

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF ENTIAT SCHOOL DISTRICT,)	CASE NO. 3294-U-81-470 & 3308-U-81-472
Complainant,)	
vs.)	DECISION NO. 1361-A - PECB
ENTIAT SCHOOL DISTRICT NO. 127,)	
Respondent.)	DECISION OF COMMISSION

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.

Examiner Kenneth J. Latsch issued the consolidated findings of fact, conclusions of law, and order in these cases on February 19, 1982, wherein he found that the respondent employer had committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (4) by failing or refusing to bargain in good faith, and had committed an additional unfair labor practice within the meaning of RCW 41.56.140(1) and (4) by refusing to negotiate about the effects of layoffs and hours reductions before these actions were implemented. The complainant filed a petition for review, claiming that the Examiner's remedial order does not require restoration of the status quo ante.

STATUTES:

RCW 41.56.030(4) reads:

"'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."

RCW 41.56.140(1) and (4) read:

"It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

* * *

(4) To refuse to engage in collective bargaining."

DISCUSSION:

The record shows quite clearly that Entiat School District No. 127 committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4) when it laid off certain bargaining unit employees while failing to respond to a union request for bargaining on the effects of the layoff. The facts and reasoning are detailed in the Examiner's decision. The petition for review is limited to the adequacy of the remedy ordered by the Examiner, and the question before the Commission is thus limited to determining the proper remedy.

The union seeks reinstatement and full back pay for all laid off employees "to restore the status quo ante", citing South Kitsap School District, Decision 472 (PECB, 1978), Lakewood School District, Decision 755, 755-A (PECB, 1980), City of Mercer Island, Decision 1026, 1026-A (PECB, 1981) and Port of Edmonds, Decision 844, 844-B (PECB, 1981). The employer relies on the economic necessity of the decision to lay off, its right to make economic (budget) decisions without negotiating, and the lack of evidence of any anti-union animus such as that found in the Mercer Island case.

It is the task of the Commission to fashion a remedy appropriate to the unfair labor practices committed by a respondent. In each of the PERC cases relied upon by the union, the underlying decision was found to be a mandatory subject of collective bargaining. It followed that the restoration of the status quo ante looked to the situation in each of those cases as it existed prior to the layoff decision. A finding of anti-union animus was not a necessary ingredient for the remedial orders reversing the layoffs in those cases. The circumstance which distinguishes the instant case from those relied upon by the union is the union's concession that the employer did not have a duty to bargain concerning the underlying layoff decision. The union did not question the financial crisis facing the employer or the employer's right to decide that layoffs and hours reductions were necessary. The request for bargaining, the refusal to bargain violation which was found, and the remedial order fashioned by the Examiner were all directed to bargaining on the effects of the layoffs on bargaining unit employees. An order reversing the layoffs in their entirety because of a failure to bargain the

effects would invade the scope of management rights conceded by the union in its brief before the Examiner. The union is not entitled to restoration of the status quo as it existed prior to the financial crisis and the employer's decision to lay off.

The Examiner's order compels bargaining, but places no incentive on the parties to bargain in good faith in a timely manner. With the passage of time, it is difficult to reconstruct the environment in which bargaining would have occurred. The National Labor Relations Board (NLRB) has developed a remedy formula which has withstood the tests of time. In Seeburg Corp., 259 NLRB No. 105, 109 LRRM 1029 (December 28, 1981) the NLRB included the following remedy discussion:

"The Remedy: Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall also order that Respondent bargain with the Union over the effects on its employees of the discontinuance of its operations. It is clear, however, that a bargaining order alone cannot fully remedy the unfair labor practices committed by Respondent because, as a result of Respondent's failure to bargain with the Union about the effects of discontinuing operations, Respondent's employees were denied an opportunity to bargain through their exclusive representative at a time when such bargaining would have been meaningful. Meaningful bargaining cannot now be assured until some measure of economic strength is restored to the Union. Accordingly, in order to effectuate the purposes of the Act, we shall accompany our order to bargain with a limited backpay requirement designed both to make whole the seven employees, who were on the payroll on February 11, 1980, for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for Respondent. We shall do so in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Navigation Corporation, supra. As in Transmarine, we shall require that the backpay for those employees be not less than the amounts they would have earned during a two-week period of employment,^{8/} at the rate of their normal wages when last in Respondent's employ.

^{8/} Despite his dissent in Transmarine, Member Jenkins notes that the remedy there has been accepted by the courts and the Board and, since some type of remedy for the misconduct is needed, he is therefore willing to join in the Decision herein, Underwood Hair Adaption Process, Inc., 242 NLRB 1017, fn.6, 101 LRRM 1387 (1979); Uncle John's Pancake House, 232 NLRB 438, fn.7, 97 LRRM, 1337 (1977)." 109 LRRM 1029 at 1031.

The decision in Transmarine Navigation Corp., 170 NLRB 389 (1968) involved a violation limited to a refusal to bargain concerning the effects of a layoff decision.

Our remedy order herein conforms to the pattern established by the NLRB in those cases.

AMENDED ORDER

Upon the basis of the Consolidated Findings of Fact and Conclusions of Law entered on February 19, 1982 by Examiner Kenneth J. Latsch, and pursuant to RCW 41.56.160, 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 to effectuate the policies of the Act:
 - (a) Upon request, bargain collectively in good faith with Public School Employees of Washington concerning the effects on its employees of the layoffs and hours reductions referred to in paragraphs 4 and 5 of the foregoing findings of fact.
 - (b) Provide backpay to employees affected by the layoff and hours reduction 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 Public School Employees of Washington bargain to agreement concerning the effects of the layoffs and hours reductions; (2) a bona fide impasse is reached in bargaining; (3) the failure of the union 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 the union to bargain in good faith; but in no event shall the sum paid to any of the named employees exceed the amount that employee would have earned as wages from the time

of his or her layoff or hours reduction 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. Backpay shall be computed in accordance with WAC 391-45-410.

- (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 analyze the amount of backpay due under the 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 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.
- (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.

DATED at Olympia, Washington this 27th day of August, 1982.

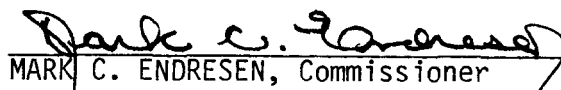
PUBLIC EMPLOYMENT RELATIONS COMMISSION



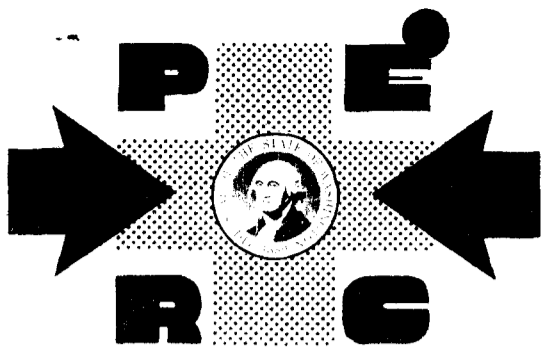
JANE R. WILKINSON, Chairman



R. J. WILLIAMS, Commissioner



MARK C. ENDRESEN, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AMENDING THE ORDER OF THE EXAMINER IN THESE PROCEEDINGS, AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY ISSUE THIS AMENDED NOTICE TO 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, and will pay limited backpay to affected employees pursuant to the terms of the amended order of the Commission.

DATED: _____

ENTIAT SCHOOL DISTRICT NO. 127

By: _____
AUTHORIZED REPRESENTATIVE

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.