

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SERVICE AND INDUSTRIAL))	
EMPLOYEES, LOCAL 1239,))	
Complainant,))	CASE 7935-U-89-1713
vs.))	DECISION 3654 - PECB
CITY OF SEATTLE,))	FINDINGS OF FACT,
Respondent.))	CONCLUSIONS OF LAW
_____))	AND ORDER

Noel McMurtray, Attorney at Law, appeared on behalf of the complainant.

Mark H. Sidran, City Attorney, by James Pidduck, Assistant City Attorney, appeared on behalf of the respondent.

On April 24, 1989, Public Service and Industrial Employees, Local 1239, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had illegally removed bargaining unit work by the transfer of duties from a bargaining unit position of traffic sign crew chief II to a position outside of the bargaining unit. A hearing was held in Seattle, Washington, on May 16, 17 and 18, 1990, before Examiner Katrina I. Boedecker. The parties filed post-hearing briefs.

BACKGROUND

The City of Seattle entered into a collective bargaining agreement with the Joint Crafts Council (JCC) covering the period September 1, 1986 through August 31, 1989. The JCC is composed of several labor organizations, including Public Service and Industrial Employees, Local 1239. Local 1239 represents a majority of the

city's laborer workforce. The local represents 55 job classifications, from laborer to senior crew chief (also known as crew chief II.)

The City of Seattle has an Engineering Department which, among other things, is responsible for the operation of the traffic system throughout the city. The director of the Engineering Department is Gary Zarker. Reporting to Zarker is Jesse Krail, the director the Transportation Services. Within this division is the Transportation Systems Management Section headed by Barry Fairfax. Under Transportation Systems Management is Traffic Operations led by Senior Traffic Engineer Gerald Wilhelm. One of the four subsections for which Wilhelm is responsible is Signs and Markings.

Larry Buxton was the crew chief II in the Signs and Markings shop from April, 1984 through June, 1989. Buxton began working as a general laborer for the city in 1958 and thereafter promoted up through various job classifications.

In December, 1986, certain incidents occurred involving employees on Buxton's crew. The incidents resulted in allegations of harassment, intimidation, racial slurs, verbal threats, physical violence, violations of the city's weapons policy, and destruction of city property.¹ Krail presided over a pre-investigatory meeting in January, 1987. In March, 1987, Buxton received a letter from then City Traffic Engineer W. G. van Gelder, which reported criticisms of Buxton's leadership abilities. The letter also set up a meeting for Buxton, Fairfax and van Gelder to establish ways for Buxton to change in order to correct the "out-of-harmony feel in the Shop". Zarker was sent a copy of the letter.

In the spring of 1988, Zarker met with the department's division directors to determine what productivity improvements could be

¹ Ultimately, a law suit was filed against the city and the union. The matter was settled in early 1990.

made. Krail reported that he wanted to reorganize the Signs and Markings shop. His plan contemplated the abrogation of the crew chief II position held by Buxton.² Zarker advised him that he would not consider any position abrogation that was for the purpose of solving a personnel problem.

On April 21, 1988, Krail presented Zarker with a written report on the reorganization. The report summarized that staffing levels in the Transportation Division shops had dropped by 34% between 1968 and 1988, primarily reflecting a shift from a "construct-and-build" to an "operate-and-maintain" mission. While the staffing in the shops was reduced, the level of supervision remained constant. Thus, whereas in 1968 the Signs and Markings shop had one crew chief per nine employees, in 1988 there was one crew chief per six employees. Additionally, Krail was proposing to transfer the two employees who did parking meter repair and their duties from the Signs and Markings shop to the Meter shop. With that change, there would be approximately five employees per each crew chief. Krail also advised that reorganizing the Traffic Operations Section along more functional lines would improve service delivery, as was recently demonstrated in the Electrical Section.

In his report, Krail examined the duties of the crew chief I's, the crew chief II and the traffic operations engineer and determined the following:

ACTIVITY	CREW CHIEF I	CREW CHIEF II
Prioritize, assign and monitor work	50%	50%
Recordkeeping and personnel	30%	10%
Materials, tools and equipment	15%	30%
Public requests and inspections	5%	10%

² "Abrogate" is a term used by the parties throughout the proceedings. It was not brought to the Examiner's attention that it was to mean anything other than "eliminate".

Krail proposed that permanent priorities be developed in the shop, and that permanent primary and backup crew assignments be made. These two items, Krail believed, would eliminate 75% of the prioritizing and assignment decisions made by the crew chief II. The remaining duties in this area Krail suggested giving to the crew chief I's.

Krail believed that there was overlap in the recordkeeping and personnel functions between the crew chief I's and the crew chief II. He determined that 25% of the crew chief II's time that was spent on this activity could be eliminated by having the crew chief I's review and sign all time cards. Therefore, the crew chief I's would be assigned 50% of the crew chief II's time spent on this overall activity. The remaining 25%, primarily review and approval of the crew chief I's personal time cards, would be assigned to the traffic operations engineer.

Krail did not anticipate a significant elimination in the time that was spent by the crew chief II on materials, tools and equipment. So the majority of the duties were contemplated to be distributed among the crew chief I's, with the traffic operations engineer assuming responsibility for 25% of the duties, primarily in a review-and-approval role.

The 10% of the crew chief II's time that was spent on public requests and complaint investigation was recommended to be distributed to the crew chief I's.

Overall, Krail's reorganization plan projected that 43% of the crew chief II's duties would be eliminated, 47% would be redistributed among the crew chief I's and 10% would be given to the traffic operations engineer.³

³ Wilhelm testified that, in fact, his level of interaction with the shop was about the same after the crew chief II position was abrogated as it had been before.

In May, 1988, there was a reorganization of the Transportation Division. Wilhelm became Buxton's supervisor.

Zarker received a letter from the city's budget director dated May 6, 1988, indicating that the department's budget request for 1989 was due by June 1. The letter directed that the 1989 proposed budget was to be 6% less than the 1988 budget base. The letter also stated, "Each department head will be evaluated on the judgment he or she exercises in meeting these guideline, so you need to do this with care." Krail testified that the letter was not a surprise, as similar directives had been received in prior years.

On May 12, 1988, Krail met with John Masterjohn, secretary-treasurer and business manager for Local 1239. Krail told Masterjohn that he was planning to reorganize the traffic shop, and was proposing to abrogate the crew chief II position. Krail also discussed his displeasure with Buxton's performance as a manager. Masterjohn told Krail that he did not think that the position elimination was a good idea; that the position had been in the bargaining unit for a number of years; and that he did not know what kind of action he would take until he found out exactly what was going to happen. Krail responded that he would work with the union on the situation. Masterjohn did not ask for any further meetings regarding the crew chief II circumstances.

By the end of the May, Krail submitted a Transportation Services budget that met the requested 6% reduction. The budget proposed eliminating Buxton's crew chief II position.

On June 24, 1988, Krail notified Buxton that the crew chief II position would be abrogated. Buxton contacted Masterjohn, who phoned the Engineering Department's personnel manager, Robert Graham, to set up a meeting. Masterjohn's intent was "to try and

discuss the situation and see if there is anything we could do to work it out, so that the position would stay in the budget."

The meeting was held August 11, 1988. Masterjohn, Zarker, Krail, Graham, and Ian Gordon, a Local 1239 business representative, attended. The meeting was contentious. The union asserted that the city was overreacting to the way Buxton had handled the harassment allegations, and that the crew chief II position was not being eliminated as a money-saving item. Zarker stated that he did not use the budget process to handle personnel problems. At the meeting it was established that the three crew chief I's would perform the limited left-over crew chief II duties on a rotational basis. When the employee was doing so, he would be paid "outside of work classification" pay. The city also committed to finding a comparable position for Buxton.

The mayor submitted the budget to the city council in September, 1988. When Masterjohn saw that the crew chief II position was not in the budget proposed by the mayor, he lobbied Councilwoman Jeanette Williams and her staff to "look into their position and see if we could keep it into the budget." The city council passed the 1989 budget without the crew chief II position in the Signs and Markings shop.

On October 10, 1988, Masterjohn wrote to Zarker asking for a written statement as to how Buxton's job duties would be redistributed. Krail wrote Graham on October 24, 1988, demanding to know where Buxton and another employee would be placed when their positions would be abrogated January 1, 1989. He asked for an answer by November 1 so that he could work with the employees "toward a smooth transition."

Buxton continued as the crew chief II in the Signs and Markings Shop on and after January 1, 1989. The understanding was that he would maintain those job duties until the city could relocate him in a similar capacity.

On April 14, 1989, at the city's request, Masterjohn, Gordon, Zarker, Graham, and Krail met with Bill Hauskins, director of labor relations for the city, to discuss the abrogation and the redistribution of duties. At that time, Buxton was still performing as a crew chief II in the Signs and Markings section. Masterjohn told the city representatives he thought that the city was stalling on transferring Buxton until there would be no crew chief II openings. Masterjohn was concerned that two daytime positions had come open in the Sewer Division and had been filled by Sewer Division employees without Buxton having been allowed to interview.

On May 16, 1989, Buxton was notified that he was subjected to layoff because his position as traffic sign crew chief II had been abrogated from the 1989 budget. He was given three options; he accepted a vacant night-shift street maintenance crew chief II position in the Operations Division. He continued to maintain his wages as a crew chief II during this entire matter.

POSITIONS OF THE PARTIES

The union contends that the city did not allow any meaningful bargaining to occur about its decision, or the impact thereof, to abrogate the crew chief II position in the Signs and Markings section. Instead, it asserts, the city presented the transfer of unit work as a "fait accompli". The union advances that the change was a foregone conclusion driven by budgetary considerations, in part, and by a desire to solve a personnel problem indirectly through the budget process. The union argues that the transfer of Buxton and the payment of out-of-class-pay to crew chief I's were not concessions by the city but merely the city's obligation under the labor agreement.

The employer argues that it provided the union with adequate, timely notice of the proposed abrogation. The city maintains that

the union, in fact, failed to request bargaining. The city advances that the abrogation was never presented as a fait accompli and that the union failed to offer alternative solutions. Finally, the city claims that it had no duty to participate in additional bargaining, since any transfer of duties outside the bargaining unit was de minimis, having no significant impact on the bargaining unit.

DISCUSSION

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, establishes a mutual obligation on public employers and bargaining representatives of public employees to bargain in a meaningful way over wages, hours and working conditions. City of Yakima, Decision 1124-A (PECB, 1981).

"Skimming" of bargaining unit work occurs when an employer transfers work from bargaining unit employees to its own employees outside of the bargaining unit. South Kitsap School District, Decision 473-A (PECB, 1978). Such transfers of bargaining unit work are a mandatory subject of collective bargaining. South Kitsap, supra; City of Vancouver, Decision 808, (PECB, 1980); Port of Edmonds, Decision 844-A (PECB, 1981).

Therefore, an employer must give adequate notice to the exclusive bargaining representative of a proposed transfer of unit work. In the case at hand, Krail told Masterjohn directly, in their meeting on May 12, 1988, that he was proposing the elimination of the crew chief II position in the 1989 budget. The direct verbal communication meets the standards for adequate notice.⁴

⁴ There was some intimation from the union that notice should have been given to the JCC. This idea is rejected. Masterjohn is secretary/treasurer of the union which represents the crew chief II position. The employer gave

Additionally, the notice must be given sufficiently in advance of the implementation of the proposed change to allow a reasonable opportunity for bargaining between the parties to occur. Clover Park School District, Decision 3266 (PECB, 1989). The May 12 notice was given before Krail had turned in his proposed budget to Zarker. Thereafter, Zarker still had to present his budget request to the mayor; the mayor had to deliver the proposed budget to the city council; and the city council had to adopt the entire budget. The May 12 notice was timely since there was still enough time to allow for bargaining to affect a change in the employer's position at Krail's level and beyond.

The Commission has held that an employer violates RCW 41.56.140(4) by presenting a decision to transfer bargaining unit work outside the unit as a "fait accompli". When work is to be transferred outside of the bargaining unit, bargaining

[P]resupposes negotiations between the parties with attendant give and take and an intention of reaching agreement through compromise. This requires more than merely going through the motions of bargaining, or taking a pro forma approach to bargaining.

City of Kelso, Decision 2633 (PECB, 1988).

The union argues that the decision to transfer unit work had already been made by May 12 and that the city merely engaged in perfunctory "discussions" thereafter. The record does not support this contention. The union was aware of the proposed action sufficiently in advance of implementation that meaningful bargaining could have taken place. True, Krail had done his own study and formed his own opinion prior to his discussion with Masterjohn. However, the union did not take full advantage of the opportunity

the notice to a qualified agent of the exclusive bargaining representative. [Cf. Royal City School District, Decision 1419-A (PECB 1982)]

provided. Masterjohn's direct response to Krail was to disapprove of the proposed abrogation. At the same time, Masterjohn expressed uncertainty about what further actions he would take. At the August 11, 1988 meeting, Zarker told Masterjohn that the abrogation was a recommendation that would be, if it went forward, in the executive budget. The May 12 notice provided the union ample time to meet with city representatives, even to the point of lobbying a city council member.

In City of Centralia, Decision 1534-A (PECB, 1983), the employer was found to have committed an unfair labor practice when it transferred dispatching work from one bargaining unit to another during the time period between the first bargaining session and the second scheduled session. The Commission found that the union did not have an adequate opportunity to bargain. That is not the case for the situation at hand. On June 27, 1988, the union requested to meet with the city and the city agreed. At the subsequent August 11, 1988 meeting, the city responded to each concern raised by the union. At no time did the union request to expand the discussions. At no time did the union dispute Krail's opinion that there was significant duplication of effort in the Signs and Markings shop. At no time did the union offer alternatives to the abrogation. Zarker made it clear that the city was willing to continue discussions with the union if there were problems. Ironically, the parties did not meet again until April 14, 1989 -- and that was at the city's request.

RCW 41.56.030(4) defines "collective bargaining" as: "...the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith..." Upon receipt of the notice of the proposed change, the union had a duty to bargain, also. It did not offer alternative proposals to the city. The union did not provide any specific propositions for addressing either the city's hypothesis about duplication of supervision in

the shop or cost reduction/productivity increase. The union did not advance any viable alternative for the employer to consider in lieu of abrogation of the position. Instead the union limited its input to asking what was going to happen to Buxton and inquiring whether crew chief I's assuming new responsibilities would be properly compensated.

Since the city did not present the proposed abrogation of the crew chief II position as a fait accompli, but rather the union failed to avail itself of the opportunity to bargain, it is not necessary to decide whether the duties transferred to Wilhelm had a significant impact on the bargaining unit.

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(1). As Transportation Manager, Jesse Krail is an agent of the employer.
2. Public Service and Industrial Employees, Local 1239 is a bargaining representative within the meaning of RCW 41.56-.030(3). The organization is the exclusive bargaining representative of an appropriate bargaining unit of laborers of the City of Seattle, including employees in the classifications of crew chief I and crew chief II. John Masterjohn is the secretary/treasurer of the local.
3. On May 12, 1988, Krail gave Masterjohn adequate, timely notice that he was proposing to abrogate the position of crew chief II in the Signs and Markings shop. Masterjohn did not make an immediate demand to bargain.
4. On June 27, 1988, Masterjohn requested to meet with city representatives about the proposed abrogation. By mutual agreement the meeting was held August 14, 1988. At the

meeting the employer gave acceptable responses to the union regarding the union's concerns. The union did not offer alternative proposals to the abrogation of the crew chief II position for the employer to consider.

5. During or about November, 1988, the union lobbied a city council member to stop the abrogation of the crew chief II position. The city council adopted the 1989 budget that contained the abrogation of the crew chief II position.

CONCLUSIONS OF LAW

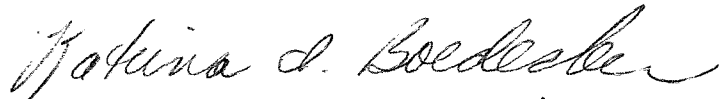
1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The employer did not violate RCW 41.56.140(1) or (4) when it transferred bargaining unit work outside the bargaining unit since it gave adequate, timely notice of the proposed transfer, but received no bargaining proposals from the union in response.

ORDER

The compliant charging unfair labor practices filed in the above-entitled matter is dismissed.

DATED at Olympia, Washington, this 17th day of December, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.