STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 252, Complainant, vs. CITY OF CENTRALIA, Respondent.	CASE NO. 3692-U-81-556 DECISION NO. 1534-A PECB DECISION OF THE COMMISSION

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

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

Examiner Rex L. Lacy issued his Findings of Fact, Conclusions of Law and Order in the above-entitled matter (Decision 1534 - PECB) on November 8, 1982. The Examiner found no violation of RCW 41.56.140 and dismissed the complaint. The union filed a petition for review on November 22, 1982.

ISSUES

The union presents two issues for review:

1. Did the union waive its right to bargain the layoff by reason of a failure to request or aggressively pursue bargaining?

2. If not, was the issue sufficiently discussed so as to constitute good faith bargaining by the employer?

In addition, the union asks for reversal of the dismissal order and substitution of an order requiring full reinstatement and back pay for the employees involved. The respondent, in the event of reversal, preserves on appeal two issues raised before the Examiner:

1. Does the Commission lack jurisdiction because the union failed to follow the contract grievance procedure.

2. Was the layoff of the dispatchers for budgetary reasons a mandatory subject of bargaining?

For reasons that follow, we hold that the layoff was a mandatory subject of bargaining and not deferrable to any contract grievance procedure (and concur with the examiner in that respect). We further find that the union

did not waive its right to bargain the issue, nor did the employer satisfy its statutory obligation to bargain the issue in good faith. We accordingly reverse the examiner, and further consider the appropriate remedy.

FACTS

For some years Teamsters Local 252 has represented two separate units of police department employees of the City of Centralia, one a unit of patrolmen and the other a support unit of dispatchers, records clerk and secretary. In August 1981, the latter comprised six employees.

The collective bargaining agreement covering the support unit was due to expire December 31, 1981. It was well-known that the city was having financial difficulties. On August 12, 1981, the union met with the city's representatives to begin negotiations for the new contract by presenting its written demands. The parties were to meet again September 1.

After the initial meeting with the union on August 12, the city commissioners decided for budgetary reasons to cut back on police department personnel. They asked for a recommendation from the chief of police as to what employees should be cut. The chief recommended cutting the dispatchers, and having their work performed by patrolmen. At the request of the commissioners, the chief drafted a termination letter to each of the dispatchers, to be sent on September 1.

Between August 12 and September 1, nothing was said to Local 252 about the proposed layoffs. Mr. Jones, one of the dispatchers and a member of the negotiating team, testified that around the fifteenth or twentieth of August, he had heard that there was some problem involving personnel terminations in the department.

On September 1, Mr. Jacobson, the secretary-treasurer of the union, arrived before the time set for the negotiating session and he conferred with the chief of police about another matter. As he left the chief's office, the chief told Mr. Jacobson that he understood that the negotiations meeting had been cancelled, that there were going to be some changes within the bargaining unit and that it was his understanding that some people were going to be laid off, probably the dispatchers.

Mr. Jones joined Mr. Jacobson and they asked the mayor what was going on. The mayor asked Mr. Jacobson if he had not been informed that the meeting had been cancelled, and he replied in the negative. There is no testimony in the record that any effort had been made by anyone to notify Mr. Jacobson of the

cancellation of the meeting or the decision to lay off the dispatchers. Messrs. Jones and Jacobson were then informed for the first time that all four dispatchers were being terminated, the termination letters going out that day, and that the work the dispatchers had been doing would thereafter be done by patrolmen. The mayor said that negotiating another contract would be what he called a "moot point" because they were laying off the dispatchers. Mr. Jacobson observed that he thought the city still had an obligation to negotiate. The meeting lasted only about ten minutes. The next day the dispatchers received their letters of termination, effective September 15, 1981.

Mr. Jacobson and Mr. Jones again met with the commissioners on September 8, and questioned the economic soundness of the decision to have patrolmen perform the dispatcher's work. Mr. Jacobson also advised the commissioners that he thought they were committing an unfair labor practice in laying off the dispatchers. The mayor admitted that between September 1 and September 15, Mr. Jacobson told him that he considered the termination of the dispatchers a matter for negotiation.

JURISDICTION

Since we are reversing the examiner, we must consider issues raised by the respondent as well as the petitioner. The employer argues that the Commission lacks jurisdiction because the union failed to pursue the issue through the collective bargaining agreement's grievance-arbitration process. This argument lacks merit. The employer incorrectly and simplistically presumes that when an issue raises both a question of an unfair labor practice and a contract grievance, the latter process necessarily precedes or supercedes the former. As is apparent from a review of this issue in The Developing Labor Law (C. Morris ed. 1971) at 454 - 459, and particularly at 480-514, difficult and complex questions arise under certain circumstances concerning the relationship between unfair labor practices and contract grievance rights. With respect to the instant case, however, the employer does not disclose, nor could we find, any contract provision that would be relevant to the question of layoffs. Hence, there is no reason to anticipate that the dispute is susceptible to resolution through contractual grievance proceedings. We therefore assume unfair labor practice jurisdiction in this matter.

DUTY TO BARGAIN, SATISFACTION OF DUTY, AND WAIVER

There is no question but that the decision to lay off the dispatchers was reached between August 12 and September 1 without any notice to the union. The mayor so testified. Neither is there any question but that the city's

unilateral decision to lay off four employees out of a unit of six and to transfer their work to other employees, without prior notice to the union in time for it to consider the matter, request negotiation about either the decision itself or the effect on the employees or both, was utterly inconsisent with bargaining in good faith. Cloverleaf Cold Storage Co., 160 NLRB 1484 (1966); Fibreboard Paper Products v. NLRB, 379 U.S. 203 (1964); Whitehead Bros., 263 NLRB No. 123 (1982); City of Mercer Island, Dec. 1026-A (PECB, 1981); South Kitsap School District, Dec. 742 (PECB, 1978). In City of Yakima, Dec. 1124-A (PECB, 1981) aff'd sub nom, International Association of Firefighters, Local No. 469 v. PERC (Yakima County Superior Court, No. 81-2-01939-0, 1982). We said:

> ... (T)his Commission has held, and so holds now, that it is a violation of RCW 41.56.140(4) for an employer to throw a decision involving a transfer of unit work out of the bargaining unit at an exclusive bargaining representative as a "fait accompli" without benefit of an opportunity for meaningful discussion. An employer which does so acts at its own peril.

Id., at PD. 1124-A.

Left for consideration is the question of whether or not the union waived, by inaction, its right to bargain about the decision to lay off the dispatchers.

In City of Yakima, supra, of the transfer inspection work from the fire department to another department was proposed for public discussion over a period of four months and included public hearings in which the union voiced its opposition to the proposal, yet the union never requested bargaining on the subject. We are reluctant to infer a waiver of bargaining rights, but did so in City of Yakima to prevent a party from bringing a failure-to-bargain unfair labor practice charge after having failed to seize upon any opportunity to bargain.

In the instant case, the city made its decision unilaterally during the time between the first bargaining session for a new contract and the date scheduled for the second meeting. It then confronted the union with cancellation of the bargaining meeting and the already prepared letters to the employees announcing their layoff. The City of Centralia threw "a decision involving a transfer of unit work out of the bargaining unit at an exclusive bargaining representative as a 'fait accompli' without benefit of an opportunity for meaningful discussion". The union was taken by surprise. It protested the legality of the layoffs. It met again with the city on September 8, before the layoffs were effective. The discussion centered on the effectiveness of the decision to transfer work to solve the fiscal crisis. Given these facts, we hold that the union did not waive its right to bargain. Ciba-Geigy Pharmaceutals Div., 264 NLRB No. 134 (1982).

REMEDY

This brings us to the question of the appropriate remedy. The evidence does not discredit the city's claim of a fiscal crisis. The bargaining would have centered on how to deal with the existing fiscal problem. Jersey Farms Milk Service, Inc., 148 NLRB 1392 (1964), offers some guidance here. There the NLRB modified the Trial Examiner's decision and held:

> In fashioning our affirmative orders, we bear in mind that the remedy should be molded to the particular situation requring redress. Having scrutinzed the record and weighed the particular facts and circumstances surrounding this case, including cumulatively (a) Respondent's earlier history of harmonious labor relations with the Union; (b) the absence of any apparent antiunion motivation in the unilateral subcontracting; (c) the economic hardship both to Respondent and to third party interests that full restoration of the status quo ante would entail; and (d) Respondent's subsequent willingness to bargain with the Union about the subcontract as detailed below, we agree with the finding of the Trial Examiner that an order to restore the status quo ante is inappropriate in this case.
>
> Even though the unilaterally discontinued operation is not ordered restored, effectuation of the policies of the Act does require that the Respondent be directed now to remedy the violation found by offering to bargain about resumption of the operation it contracted out and any proposed alternatives thereto, including steps that might be taken to minimize the effects upon employees of the action taken. And while under other circumstances we might have considered it appropriate to require the Respondent to make whole its transport division employees for all losses of pay they may have suffered during the period from April 8, 1963, the date of the violation, until the date such violation is fully remedied, we do not believe that the full measure of such remedial relief is warranted under the special facts of this case. Thus it appears that the Respondent did meet with the union on May 6, 1963, at which meeting only the question of reinstating the men was discussed. Although the parties did not "bargain" to impasse on that occasion concerning the subcontracting, we believe that to the extent the reinstatement of employees was discussed, the Employer discharged his duty to bargain on that aspect of the matter. Consequently, we are limiting remedial monetary relief to the employees to the period between April 8 and May 6, 1963.

Id. at 1392-1393, (footnotes omitted)

In Jersey Farms reinstatement of the laid off employees had been discussed on one date and back pay was limited to the period between the subcontracting and that date. A similar modification of the usual remedy was made for comparable reasons in Cities Service Oil Co., 158 NLRB 1204 (1966); Transmarine Navigation Corp., 170 NLRB 389 (1968); and Seeburg Corp., 259 NLRB 819 (1981). We adopted a similar remedy in Entiat School District, Decision No. 1361-A (PECB, 1982).

In the instant case, the union had two weeks' notice of the effective date of the layoff and met with the city on September 8, but did not ask that the effective date of the layoffs be deferred pending negotiations. We note that before the hearing in this case, the parties had negotiated a contract covering the same bargaining unit and two dispatchers had been rehired. Applying the Jersey Farms criteria to the facts of this case, it would be unreasonable to require the restoration of the status quo ante or full back pay to the dispatchers who were laid off. Accordingly, we will provide for a limited back pay order to the union.

AMENDED FINDINGS OF FACT

1. The 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.

3. The parties' had a contract due to expire December 31, 1981. Negotiations for a successor collective bargaining agreement 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. Between August 12, 1981 and September 1, 1981, the employer decided, for budgetary reasons, to lay off dispatchers employed in the bargaining unit described in paragraph 2 of these amended findings of fact, and to transfer the work formerly performed by the dispatchers to police officers employed by the employer in a different bargaining unit. The employer did not give Teamsters Local 252 notice of the proposed transfer of unit work.

5. On September 1, 1981, the employer cancelled the scheduled bargaining session and mailed to the dispatchers notice of their termination, effective September 15, 1981. Additionally, the hours of remaining bargaining unit employees were reduced from full-time to half-time. Ed Jacobson, secretary-treasurer of Local 252 contacted the mayor of the City of Centralia, William Moeller, regarding the employers actions. 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. Jacobson expressed his opinion that the layoff of dispatchers was unlawful.

6. On September 8, 1981, Jacobson met with the city's commission 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. Jacobson again asserted his opinion that the termination of the dispatchers was an unfair labor practice and a matter for negotiation.

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.

AMENDED CONCLUSIONS OF LAW

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

2. By presenting its decision to lay off dispatchers, and the consequent transfer of bargaining unit work to employees in another bargaining unit, to Teamsters Local 252 as a fait accompli, without having previously given Local 252 notice of the proposed change and an opportunity to bargain thereon, the City of Centralia failed to bargain collectively as set forth in RCW 41.56.030(4) and committed unfair labor practices in violation of RCW 41.56.140(4) and (1).

3. Under all of the circumstances, and in the absence of claim or evidence that there was no budgetary problem, an order requiring reinstatement of all dispatchers and other employees with full back pay would be punitive and in excess of that necessary under RCW 41.56.160 to remedy the situation. A limited back pay order is necessary to re-create in a practicable manner a situation in which the parties' bargaining positions are not entirely devoid of economic consequences.

AMENDED ORDER

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160, it is ordered that the City of Centralia, its officers and agents, shall immediately:

1. Cease and desist from:

   (a) Refusing to bargain collectively with Teamsters Union Local 252 concerning the transfer of work of and the effects of lay off on police dispatch employees.

   (b) In any other manner interfering with, restraining or coercing public employees in the exercise of their rights guaranteed in Chapter 41.56 RCW.

2. Take the following affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act:

   (a) Upon request, bargain collectively in good faith with Teamsters Union Local 252 concerning all matters of wages, hours and conditions of employment, including the lay offs and transfers of bargaining unit work such as are referred to in paragraphs 4 and 5 of the foregoing findings of fact.

   (b) Provide back pay to police dispatch employees affected by the lay off at the rate of their normal wages when last in Respondent's employ, from five (5) days after the date of this Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent and Teamsters Union Local 252 bargain to agreement concerning the effects of the lay offs; (2) a bona fide impasse is reached in bargaining; (3) the failure of Teamsters Union Local 252 to request bargaining within five (5) days following the date of this Order, or to commence negotiations within five (5) days of Respondent's notice of its desire to bargain with the union; or (4) the subsequent failure of Teamsters Union Local 252 to bargain in good faith; but in no event shall the sum paid to any of the affected employees exceed the amount that employee would have earned as wages from the time of his or her lay off by the Respondent to the time that employee secured equivalent employment elsewhere or was reinstated by the Respondent; provided, however, in no event shall this sum be less than such employee would have earned for a two (2) week period. Back pay shall be computed in accordance with WAC 391-45-110.

(c) Preserve and, upon request, make available for examination and copying all payroll records, social security payment records, personnel records and reports, and all other records necessary to determine the amount of back pay due under terms of this Order.

(d) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the City of Centralia, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Centralia to ensure that said notices are not removed, altered, defaced or covered by other material.

(e) Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

ISSUED at Olympia, Washington, this 6th day of April, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson

JANE R. WILKINSON, Chairman

Mary Ellen Krug

MARY ELLEN KRUG, Commissioner

Commissioner Mark C. Endresen did not take part in the consideration or decision of this case.

"Appendix A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL provide notice to and, upon request, bargain collectively with Teamsters Local 252 prior to implementing any change of wages, hours or conditions of employment of employees represented by Local 252, including any transfer of work to employees in a different bargaining unit.

WE WILL provide limited back pay to police department support employees laid off when dispatching duties were transferred to police officers, as specified in the Order of the Public Employment Relations Commission.

WE WILL NOT, in any other manner, interfere with, restrain, coerce employees in the exercise of their rights under Chapter 41.56 RCW or fail to refuse to bargain collectively in good faith with any labor organization designated by our employees as their exclusive bargaining representative.

CITY OF CENTRALIA

BY:_____
Mayor

DATED:_____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.