STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION, LOCAL 1576,	)	
Complainant,	)	CASE 13219-U-97-3216
vs.	)	DECISION 6375 - PECB
COMMUNITY TRANSIT,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Jared C. Karstetter, Jr., Attorney at Law, appeared on behalf of the complainant.

Stoel Rives, by Judith B. Stouder, Attorney at Law, appeared on behalf of the respondent.

On June 9, 1997, Amalgamated Transit Union, Local 1576, filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The union alleged that Community Transit had refused to bargain over a mandatory subject of bargaining, by unilaterally implementing a disciplinary policy in a revision of its standard operating procedures manual. A hearing was held on November 13 and 14, 1997, before Examiner Katrina I. Boedecker. The parties filed briefs in January, 1998.

BACKGROUND

Community Transit (employer) provides public passenger transportation services in Snohomish County. Two unions represent employees at Community Transit: Amalgamated Transit Union, Local 1576 (ATU) represents the coach operators; International Aerospace Machinists Union, Local 160 (IAM) represents the supervisors.

In 1986, Community Transit issued a Standard Operating Procedures (SOP) manual. The ATU president at the time, Daniel McDaniel, directed the membership to surrender the manuals back to management, claiming that they were not properly negotiated with the union. The ATU demanded that it be included in negotiations for the SOPs, because the employer was listing a disciplinary procedure within the manual.

In 1993, Michael Ford, currently the employer's deputy director for operations, was assigned the task of overhauling the SOP manual. He formed a committee comprised of employees from various departments. He involved ATU officials, members of the IAM unit (because they supervise and monitor the performance of the operators), and management officials, to help facilitate and finalize decisions in the various areas of the manual. ATU participants on the committee always included one or more of the four elected officials of the ATU, Local 1576, who also sat on the ATU contract negotiations committee.

To begin that process, Ford outlined his goals to committee members, including ultimate cooperation with and adherence to the SOP policies. He wrote:

> Although everyone is encouraged to provide input ... it should be pointed out that the corporation maintains the right and responsibility to enforce and determine the final outcome on policy decisions.

Ford developed an "SOP REVISION FORM" for soliciting employee suggestions. The form maintained the ultimate sign-off for approval or rejection of the suggestions by management.

The committee met offsite. It broke into smaller groups based on interest in a topic or subject area. The work was done by

consensus. Although Ford reserved the right for his director to make final decisions; apparently, that right did not need to be exercised.

As a result of the committee process, a revised SOP manual was promulgated. In the introduction, it is emphasized:

> This document is "alive" in the sense that it is subject to revision and improvement as change and circumstances warrant. It represents the best advice available from experienced coach operators and management personnel with many years of experience. It has been developed with the **full cooperation and support of ATU Local 1576 and IAM Local 160 in addition to the following departments: Operations, Maintenance, Human Resources, Safety/ Training/Security and Customer Information Services (CIS)**. While this document contains set rules and guidelines, it also provides employees information to make their jobs better and to serve the public in an optimal manner. ...

[Emphasis by **bold** in original.]

The SOP manual contained two articles, one on attendance and the other on accidents, which included elements of progressive discipline.

This same committee process was utilized for revising the SOP manual in 1994 and 1996. The same acknowledgment of "...with the **full cooperation and support of ATU Local 1576...**" continued to be emphasized in the introduction to the manual.

The SOPs at Community Transit underwent another revision in late 1996, but the process was scaled back. This time, there was no joint committee. The ATU was allowed to provide input on the revision, but the employer indicated it would unilaterally implement changes that it believed necessary, even if the ATU did

not agree. Chris Reiter was the newly-elected president of the ATU at that time. Ford wrote to Reiter on two occasions in August of 1996, to solicit participation, comment, and feedback from the ATU about the SOPs. Ford informed Reiter that the employer would implement changes in the SOPs if the union did not use its opportunity to provide input.

Two areas in which the employer wanted changes in 1996 involved disciplinary actions relating to accidents and attendance. The ATU did not agree with those changes. The employer unilaterally implemented its proposed changes in January of 1997. As revised at that time, the introduction to the SOP manual omitted the "in full cooperation and support of ATU" language and states, instead, that the revision had been "developed with joint input and comments from ATU Local 1576, IAM Local 160 and numerous employees...". The ATU then filed the instant unfair labor practice complaint.

POSITIONS OF THE PARTIES

The union argues that the employer made unilateral changes to the SOPs in areas that were mandatory subjects of bargaining. It asserts that the disciplinary policy was negotiated in the past by a committee comprised of management, IAM (supervisors), and ATU representatives, and the finished documents were the result of constructive input from all parties. The union contends it was only allowed to make suggestions in 1996, and that the employer made the final decision to implement. It claims that the union has not waived its right to bargain over mandatory topics, either by conduct or contract.

The employer contends that the union has clearly and unmistakably waived, by contract, the right to bargain regarding changes to the SOPs. The employer argues that the years in which the parties

revised the SOPs through consensus does not mean that the language in Article 19 is abandoned.

DISCUSSION

Discipline as a Mandatory Subject of Bargaining

In determining whether a particular matter constitutes a mandatory or permissive subject of bargaining under Chapter 41.56 RCW, the Commission looks to its impact on the wages, hours or working conditions of bargaining unit employees. The Commission had held that procedure manuals and so-called "standard operating procedures" are mandatory subjects of bargaining, when they contain provisions that impact employee wages and other working conditions. King County Fire District 11, Decision 4538-A (PECB, 1994). Washington law is well-settled that changes in disciplinary procedures constitute mandatory subjects of bargaining. City of Spokane, Decision 5054 (PECB, 1995) citing City of Yakima, Decision 3503-A (PECB, 1990, affirmed, 117 Wn. 2d 655 (1991).

Waiver and Deferral Issues

The ATU did not file a grievance protesting the employer action at issue in this case. The union advanced in its brief that it did not file a grievance due to a contract bar that prohibited grievances over changes to rules and regulations. Specifically, the collective bargaining agreement for April 1, 1994 through March 31, 1997, states at Article 19:

> 19.2 The employer agrees to notify the Union of any changes in the Employers Rules and Regulations, including Standard Operating Procedures (SOP's) and Performance Code, affecting Employees in the Bargaining Unit. The grievance procedure shall not apply to any

> matters covered by this section, except as to Employer administration of such provisions resulting in Employee appeal of his/her discharge or suspension only as per Article 14 of the Labor Agreement.
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> 19.3 The Union and/or Employees may submit written comments and suggestions within five (5) days of such notice. The Employer will consider such comments and suggestions in issuing such policies in final form.

The employer submits that this negotiated language obligates Community Transit only to notify the union of changes in the SOPs, and to accept and consider comments and suggestions provided by the union and employees.

Bargaining History of Article 19 -

The first collective bargaining agreement submitted into evidence covered the period from April of 1977 through December of 1978. It has no reference to rules, regulations, or SOPs.

The next contract, for the period from May of 1979 through December of 1981, records:

> Article XXV, Section 2: The employer agrees to notify the Union of any changes in the Employer's rules and Regulations affecting employees in the bargaining unit. The Union and/or employees may submit written comments and suggestions within fifteen (15) days of such notice. The Employer will consider such comments and suggestions in issuing such policies in final form.

Allen Hendricks, who was the employer's negotiator at that time, testified that the employer wanted no union involvement at all in the rules and regulations, but agreed to the above-quoted language as a compromise. McDaniel, who was one of the union negotiators at that time, testified that the right to make rules "was a big fight

every time",[1] that the union wanted to negotiate the disciplinary rules, and that the employer did not want them "in any negotiation agreement". McDaniel confirmed the "compromise" characterization, however, testifying that the above-quoted language "was the closest we could get to anything resembling a compromise".

The parties' collective bargaining agreement, for the period from April of 1982 though December of 1984, contained language similar to that quoted above. Changes from the previous contract included references to the SOPs and the performance code. Also, the ATU protected the right to grieve a discharge or suspension resulting from employer administration of the rules. The time was reduced for union comments on proposed changes in the rules. Hendricks testified that the employer still did not want to negotiate on the SOPs, and wanted to limit grievances to administration of the provisions in discharge appeals or suspensions. McDaniel testified that the union wanted to negotiate the SOPs; and the parties had the "same fight" at the bargaining table. Finally, the union compromised and agreed to "let management make the stupid rules". The union concentrated on caring only if the employer fired someone, then it could argue about the fairness of the rules to an arbitrator. The parties' collective bargaining agreements since 1984 show that the language of Article 19 has not had further changes.

Both at the time the instant unfair labor practice complaint was filed and at the time of the hearing in this matter, contract negotiations were on-going between the parties for a collective bargaining agreement to replace one which expired on March 31, 1997. Both Ford and Reiter testified that the union had proposed

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[1] McDaniel testified that the parties fought "like cats and dogs" on these issues.

changes to Article 19, but had withdrawn them as topics for negotiations.[2]

The Employer's Exercise of Article 19 -
Various SOP manuals which could be located were submitted into evidence. Review of those documents discloses:

- The ATU concedes it did not bargain the contents of a manual issued in 1986. It contained rules on attendance, including the disciplinary steps for absence, late reports, miss-outs and no-shows, as well as the accident policy and related discipline. Its policy on uniforms required coach operators to wear neckties from October 1st through June 1st.

- The 1993 SOP manual contained the same disciplinary rules. It also contained a performance guide requiring neckties to be worn from October 16th through April 14th.

- The 1994 SOP referenced discipline for the various infractions above, and made wearing ties optional.

- The 1996 and 1997 SOPs parallel the 1994 provisions. Neckties remain optional.

The employer contends it relied on specific and precise language in Article 19 to follow through that the union had waived its right to bargain changes in the SOPs. The employer cites the language to claim that the waiver applies to "changes in the Employees Rules and Regulations, including Standard Operating Procedures (SOPs) and Performance Code, affecting employees in the bargaining unit". Although it involves allegations of "unilateral changes", this case

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[2] Earlier, the union also had proposed negotiating the SOPs and later withdrew the proposal.

was not deferred to arbitration under City of Yakima, Decision 3564-A (PECB, 1991). The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute,[3] but the task of deciding the employer's "waiver by contract" defenses remains before the Examiner.

Waiver by Contract -

If a union waives its bargaining rights by contract language, an action in conformity with that contract will not be an unlawful "unilateral change". In City of Yakima, Decision 3564-A (PECB, 1991), the Commission wrote:

> In order to show a waiver, the employer would have to demonstrate that the union also understood, or could reasonably have been presumed to have known, what was intended when it accepted the language relied upon by the employer.

The Commission then found no waiver on certain issues in Yakima, because contract provisions were either ambiguous or added no substance to the matter at issue. In Washington Public Power Supply System, Decision 6058-A (PECB, 1998), the Commission noted that the Supreme Court of the State of Washington has long adhered to an "objective manifestation" theory of contracts, and imputes to a person an intention corresponding to the reasonable meaning of the person's words and acts.[4] Where the contract provisions are

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[3] City of Walla Walla, Decision 104 (PECB, 1976).

[4] The Commission cited Plumbing Shop, Inc. v. Pitts, 67 Wn.2d 514 (1965), and Lynott v. National Union Fire Insurance Company, 123 Wn.2d 678, 684 (1994). In Lynott, the Supreme Court wrote, "Unilateral or subjective purposes and intentions about the meanings of what is written do not constitute evidence of the parties' intentions".

not ambiguous, and when the contract terms themselves evidence a meeting of the minds, no further inquiry is needed to determine what was intended. See, Chelan County, Decision 5469-A (PECB, 1996), where the Commission determined that if the union had an individual intent as to the bargaining of normal work schedules, it became subsumed by the mutual intent expressed by both parties in the contract.

In this case, the language in Article 19 is very specific. It is not too general to give rise to a specific waiver for bargaining SOPs. McDaniel's testimony about the history of the language in Article 19 reinforces the argument that the waiver of the right to bargain on SOPs was expressly negotiated.

The employer did not change the waiver by using a collaborative process in the revisions in more recent years. The Commission has long encouraged parties to come together to discuss their problems, without jeopardizing their respective legal rights. WAC 391-45-550 records, in part:

> It is the policy of the commission that a party which engages in collective bargaining with respect to any particular issue does not and cannot thereby confer the status of a mandatory subject on a nonmandatory subject.

The parties have bargained about the procedure for establishing the employer's rules and regulations, including SOPs and the performance code, applicable to the employees in the ATU bargaining unit. In doing so, the ATU waived the right to negotiate the particulars of the changes in exchange for notice of changes, opportunity to provide comments and suggestions; and the union obtained an obligation by Community Transit to consider the ATU's comments and suggestions.

FINDINGS OF FACT

1. Community Transit is a "public employer" within the meaning of RCW 41.56.030(1).

2. Amalgamated Transit Union, Local 1576, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory coach operators employed by the employer.

3. The parties had a collective bargaining agreement for the time from April 1, 1994 through March 31, 1997. It contained the following language:

> 19.2 The employer agrees to notify the Union of any changes in the Employers Rules and Regulations, including Standard Operating Procedures (SOP's) and Performance Code, affecting Employees in the Bargaining Unit. The grievance procedure shall not apply to any matters covered by this section, except as to Employer administration of such provisions resulting in Employee appeal of his/her discharge or suspension only as per Article 14 of the Labor Agreement.

4. In late 1996, the employer adopted a revised Standard Operating Procedures manual which included articles on attendance and accidents. Each article had elements of progressive discipline in them.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By the language of Article 19 of the parties' 1994-1997 collective bargaining agreement, Amalgamated Transit Union, Local 1576, has waived its right to bargain concerning mandatory subjects of bargaining incorporated into the employer's standard operating procedures or performance code.

3. The complainant has failed to sustain its burden of proof to establish that, by events described in the foregoing Findings of Fact, the employer has committed any unfair labor practice under RCW 41.56.140.

ORDER

Based on the foregoing and the record as a whole, the complaint charging unfair labor practices is hereby DISMISSED.

Issued at Olympia, Washington, this 23rd day of July, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

This order will be the final order of the agency unless appealed to the Commission pursuant to WAC 391-45-350.