

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 252,	)	CASE NO. 3692-U-81-556
	)	
Complainant,	)	DECISION NO. 1534 - PECB
	)	
vs.	)	
	)	
CITY OF CENTRALIA,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	

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Griffin and Enslow, P.S. by Fred G. Enslow, Attorney at Law, appeared on behalf of the complainant.

Olson, Pietig and Althausen by Donald F. Pietig, Attorney at Law, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on September 21, 1982, wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. On October 8, 1981 the complainant amended the complaint, clarifying the factual allegations. On October 21, 1981, the parties were requested to comment upon the propriety of deferring this matter to grievance arbitration. On December 17, 1981, the complainant again amended the complaint. Thereafter, Rex L. Lacy was designated as Examiner to make and issue Findings of Fact, Conclusions of Law and Order. Pursuant to notice issued by the examiner, hearing on the matter was held in Olympia, Washington on February 25, 1982. The parties filed post-hearing briefs.

THE UNFAIR LABOR PRACTICE ALLEGATIONS

On September 21, 1981, the complainant filed an unfair labor practice allegation which read as follows:

"On September 15, 1981 at 8:00 a.m. the City of Centralia terminated and/or layed off four (4) dispatchers and replaced them with Police officers.

There are two (2) separate collective bargaining agreements in effect covering the two (2) separate units."

On October 8, 1981, the complainant amended the complaint as follows:

"On September 1, 1981, a negotiating session with the City of Centralia was cancelled by the City. I was informed by the Chief of Police Jay Winter and Mayor Bill Moeller that the City was going to make some cuts in the Police Department personnell (sic). The employees who were to be cut were the four (4) dispatchers. I asked if there were other area's that could be cut and was told that they have to (sic) much invested in their Patrolman to lay them off. We have two (2) collective bargaining agreements with the City of Centralia, one with the Police Department and one with the Dispatchers, Records Clerk and Secretary. The City has replaced the four (4) dispatchers with Patrolmen, which has violated the collective bargaining rights of the dispatchers.

We are demanding that the City of Centralia put the dispatchers back to work with no loss of pay, benefits and seniority."

On December 17, 1981, the complainant amended the complaint further as follows:

"City of Centralia Dispatchers were organized and certified as a bargaining unit July 24, 1978. Thereafter the parties negotiated two successive contracts and were negotiating the 3rd covering the years 1981 through 1982 and possibly 1983. On September 1, 1981, Chief of Police Jay Winter and Mayor, Bill Moeller, announced that they were going to reduce personnel in the Police Department, for economic reasons, by laying off the four dispatchers and replacing them with Patrolmen. The Patrolmen belong to a separate bargaining group subject to a different labor contract. At no time did the City offer to bargaining (sic) the termination of the entire bargaining group nor has there been any request to bargain the effects of the acts of the City in terminating the personnel from this certified bargaining unit. This unilateral act of termination by the City violates the employees' rights as certified and the Union requests that all employees be re-instated with full back pay. The work has not been eliminated, only the employees, and the Union contends that this is done to destroy and subvert the employees right to organize and be represented."

#### BACKGROUND

The City of Centralia is located in Lewis County, Washington. The city is governed by a three member board of commissioners. William A. Moeller is Mayor and Commissioner of Safety, William H. Rickard is Commissioner of Public Works, and John G. Gelder is Commissioner of Finance and Accounting. Among other services it maintains and operates a police department. Roland J. Winter is Chief of Police.

International Brotherhood of Teamsters, Local 252, is the certified bargaining representative in two separate bargaining units of employees of the police department. Commissioned police officers are in one unit. The other bargaining unit, consisting of dispatchers, records clerks and secretaries, was certified by the Public Employment Relations Commission on July 24, 1978. The parties have negotiated collective bargaining agreements covering the dispatchers, records clerk, and secretary bargaining unit for the period from certification to December 31, 1981. Eddie L. Jacobsen is Secretary-Treasurer of Local 252.

Collective bargaining negotiations between these parties are conducted in an informal atmosphere. The union usually presents its proposed amendments to the contract, the parties discuss the intent and meaning of the union's proposals, the employer considers the issues raised by the union, additional discussions occur, and the final agreed to items are written down for incorporation into the collective bargaining agreement. The record reflects that discussions also occur whenever the parties are meeting on other matters related to the contract administration process for this and other bargaining units.

In August, 1981, the parties commenced negotiations for an agreement to replace the dispatchers, records clerk, and secretary contract expiring on December 31, 1981. The first bargaining session was conducted on August 12, 1981. At that meeting the union presented its proposed amendments to the expiring agreement and the next negotiation session was scheduled for September 1, 1981.

On September 1, 1981, prior to the commencement of negotiations, Jacobsen was discussing an unrelated business matter with Chief Winter. During their conversation Winter informed Jacobsen that the employer had cancelled the scheduled bargaining session because the police department workforce was being reduced, and that the dispatchers would be terminated. Jacobsen went to city hall to confer with Mayor Moeller about Winter's statements. Moeller confirmed that the police department was undergoing a reduction in force, and that the dispatchers would be terminated. Moeller cited the overexpenditure of the police department budget, the ability of police officers to perform the dispatching as well as their routine patrol duties, the inability of dispatchers to serve as police officers, the cost of training police officers versus the cost of training dispatchers, the safety of the citizens, and the depleted police officer ranks due to three officers being on disability leave, as reasons for the employer's decision to terminate the dispatchers. Jacobsen indicated the union believed the employer would be committing an unfair labor practice, but did not request to bargain the termination, or the effects of the termination, of the dispatchers.

On September 1, 1981, concurrently with Moeller's discussions with Jacobsen, the employer issued notice to the dispatchers they would be terminated on September 15, 1981. Additionally, the records clerk and secretary were reduced to half-time.

On September 8, 1981, Jacobsen met with the board of commissioners to continue negotiations for the dispatchers, records clerk and secretary bargaining unit. During the negotiations, the Commissioners again explained the reasons for the employer's decision to eliminate the dispatchers. Jacobsen again raised the threat of unfair labor practice litigation, but did not request to bargain concerning the dispatchers layoffs. The union, in fact, offered no alternatives to the employers proposal to eliminate the dispatchers or to resolve the budgetary dilemma.

On January 7, 1982, Jacobsen and the commissioners again met to continue negotiations for the dispatchers, records clerk and secretary contract. The union withdrew some of its proposals, some issues were agreed to, and some issues remained unresolved. Additionally, the city agreed to formalize its position, in writing, at the next bargaining session.

On February 23, 1982, the employer presented a proposal to rehire two dispatchers and an alternative method of providing communications for the police department in the event no current or former employees accepted the offer of re-employment.

No agreement had been reached on a new collective bargaining agreement as of the date the hearing in these matters was held.

#### POSITIONS OF THE PARTIES

The union contends that the employer has violated RCW 41.56.140 by unilaterally transferring the work jurisdiction of the dispatchers bargaining unit to another bargaining unit. The union reasons that discharging all employees in a job classification is an unfair labor practice; that the jurisdiction for the dispatchers work was established when the bargaining unit was established by certification on July 24, 1978; and that it would have been less expensive for the city to retain the dispatchers than to compensate the higher paid police officers to do the same work.

The employer contends that the dispatchers were terminated for budgetary reasons which are not mandatory subjects of collective bargaining, that the union waived its bargaining rights through inaction, and that the Public Employment Relations Commission does not have jurisdiction to resolve disputes concerning the interpretation or application of collective bargaining agreements.

DISCUSSIONThe Jurisdiction Issue

The employer cites Tumwater School District, Decision 936 (PECB, 1980) to support its position that the Commission does not have jurisdiction to resolve disputes involving interpretation or application of collective bargaining agreements. Tumwater involved a grievance filed by a bargaining representative for wages lost due to a load limit restriction imposed by Thurston County that prevented the employer's school buses from being operated on days the restriction was in effect. This case is distinguishable from Tumwater because it involves elimination of jobs and transfer of the eliminated positions work to members of another bargaining unit without bargaining the effects of the employer's actions.

The union supports its jurisdictional arguments by citing provisions contained in WAC 296.132.150 and WAC 296.132.302. Chapter 296.132 WAC ceased to be operative on January 1, 1976, when the Public Employment Relations Commission assumed jurisdiction for administration of Chapter 41.56 RCW and adopted Chapter 391-20 WAC. WAC 391.20 was replaced by Chapter 391-21 WAC on February 2, 1978, which was in turn, replaced by WAC 391-45 on November 1, 1980 as the Commission's rules for processing unfair labor practices. WAC 391-45 does not contain any provision similar to WAC 296.132.150, nor has any such provision existed since February 2, 1978.

The Commission has, however, historically asserted jurisdiction in cases involving failure by an employer to bargain a decision to transfer work from one bargaining unit to another unit. South Kitsap School District, Decision 472 (PECB, 1978); City of Kennewick, Decision 482-B (PECB, 1980); Lakewood School District, Decision 755 (PECB, 1979); City of Vancouver, Decision 808 (PECB, 1980); City of Mercer Island, Decision 1026-A (PECB, 1981) and Port of Edmonds, Decision 844 (PECB, 1980).

Duty to Bargain

RCW 41.56.030(4) defines collective bargaining as follows:

"(4) 'Collective Bargaining' means 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 and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter."

Collective bargaining is a dynamic process that has not been standardized either by management or labor. The methods of achieving agreement are as varied as those used by politicians seeking votes, or by salespersons endeavoring to dispose of their wares. Success depends largely upon the degree of harmony or hostility that exists between the parties and the character, personality, and ability of the individual negotiators.

The collective bargaining process is activated by the notification by one of the parties of its desire to alter or amend a contractual provision or an existing practice. Notification of a proposed change from status quo then raises the obligation on the other party to request bargaining about the substance and effects of the proposed alteration. The party affected by the change must be afforded the opportunity to explore all the possibilities and offer alternative solutions to the issue raised by the proposed amendment. The length of time necessary to resolve the issue is directly related to the nature of the need for the alteration. Thus, it may be appropriate to negotiate about a financial emergency, such as that existing in the instant case, in one or two meetings, whereas, other provisions of the contract may take several meetings to reach agreement. A party may waive its right to bargain by inaction when afforded the opportunity to bargain. City of Yakima, Decision 1124-A (PECB, 1981).

The union was notified on September 1, 1981 of the employer's desire to change the status quo in the police department. Jacobsen immediately contacted Moeller, who explained the reasons for the employer's proposed actions with regard to the layoffs or terminations of the dispatchers and hours reductions of the remaining bargaining unit employees. Jacobsen did not contest the financial shortcomings of the police department, nor did he specifically request to bargain the effects of the layoffs. Jacobsen did not offer alternative solutions during that initial meeting with Moeller. Jacobsen did raise the question of violation of the employees statutory rights and suggested the employer seek legal advice with regard to the transfer of the work of the dispatchers to the police officers.

The opportunity to bargain the employers actions next occurred on September 8, 1981, when the parties were involved in negotiations for a collective bargaining agreement for the dispatchers bargaining unit. The employer again explained its reasons for reducing hours of bargaining unit employees and discharging the dispatchers. The reasons were again based upon financial necessities arising out of the overexpenditure of budgeted funds in the police department. The union did not avail itself of the opportunity to seek a delay in the implementation of the discharges, did not offer any alternative solutions, or make any request to bargain further regarding the effects of the employers actions.

Certification of a union does not guarantee the scope of bargaining unit work for all time. If it did, there would have been no need for bargaining and no obligation to be violated in the South Kitsap, Lakewood School District, City of Kennewick, City of Mercer Island and City of Vancouver cases cited above. The law merely affords the incumbent union the opportunity to bargain. The examiner is convinced that, in light of the very informal manner in which these parties conduct negotiations and the emergency nature of the problem, enough collective bargaining and sufficient opportunity for bargaining has occurred to fulfill the dictates of RCW 41.56. The financial problem was known to exist by both parties, and ample time existed between September 1, 1981 and September 15, 1981 to allow the parties to reach a solution to the problem. By not offering alternative solutions to solve the financial problem, the union acceded to the employers proposed actions.

#### FINDINGS OF FACT

1. City of Centralia, Washington is a "public employer" within the meaning of RCW 41.56.030(1).
2. International Brotherhood of Teamsters, Local 252, is a "bargaining representative" within the meaning of RCW 41.56.030(3), and is the certified exclusive bargaining representative of a dispatchers, records clerk, and secretary bargaining unit in the City of Centralia Police Department. The unit was certified by the Public Employment Relations Commission on July 24, 1978. The parties' had a contract due to expire December 31, 1981.
3. Negotiations for a successor collective bargaining agreement to the contract expiring December 31, 1981 commenced on August 12, 1981. The union presented proposed amendments to the agreement, and after some discussions about the union's proposals the parties agreed to meet next on September 1, 1981.
4. On September 1, 1981, the employer cancelled a scheduled bargaining session and simultaneously mailed to the dispatchers notice of their termination, effective September 15, 1981. Additionally, the remaining bargaining unit employee hours were reduced from full-time to half-time. Jacobsen contacted Moeller regarding the employers actions and Moeller indicated the city's reasons for eliminating the dispatchers were based upon a financial overexpenditure of the police department budget allocations, the cost of training of police officers, the ability of police officers to serve in a dual capacity, and the safety of the

citizens. Jacobsen did not request to bargain the decision to eliminate the dispatchers or the effects of the decision to terminate the dispatchers and reduce remaining bargaining unit employees hours of work.

5. On September 8, 1981, Jacobsen met with the commissioners regarding negotiations for the successor agreement for the dispatchers, records clerk, and secretary bargaining unit. The commissioners again explained the reasons for their actions regarding the dispatchers. Jacobsen did not request to bargain the termination of the dispatchers or the effects of the commissioners decision to eliminate dispatchers and reduce employee hours, and did not present alternative solutions to the problem giving rise to the employer's actions.
6. On January 7, 1982, the parties next engaged in collective negotiations at that meeting, the union withdrew some proposed amendments to the expired agreement, some union proposals were agreed upon, and some unresolved issues remained while the parties sought legal advice.
7. On February 23, 1982, the employer presented a formal proposal to rehire two dispatchers and an alternative method for providing communication services for the police department if no current or former employees applied for the two dispatcher positions. No agreement for a total collective bargaining agreement was reached.

#### CONCLUSIONS OF LAW


1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The parties have engaged in collective bargaining sufficient enough to satisfy the statutory responsibilities of the parties as set forth in RCW 41.56.030(4), and the employer has not violated RCW 41.56.160(4).

#### ORDER

The unfair labor practice allegations set forth in the complaint, along with the subsequent amendments filed by the complainant, are hereby denied.

DATED at Olympia, Washington, this 8th day of November, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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REX L. LACY, Examiner