

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,)	CASE NOS. 3294-U-81-470 & 3308-U-81-472
Complainant,)	
vs.)	DECISION NO. 1361 - PECB
ENTIAT SCHOOL DISTRICT NO. 127,)	
Respondent.)	CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Edward A. Hemphill, Legal Counsel, appeared on behalf of the complainant.

Whitmore, Warren, Bromily and Crowell, by David J. Whitmore and Chancey C. Crowell, Attorneys at Law, appeared on behalf of the respondent.

On February 4, 1981, Public School Employees of Washington (complainant) filed an unfair labor practice complaint against Entiat School District No. 127 (respondent) alleging that respondent violated RCW 41.56.140(4) by unilaterally laying off several bargaining unit employees. On February 17, 1981, complainant filed a second unfair labor practice complaint alleging that respondent violated RCW 41.56.140(4) by bargaining in bad faith. The complaints were consolidated for hearing, and a formal hearing was conducted on May 7, 1981 in Wenatchee, Washington before Kenneth J. Latsch, Examiner. At the hearing, the complaints were amended to allege that respondent's actions also violated RCW 41.56.140(1). The parties submitted post-hearing briefs.

BACKGROUND:

Entiat School District No. 127 operates schools serving approximately 350 students in Chelan County. Public School Employees of Washington represents a bargaining unit of classified employees employed by the district in the general job classifications of transportation, custodial, and maintenance. At the time that events leading to these unfair labor practice complaints began, twelve individuals (holding 9.7 FTE (Full Time Equivalent) positions) were employed within the bargaining unit.

On September 5, 1980, the parties began negotiations for a successor collective bargaining agreement to replace the contract in effect from

September 1, 1978 through August 31, 1980. Virgil King, district superintendent, and Don Olin, a school board member, participated on behalf of respondent with Olin serving as spokesman. Mark Downing, field representative for complainant, represented the bargaining unit. Among ground rules established at the initial meeting was the mutual understanding that any tentative agreement reached in negotiations had to be ratified by the bargaining unit and school board.

Negotiations continued until December 10, 1980, when the parties reached a tentative agreement. Downing noted several errors in the final copy of the agreement and made corrections before the contract was presented to the employees. On December 16, 1980, the bargaining unit ratified the corrected agreement, and the contract was forwarded to King for presentation before the school board. However, before the school board took action, King raised questions about the agreement's union security and bereavement leave provisions, and the district learned of a reduction in state funds.

In the latter part of December, 1980, respondent received an Attorney General's Opinion, AGO 1980 No. 22, issued November 19, 1980, holding that all emergency leave and sick leave must be granted from a single twelve day allotment. The tentative agreement contained a separate bereavement leave provision which, when added to other emergency and sick leave provisions, allowed bargaining unit employees access to more than twelve days of leave. In addition, respondent received notification from the state Superintendent of Public Instruction that it should anticipate a short-fall in state funds for education. Before the school board considered the tentative agreement, it acted to adjust its financial position in light of the shortfall.

When the district received the notification about funding, it had an uncommitted cash reserve of approximately \$16,000.00. King estimated that the shortfall would mean a loss of \$62,000.00 to the district. As a result of the projected loss of funds, the school board put an immediate freeze on supply purchases and travel expenses. In addition, the board decided that a staff reduction in the classified bargaining unit was necessary. As part of the reduction, respondent made an agreement with the neighboring Chelan School District, under which the Chelan district would bus respondent's special education students to classes in Wenatchee. By making the agreement, respondent could eliminate its special education bus route to Wenatchee and could reassign the driver elsewhere in the district. Reassignment of the special education driver allowed respondent to eliminate a second route which was regularly taken by the bus mechanic in addition to his maintenance responsibilities. Respondent then combined the mechanic's position with that of the maintenance supervisor. The employee holding the maintenance supervisor position would be laid off through the combination of positions. Apart from reassignments in bus service, respondent planned to reduce the custodial staff from 1.5 FTE to one FTE, lay off a secretary, and reduce the number of hours worked by an aide and two bus drivers.

On January 5, 1981, King called Downing to discuss the bereavement leave issue. A meeting was conducted on January 7, 1981, but the issue was not resolved. On January 8, 1981, King called a meeting of the classified bargaining unit to explain the proposed reductions and layoffs necessitated by the funding shortfall. The record indicates that Downing was not present at the meeting.

Downing and King attempted to resolve the union security and bereavement leave issues on January 14, 1981, but agreement was not reached. On January 16, 1981, Downing telephoned King to set up a meeting about the proposed layoffs, but no meeting was held before respondent sent layoff notices on January 20, 1981. On January 21, 1981, King and Downing held a meeting to finalize agreement on the outstanding issues remaining in the tentative agreement, but the layoffs were not addressed.

On January 22, 1981, Downing sent King a letter complaining about the layoffs. In response, King sent Downing a letter on January 27, 1981, stating that a meeting on the layoffs would soon be set, but a meeting was never held.

On January 28, 1981, the bargaining unit ratified the tentative agreement with modifications in the union security and bereavement leave sections. The agreement was presented to the school board for ratification on January 29, 1981, but the board rejected the proposed contract. On February 3, 1981, complainant mailed an unfair labor practice complaint about the layoffs to the Public Employment Relations Commission at its Olympia, Washington office.^{1/}

A negotiation session was held on February 4, 1981, at which respondent proposed 34 changes to the tentative agreement. Among the changes was stronger management's rights language, modified from the original agreement to state that the employer would be restricted by applicable laws and regulations but not necessarily by the terms of the contract when exercising management's rights. Other changes included modifications in seniority, vacations and insurance benefits. In addition, respondent proposed deletion of language dealing with consultation with complainant before existing benefits were to be changed.^{2/} Further negotiations were held on February 11, 1981, at which time respondent proposed six more changes to the tentative agreement including modifications in bereavement leave and service charges in the union membership section. On February 17, 1981 complainant filed an unfair labor practice complaint relating to respondent's negotiating actions

^{1/} The complaint was filed in the Commission's Olympia office on February 4, 1981.

^{2/} The unfair labor practice complaint relating to layoffs referred to the contract provision which respondent wished to delete in its February 4, 1981 proposal.

The state legislature passed a supplemental budget for school districts in the latter part of February, 1981, which eliminated the necessity for most of respondent's layoffs. However, several drivers were still working reduced hours and the former maintenance supervisor was still laid off. Negotiations continued until an agreement was reached on March 12, 1981. The contract was ratified by the bargaining unit on that date, and was ratified by the school board on March 19, 1981. The layoffs and hours reductions were still in effect at the time of hearing.

POSITIONS OF THE PARTIES:

Complainant argues that respondent demonstrated a lack of good faith by escalating bargaining demands after complainant filed an unfair labor practice complaint dealing with the layoff of bargaining unit members. Complainant further alleges that respondent unilaterally laid off bargaining unit employees without bargaining the decision or the effects of the layoff.

Respondent denies that it committed an unfair labor practice by rejecting the tentative agreement presented on January 29, 1981 and requesting changes in the proposed contract. Respondent asserts that it never refused to negotiate and was not obligated to accept any tentative agreement until the entire contract was acceptable. As to the layoffs, respondent maintains that it acted properly to make adjustments in staff caused by a budget deficiency.

DISCUSSION:

Unilateral Action

Complainant does not dispute that respondent was faced with the potential loss of a substantial portion of state funds and had to reduce expenditures in light of the projected shortfall. As part of the expenditure reduction, respondent chose to layoff several bargaining unit employees and reduce the hours of other unit members. Complainant does not question the decision regarding layoffs and hours reduction. However, complainant raises legitimate concerns about the lack of negotiations concerning the effects of the layoffs and hours reduction on bargaining unit employees.

The record does not establish any waiver that would prevent complainant from requesting negotiations about the layoffs and hours reduction. Respondent announced its intention to take personnel action at a meeting of bargaining unit employees called by Superintendent King on January 8, 1981. Complainant's representative called King to discuss the matter on January 16, 1981. The layoffs and hours reductions were implemented on January 20, 1981 without any negotiations. Complainant sent a letter to King on January 22, 1981, complaining about the situation and requesting negotiations. Respondent promised that a meeting would be set up, but the matter was never

negotiated. Clearly, complainant acted in a reasonable and timely manner in requesting negotiations when it learned of the proposed layoffs and hours reductions.

Respondent argues that it had no obligation to negotiate any aspect of the layoffs and hours reduction because the action was motivated by economic necessity. See: NLRB v. Dixie Ohio Express Company, 409 F.2d 10 (1969). Respondent is not completely correct in its analysis of the situation. Although an employer may not need to negotiate about the decision to make personnel reductions based on economic necessity, negotiations about the effects of the reduction on bargaining unit employees are necessary. See: NLRB v. United Nuclear Corp., 381 F.2d 972 (1967). An employer has the right to establish a budget and need not negotiate the components of that budget. However, employees have a legitimate concern regarding the portion of the budget relating to employee wages and benefits. See: Federal Way School District No. 210 Decision No. 232-A (EDUC, 1977). In this instance, the bargaining unit employees had a legitimate interest in finding out the effect that the layoffs and hours reduction would have. By unilaterally implementing the layoffs and hours reduction, respondent precluded complainant from properly representing the interests of bargaining unit employees. As a practical matter, respondent missed an opportunity to hear complainant's suggestions about the budget problem. By refusing to negotiate the effects of the personnel reductions, respondent committed an unfair labor practice.

Good Faith Bargaining

In their closing briefs, both parties point to the provisions of RCW 41.56.030(4) in discussing the obligation to bargain in good faith. The statute provides:

"'Collective Bargaining' means the performance of 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."

Respondent correctly notes that nothing in the statute requires an employer to agree to any specific proposal made in negotiations. However, the process of collective bargaining is designed to bring about a final agreement which sets forth the rights and obligations imposed on labor and management. In reaching that agreement, the parties are expected to negotiate in good faith, and a breach of good faith can lead to the finding of an unfair labor practice.

In this case, the parties experienced difficulty in reaching agreement on a new contract. Even after negotiations resulted in a tentative agreement in December, 1980, additional issues, such as bereavement leave, arose and had to be addressed. Correspondingly, the agreement submitted to the school board contained several changes made by complainant when the bargaining unit ratified the contract on December 16, 1980. A collective bargaining agreement must reflect the complete understanding of the parties. Since terms of the tentative agreement were altered before the contract was presented to the school board for ratification, the proposed contract did not necessarily reflect such an understanding. Respondent had legitimate reasons to seek further clarification of the agreement based on the foregoing changes in circumstance. However, the Examiner cannot find justification for respondent's escalation of bargaining demands thereafter.

The issue of good faith must be examined in the context of the totality of circumstances surrounding negotiations. See: Island County, Decision No. 857 (PECB, 1980). In this case, the parties had been in negotiations for approximately five months when respondent requested 34 changes to a tentative agreement which complainant had already ratified. Respondent's actions are particularly suspect because the additional bargaining demands were made shortly after complainant filed an unfair labor practice over layoffs in the bargaining unit. Some of respondent's demands dealt with layoff provisions in the contract, and the record indicates that this demand had not been raised before the unfair labor practice was filed. Respondent aggravated the situation by making six additional demands at a later negotiation session. Taken together, these actions clearly show that respondent was not making a good faith attempt to reach a final agreement. In Sunnyside Valley Irrigation District, Decision No. 314 (PECB, 1977), the Public Employment Relations Commission held:

"any practice of increasing demands during bargaining or adding new demands assuredly hinders achievement of a complete agreement, and one must be suspect of the good faith of a party which 'moves the target' during bargaining or as the moment of agreement approaches."

Respondent's assertion that it did not refuse to meet does not address complainant's allegation. It is undisputed that the parties met on numerous occasions. The issue in this case deals with respondent's actions at the bargaining table. By increasing demands at such a late time in the negotiations, respondent did not bargain in good faith.

CONSOLIDATED FINDINGS OF FACT

1. Entiat School District No. 127 is a "public employer" within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents certain

classified employees of the employer in the general work classifications of transportation, custodial and maintenance.

3. The employer and union were parties to a collective bargaining agreement in effect from September 1, 1978 through August 31, 1980. Negotiations for a new agreement began on September 5, 1980. The union ratified a tentative agreement on December 16, 1980. Before the agreement was submitted to the Entiat School Board for ratification, questions arose concerning sick leave and union security, and the employer requested additional negotiations.

4. The employer also received notification from the state that it would be losing a substantial portion of state funds for basic education. To correct the anticipated budget shortfall, the employer cut expenditures in purchasing and travel, and also took steps to reduce the number of employees in the classified bargaining unit. The employer planned to reduce the hours worked by several employees, combine several positions and eliminate a bus route, which took special education students to Wenatchee. The special education bus route was contracted to the Chelan School District, with the driver reassigned to another bus route. The reassignment permitted the employer to combine two positions in the bus operation, thereby laying off one employee.

5. The employer announced its intentions at a meeting of the classified bargaining unit on January 8, 1981. The union representative was not present at the meeting, but called the employer to negotiate the layoffs and hours reduction on January 16, 1981. The employer implemented the personnel reductions on January 20, 1981. The union requested negotiations for a second time on January 22, 1981. The employer promised that negotiations would be forthcoming in a letter dated January 27, 1981, but no negotiations were held. The union filed an unfair labor practice complaint about the employer's unilateral action on February 4, 1981.

6. Negotiations for a successor collective bargaining agreement continued until January 28, 1981, when the union ratified a tentative agreement which contained modifications in the sick leave and union security provisions. The tentative agreement was rejected by the school board on January 29, 1981. At a negotiation session called on February 4, 1981, the employer made 34 demands for changes in the tentative agreement. At a negotiation session held on February 11, 1981, the employer made six additional demands for changes in the tentative agreement. The union filed an unfair labor practice complaint concerning the employer's acceleration of bargaining demands on February 17, 1981.

7. In the latter part of February, 1981, the State Legislature passed a supplemental budget for school districts which alleviated the projected shortfall in Entiat School District No. 127.

8. The parties reached agreement on a new contract with the union ratifying the contract on March 12, 1981 and the employer ratifying on March 19, 1981.
9. At the date of hearing, several employees were still working reduced hours and at least one employee was still laid off as a result of the employer's expenditure reduction initiated on January 20, 1981.

CONSOLIDATED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By accelerating its bargaining demands at an advanced stage of negotiations, Entiat School District No. 127 has failed or refused to bargain in good faith and has committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (4).
3. By refusing to negotiate about the effects of layoffs and hours reduction before these actions were implemented, Entiat School District No. 127 has committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (4).

ORDER

Upon the basis of the above Consolidated Findings of Fact and Conclusions of Law and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that Entiat School District No. 127, its officers and agents shall immediately:

1. Cease and desist from:
 - (a) Increasing bargaining demands or engaging in other conduct which would frustrate or prevent agreement in collective bargaining with Public School Employees of Washington.
 - (b) Refusing to negotiate the effects of layoffs and hours reductions with Public School Employees of Washington.
2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the policies of the Act:
 - (a) Negotiate in good faith about the effects of the layoffs and hours reductions imposed on January 20, 1981.
 - (b) 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 Entiat School District No. 127, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Entiat School District No. 127 to ensure that said notices are not removed, altered, defaced or covered by other material.

(c) 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.

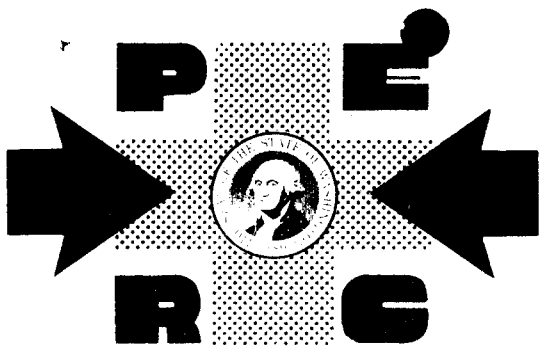
DATED at Olympia, Washington this 19th day of February, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner

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 NOT refuse to bargain collectively with Public School Employees of Washington with respect to wages, hours or conditions of employment.

WE WILL NOT increase demands or engage in other conduct which frustrates or prevents agreement in collective bargaining with Public School Employees of Washington.

WE WILL negotiate the effects of layoffs and hours reductions implemented on January 20, 1981, with Public School Employees of Washington.

DATED: _____

ENTIAT SCHOOL DISTRICT NO. 127

By: _____
AUTHORIZED REPRESENTATIVE

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

This notice must remain posted for sixty (60) consecutive days from the date of positing 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.