PECB, 1981), the Public Employment Relations Commission certified Service Employees International Union, Local 92 as the exclusive bargaining representative of all full-time and regular part-time classified employees of Wahkiakum School District No. 200. The unit includes approximately 22 employees in the general work classifications of aides, secretaries, bus drivers, custodians, and maintenance.

During the latter part of May, 1981, bargaining unit employees met with Les Hayes, Business Representative for the complainant, to formulate bargaining positions for an initial collective bargaining agreement. Testimony offered at the hearing indicated that the bargaining unit membership was deeply divided over the issue of union security, and this dispute complicated the process of putting together any contract proposal. During the course of the meetings, two employees, Joanne Brockway and Marsha Woody, were designated as "contact persons" to relay questions and information between bargaining

unit employees and Hayes. The unit did not elect officers, nor were bargaining team members selected.

On July 20, 1981, Hayes sent a letter to district Superintendent Gary Holmberg requesting negotiations along with a partial contract proposal. Holmberg responded by letter dated July 30, 1981, stating that the district would not negotiate until it received a complete proposal from the union. On July 31, 1981, Hayes sent a letter to Holmberg requesting wage and benefit information in order to complete the union's contract proposal. The requested information was sent to Hayes on August 6, 1981. The union sent the completed proposal to Holmberg on August 10, 1981, along with suggested meeting dates.

Hayes and Holmberg never had any face-to-face negotiations. The lack of negotiations concerned bargaining unit employees. Conversations between Superintendent Holmberg and bargaining unit employees began when several bus drivers approached Holmberg to ask about the status of negotiations. On September 1, 1981, Joanne Brockway asked Holmberg to speak to all bus drivers about the negotiations. Holmberg asked Brockway if Hayes had given the employees authority to meet independently, and Brockway telephoned Hayes. The content of the telephone call is disputed between the parties. Testifying for respondent, Brockway stated that Hayes welcomed the idea of independent meetings because he had not made progress in negotiations with the district. Brockway testified that Hayes authorized the employees to meet with Holmberg and negotiate a contract. Hayes testified that he authorized the employees to discuss the status of negotiations with Holmberg but did not authorize any negotiations without his participation.

Brockway told Holmberg that the employees could meet with him, and a series of meetings soon took place. Holmberg first met with bus drivers and then had separate meetings with custodians, secretaries and aides. Holmberg then met with all bargaining unit employees. Holmberg testified that prior to all meetings, he informed the employees that they could have Hayes present, but was told that the employees could meet independently.

As the meetings progressed, respondent and the bargaining unit employees reached agreement on certain portions of a collective bargaining agreement. Shortly after Holmberg met with the entire bargaining unit, the employees held a meeting to elect "officers". The meeting was conducted without Hayes' knowledge. The elected "officers" then met with Holmberg to finalize the negotiations started earlier. After two meetings, the "officers" and respondent signed a contract on September 14, 1981, and both parties ratified the agreement the same day. On September 15, 1981, Hayes called Holmberg to set up a negotiations meeting. Holmberg informed him that a contract had been signed. Holmberg testified that Hayes expressed relief that a contract had been settled. Hayes called Brockway on September 15 to confirm that a contract had been signed, and she also testified that Hayes was pleased to

have a contract. Complainant filed the unfair labor practice complaint in this matter on September 18, 1981.

POSITIONS OF THE PARTIES:

Complainant contends that respondent committed an unfair labor practice by negotiating directly with bargaining unit employees. Complainant maintains that the employees were authorized to discuss the status of negotiations with Superintendent Holmberg, but were not authorized to negotiate a collective bargaining agreement.

Respondent maintains that it did not commit an unfair labor practice. Respondent argues that bargaining unit employees represented that they had authority to negotiate a collective bargaining agreement, and that respondent acted in good faith based upon the representations made by the employees.

DISCUSSION:

The record clearly indicates that there was a serious failure of communications between the union and bargaining unit employees. While this problem certainly contributed to the situation at issue in this case, the Examiner cannot pass judgment on internal union affairs. The issue to be decided is whether respondent committed an unfair labor practice by negotiating with bargaining unit employees and their elected "officers" without the participation of the union business agent.

The National Labor Relations Board (NLRB) consistently holds that an employer refuses to bargain in good faith by negotiating directly with employees instead of with the bargaining representative. Even if the employer makes the same offer to employees as it did to the union, a violation has been found. See: C. K. Smith and Co., Inc., 95 LRRM 1617 (1977). Where an employer circumvented a newly certified union and negotiated directly with employees, a violation was found because the employer frustrated the collective bargaining process and precluded the union from properly representing bargaining unit employees. See: Evans Rotork, Inc., 105 LRRM 1345 (1980). In addition, the NLRB has found such employer conduct interferes with the right of employees to freely choose a bargaining representative. In Jamaica Towing, Inc., 98 LRRM 1495 (1978), such a violation was found where the employer promised to review and consider bargaining demands made by a group of employees independently from demands made by the union.

In this case, respondent negotiated directly with bargaining unit employees after Joanne Brockway, the acknowledged "contact person" for the union,

represented that complainant had given permission for the employees to meet with Superintendent Holmberg. On the one hand, the existence of and communications through the "contact person" distinguishes this case from other situations where the employer circumvented the bargaining representative. On the other hand, the evidence of the employer's repeated invitation to employees to have Hayes present indicates the absence of an intent to exclude the union or to subvert the union's bargaining rights. The Examiner credits Brockway's testimony that the union representative, Les Hayes, gave the employees authority to negotiate a contract without his presence. In essence, Brockway became an agent for the union. The employer acted reasonably in relying upon the representations Brockway made. It would have been preferable to have the authority conferred on the employees reduced to written form, but lack of such a document is not determinative in the circumstances of this case. While respondent did not contact complainant to verify Brockway's representation of authority, there is also no evidence of contacts with the employer initiated by Hayes between the August 10, 1981 proposal and the September 15, 1981 telephone call. Thus, the complainant never notified respondent that the employees did not have permission to negotiate.

#### FINDINGS OF FACT

1. Wahkiakum School District No. 200 is a "public employer" within the meaning of RCW 41.56.030(1).
2. Service Employees International Union, Local 92 is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents classified employees of Wahkiakum School District No. 200 in the general classifications of bus driver, custodian, maintenance, aide and secretary.
3. The parties began initial contract negotiations in July, 1981 by correspondence between Superintendent Gary Holmberg and Business Representative Les Hayes. Hayes and Holmberg never met for any face-to-face negotiations.
4. Employee concern over the lack of negotiations led several bargaining unit members to approach Holmberg to ask about the status of bargaining. Before Holmberg discussed negotiations, he requested Joanne Brockway, a bargaining unit employee designated as "contact person" within the unit, to contact Hayes and ask his approval for such meetings. Brockway contacted Hayes on September 1, 1981, and told Holmberg that the employees could meet to negotiate without Hayes' participation. A series of meetings was held, with Holmberg advising employees that they could have Hayes present. Holmberg was repeatedly told that the employees could meet independently.

5. After several negotiation meetings, the employees chose bargaining unit officers, and these officers and Holmberg finalized the terms of a collective bargaining agreement on September 14, 1981. The agreement was ratified by the Wahkiakum School Board and the employees the same day.

6. Holmberg did not verify the employees' statements with Hayes. Conversely, Hayes never contacted Holmberg on or after September 1, 1981 to verify or limit the authority of Brockway to speak on behalf of the union.

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 4, 5, and 6, above, Wahkiakum School District No. 200 did not commit an unfair labor practice.

ORDER

The unfair labor practice complaint is hereby dismissed.

DATED at Olympia, Washington this 23rd day of April, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

*Kenneth J. Latsch*

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KENNETH J. LATSCH, Examiner