

This decision arises from four separate unfair labor practice cases involving the adoption of a tobacco use policy by the City of Seattle (respondent). International Federation of Professional and Technical Engineers, Local 17, filed its complaint charging unfair labor practices on December 2, 1986. The Seattle Police Officers' Guild (police guild) filed its complaint charging unfair labor practices on January 23, 1987. The Seattle Police Management Association (SPMA) filed its unfair labor practice complaint on February 19, 1987. The Seattle Police Dispatchers' Guild (dispatchers' guild) filed its complaint on March 9, 1987. In each case, the complaints alleged that the respondent violated RCW 41.56.140(1) and (4) by its adoption of a city-wide "no smoking" policy. The cases were consolidated for further proceedings. A hearing was conducted on January 26, January 27, and February 17, 1988, in Seattle, Washington. The parties filed post-hearing briefs.

BACKGROUND

The City of Seattle has collective bargaining relationships with a number of employee organizations. Of particular interest to the instant proceedings, the respondent has entered into collective bargaining agreements with Local 17, the police guild; the SPMA; and the dispatchers' guild.

Local 17 represents several city-wide bargaining units, including employees in such technical classifications as Administrative Analyst, Civil Engineer, Mechanical Engineer, Social Worker, Water Quality Analyst, Appraiser, Bridge Operator, Data Entry Operator, Energy Conservation Representative, Land Use Specialist, Surveyor, Structural Plans Engineer, and Recreation Specialist.

The Seattle Police Officers' Guild represents a bargaining unit of law enforcement personnel below the rank of lieutenant. The bargaining unit represented by the guild is eligible for interest arbitration in accordance with RCW 41.56.400 et. seq.

The Seattle Police Management Association represents a bargaining unit of supervisory law enforcement personnel from the rank of lieutenant through the rank of major. This bargaining unit is also eligible for interest arbitration in accordance with RCW 41.56.400 et. seq.

The Seattle Police Dispatchers' Guild represents a bargaining unit of non-supervisory emergency dispatch employees who are responsible for radio communications for police patrol units.

The employer negotiates with each of the bargaining representatives through its Personnel Department. Any tentative agreements reached in bargaining are presented to the Labor Policy Committee of the Seattle City Council. If that committee approves of the tentative agreement, it is presented to the full city council for ratification.

The City of Seattle conducts its operations in a number of different locations within the city's geographic limits, with most major facilities being located in the downtown Seattle vicinity.¹ The respondent manages office space in approximately 105 city-owned facilities, and has offices in 100 rental properties. Twenty-six of the city's facilities house more than 25 city employees. As might be expected, the city's facilities vary in age and general condition.

¹ The city also maintains some facilities, particularly for its City Light Department, outside of the city limits.

Of particular importance to the instant unfair labor practice charges, the facilities where city employees work have widely different heating and ventilation systems. For the most part, the facilities use "return air" ventilation, rather than air conditioning. Return air systems recirculate air throughout a building after the air has been filtered in a cleaning chamber. It appears from the record that return air systems use less outdoor air flow than would an air conditioning system.

Events leading to the instant unfair labor practices arose when the respondent began considering the adoption of a "no-smoking" policy to be initiated at its various offices and work facilities. While the unfair labor practice complaints arise from separate transactions, the following chronology refers to each complainant as it took part in the process leading to the adoption of the no-smoking policy.

As early as 1980, several city departments enforced smoking restrictions. For example, the police department set forth specific areas in which smoking was prohibited, and also established a list of situations when smoking would be allowed.

In 1983, the Seattle Fire Department established a policy which prohibited smoking in "public areas".

Local 17 and the city discussed restrictions on smoking in the workplace during their collective bargaining negotiations in 1983. The issue was not pursued, and the final agreement did not speak to the smoking restrictions.

Effective December 31, 1983, the Seattle-King County Health Department banned smoking at employee work stations unless the station was physically separated from the rest of the office.

In the absence of a contractual provision, several city departments in which Local 17 employees worked implemented smoking restrictions after January 1, 1984. The record indicates that the union did not challenge the imposition of the departmental smoking policies.

At some unspecified time, a number of employees represented by Local 17 and working in the Construction and Land Use Department filed a protest about cigarette smoke in the work place. The record does not reflect what steps were taken to resolve the dispute.

On November 5, 1984, Councilmember Michael Hildt asked the city council for its permission to start the process of developing a comprehensive smoking policy. As part of his request, Hildt asked for a \$50,000 appropriation for smoking cessation classes and for consultant fees.

On February 28, 1985, Acting Personnel Director Everett Rosmith sent a letter to officials of all unions representing city employees, starting the series of transactions leading to these unfair labor practice cases. In that letter, Rosmith explained a new city approach to smoking policies:

In recognition of the harmful effects of smoking on employee health, many employers have instituted smoking policies which either ban smoking altogether or restrict it to limited areas. Some City departments have already implemented departmental smoking policies, and at least one union has previously broached the issue at the bargaining table. City Council Member Michael Hildt acted on this growing concern for the effects of smoking on the workforce during the last year's budget process. As a result of his efforts, the Council designated \$50,000 of general fund monies in the City's 1985 Budget for

development of a proposed City-wide smoking policy and provision for smoking cessation classes appropriate for City employees.

Mr. Hildt's draft request for proposals (RFP) for consultant services is enclosed. As you will see, it establishes a City-wide committee, composed of City employees representing the workforce, to participate in selection of the consultant and the development of a smoking policy for City employees.

Mr. Hildt presented the RFP to the joint labor-management Health Care Cost Containment Committee meeting last week. Michael Waske from Local 17, Jon Rabine from the Joint Crafts Council, and Paul Harvey from the Fire Fighters are the labor representatives to this committee. Without waiving any bargaining rights as they relate to implementation of a smoking policy, it is their desire that the policy be developed with labor participation and that members of the City-wide committee include employees from various bargaining units.

Councilmember Hildt and I therefore request that you review the RFP and recommend employees to serve on the smoking committee. Please share your suggestions for employee nominations with the labor representatives to the HCCC Committee or with Tracy Phelan at [telephone number omitted] in the Personnel Department. Include the status of the employee with regard to smoking (smoker, nonsmoker and ex-smoker), the employee's job title and employing department, and a description of the employee's physical working environment (office, field, etc.). We would appreciate receipt of your recommendations by March 15.

(emphasis supplied)

On March 18, 1985, the city council passed Resolution 27237, appropriating the funds requested by Hildt for the smoking policy study.

On March 25, 1985, Hildt sent a memorandum to all department heads informing them of which employees would serve on the proposed smoking policy committee. The record indicates that the committee's membership was nominated by department heads or union business representatives, but the final committee roster was approved by Councilmember Hildt.

An initial meeting of the smoking policy committee was conducted on April 11, 1985. After preliminary matters were addressed, and a consultant was chosen to work on the smoking policy, the committee set a weekly meeting schedule. During the course of the ensuing meetings, the committee members surveyed the employer's workforce about smoking, met with health specialists, and examined various options concerning the reduction or elimination of smoking in the workplace.

On May 1, 1985, Mike Waske, Business Manager for Local 17, wrote to Rosmith expressing concern about the selection process used for the committee. Apparently, one of the employees suggested for the committee by Local 17 had not been named to the committee. Waske complained about the situation, but the record does not indicate what steps were taken to address the matter.

On May 14, 1985, Rosmith and Hildt sent a letter to union business representatives, explaining that the committee would be sending a survey to 800 city employees. Survey results would be made available to all interested business representatives.

On May 24, 1985, Rosmith and Hildt sent a memorandum to all department heads which confirmed the meeting schedule for the new smoking policy committee.

By August 9, 1985, the committee had completed its work, and a preliminary report had been sent to all union business representatives. A final report, with recommendations, was issued on August 22, 1985, to city department heads and to union business representatives. By the time the final report was issued, the committee consisted of 14 city employees. Examination of the report's signature page discloses that employees from bargaining units represented by each of the complainants participated in the report's preparation.

The committee's final report outlined a new approach to the smoking issue. After consideration of over 500 survey forms, and over 18 weeks of meeting, the committee had recommended that smoking should be prohibited in all "enclosed work and common areas". The report also recommended establishment of "smoking areas", either indoors or outdoors, where employees could smoke if they so desired. If indoor smoking facilities were to be established, the smoking area would have to be equipped with separate ventilation from the building's regular ventilation system. The committee went on to make specific proposals concerning limitation of smoking in city vehicles, the creation of a smoking cessation course, and notification about the new policy. In addition, the committee recommended that enforcement of the smoking policy be dealt with through the progressive discipline procedure followed in city personnel rule cases. The report established a March 1, 1986, effective date for the implementation of the new policy. In the event that smoking areas could not be permanently established by that date, the committee recommended that separate "temporary" smoking areas be set aside. Temporary facilities lacking adequate ventilation were to be eliminated by March 1, 1987.

The final report was scheduled to be presented to the City Council's Environmental Management Committee for consideration.

On September 6, 1985, Waske sent a letter to Rosmith in which he indicated Local 17's concerns about the proposed smoking policy. While recognizing the benefits of smoking restrictions, Waske asserted that the formulation of any smoking policy must take place within the collective bargaining process. Waske also reminded Rosmith that the union did not believe that the smoking policy committee was a form of bargaining, and that the union was waiting to begin negotiations on the matter.

On September 25, 1985, Bill Conn, President of the Seattle Police Officers' Guild sent a letter to Councilmember Hildt, expressing concern about the proposed smoking policy. Conn stated the opinion that the matter is a mandatory subject of collective bargaining, and went on to detail a number of issues raised by police guild members about the new policy. For example, members were concerned that adequate smoking areas had not been established, and also believed that the entire study process was biased in favor of a smoking prohibition, without giving due consideration to those bargaining unit employees who continued to smoke.

On October 8, 1985, Hildt responded to Conn's letter, reminding him that an employee represented by the police guild took part in the committee process and supported the committee's final recommendations. Hildt then reiterated the city's position that the committee's work was not collective bargaining. Hildt also stated that the proposed smoking policy had been reviewed by the city council's Labor Policy Committee, and that Rosmith had been directed to begin bargaining with all affected unions.

On the same day, Rosmith sent copies of two proposed ordinances to all union representatives. The ordinances, which codified the recommendations of the smoking policy committee, had been

presented to the the city council for consideration. Rosmith's letter detailed the hearing process that had been followed up to that time.

On October 15, 1985, Rosmith and Hildt met with union representatives about the new smoking policy. The meeting was described as an "information session", and each participating union was allowed to express concerns about the new policy.

On October 16, Conn sent another letter to Rosmith, reminding him that the police guild still had unique concerns about the proposed policy, and that participation in "group discussions" would not bind the organization from bargaining about the matter. Conn went on to ask Rosmith whether the city was claiming that the issue was permissive, rather than mandatory.²

On October 22, 1985, Rosmith sent a letter to all union representatives in which the results of the October 15 meeting were explained. Rosmith stated that several unnamed union representatives expressed concern about the proposed smoking policy, and went on to reiterate the employer's position about the imposition of smoking restrictions:

As indicated in previous correspondence, the City is prepared to bargain over implementation of its proposed City-wide smoking policy. In doing so, however, we are not necessarily agreeing or disagreeing with those labor representatives who have said we must bargain over implementation of a City-wide smoking policy. Whether or not the establishment of a City-wide smoking policy is a permissive or mandatory subject of bargaining under RCW 41.56, or whether or not implementation of

² The record does not indicate whether Rosmith made a direct reply to Conn's letter.

such a policy is within the reach of the City's contractual management rights clauses, is a legal question which must be pursued in a different forum if the parties are ultimately in disagreement over the proposed City-wide smoking policy or the means by which it is implemented. While reserving all rights the City may have to implement a City-wide smoking policy unilaterally, and likewise respecting the belief and desire of some unions to bargain over implementation of the proposed City-wide smoking policy, we are prepared to pursue the proposed City-wide smoking policy with you in the spirit of WAC 391-45-550³

The letter also suggested that the bargaining representatives create a small committee to "pursue concerns" about the new smoking policy. Rosmith suggested the group setting to save time. In the event that such a group could not be formed, the employer was prepared to meet with each bargaining representative individually. The various unions were asked to inform Rosmith by November 1, 1985, whether a small group was to be formed or whether each union desired to discuss the matter individually.

On October 31, 1985, Gene Lawson, President of the dispatchers' guild, sent a letter to Rosmith stating that his organization desired to negotiate about the smoking policy. While receptive to a "committee approach", the dispatchers' guild reserved the right to bargain individually with the city.

On December 27, 1985, Waske wrote another letter to Rosmith, explaining that Local 17 was willing to meet on the smoking issue individually or as part of a group. Waske also stated the union's continuing concern that employees should not be

³ The letter went on to quote the rule in its entirety.

disciplined unless the employer had first attempted to make reasonable accommodation of smokers.

On February 6, 1986, Rosmith sent a letter to all union representatives, expressing the employer's preference for a single, city-wide smoking policy, while also stating the city's willingness to meet with individual union representatives to discuss matters that were of particular concern.

On February 10, 1986, Gerald Taylor, President of the SPMA, wrote to Rosmith complaining about the approach taken concerning the smoking policy. Taylor stated that the SPMA had not been invited to any meetings held with union representatives to discuss concerns about the new policy. Taylor went on to request bargaining on the matter.

On March 4, 1986, the city's Director of Labor Relations, Bill Hauskins, wrote to Taylor reminding him of the series of meetings set for discussion of the smoking policy. Hauskins reiterated the employer's willingness to bargain over the issue, but specifically reserved characterizing the issue as mandatory or permissive.

On March 4, 1986, employees represented by Local 17 in the Franchise, Utilities and Street Use Division were notified that they would no longer be allowed to smoke at their work stations in the Municipal Building.⁴

On March 19, 1986, the attorney for the SPMA sent a letter to Hauskins demanding bargaining over changes in smoking policies. Brennan suggested that the issue could be made part of ongoing negotiations for a successor collective bargaining agreement.

⁴ The record does not indicate whether any grievance or protest was filed because of the modified policy.

On March 14, 1986, Local 17 Business Representative Wayman N. Alston sent a letter to city Labor Negotiator Lizanne Lyons, outlining specific changes that the union desired to see in the proposed smoking ordinance. Apart from several deletions and minor changes in language, the union specifically requested the addition of the following language:

This policy will not be used to punish or discipline employees but rather to restrict smoking in the work area, thereby improving the working relationship between smokers and non-smokers. The smokers however, will be encouraged to take advantage of the smoking cessation class that will be offered free of charge and on City time.

On April 7, 1986, Rosmith sent a letter to all department heads in which he explained the status of the smoking issue. After explaining the process followed to that point, Rosmith detailed the four areas of concern that were addressed most often by the unions taking part in the policy discussions:

On the whole, the unions have generally differed with the proposed policy primarily in terms of wanting more clarity and certainly relative to:

1. A means to accommodate existing smokers,
2. The disciplinary actions that would accompany implementation and enforcement of a policy,
3. Consideration of varied work environments (e.g., field vs. office), and
4. The availability of smoking cessation classes.

Rosmith reminded the department heads that the issue was not settled, and that any modification in existing department

smoking policies must be weighed carefully. Moreover, Rosmith stated that the employer reserved the right to adopt a city-wide policy unilaterally, and any legal challenges to such implementation would have to be addressed at a later time.

On July 31, 1986, Rosmith mailed copies of a modified smoking policy to union representatives. The employer had attempted to address several concerns that were raised most often in the meetings held up to that time. The modified policy established temporary "designated smoking" areas to be in effect for a year after the policy was enacted; provided smoking cessation classes for all employees who desire such support for one year after policy implementation; established progressive discipline for violation of the policy; allowed the Personnel Director to make decisions concerning an appeal process; and modified provisions dealing with smoking in city vehicles. The union representatives were also informed that a meeting would be held on August 11, 1986, to discuss concerns or questions about the modified policy.

A meeting was held on August 11, 1986, but the issues were not resolved. After that meeting, the employer referred the modified policy to the city council for final approval.

On August 13, 1986, Waske wrote to Rosmith, reiterating several concerns raised by Local 17. Specifically, Waske questioned the use of temporary smoking areas instead of permanent accommodation, and strongly opposed the possibility of termination because of non-compliance with the new policy.

On October 20, 1986, the Seattle City Council passed Ordinance 113148, codifying the modified no-smoking policy. The record reveals that the ordinance was to go into effect in January 1987. These unfair labor practice charges followed.

On December 31, 1986, Robert Shilling, Secretary-Treasurer of the police guild, sent a letter to Rosmith, demanding to bargain about the imposition of the new policy.

On January 14, 1987, Rosmith sent a memorandum to all department heads and personnel representatives, discussing implementation of the new smoking policy. Of particular interest here, that memorandum detailed the various forms of discipline that could be imposed if an employee violated the policy. Department heads were reminded that the provisions of the policy called for only counselling of employees during the first 30 days the policy was in effect, with disciplinary action to be taken only in cases that were "flagrant and in total disregard of the Smoking Policy". After the 30 day "grace period", full progressive discipline was to be followed for violations of the new policy.

On January 23, 1987, Rosmith responded to Shilling's letter of December 31, 1986.⁵ Rosmith therein detailed the course of events leading to the adoption of the smoking policy. After explaining the committee process and the offer of individual meetings to discuss specific concerns, Rosmith stated that the employer felt that sufficient time had been spent, and that implementation of the policy was appropriate.

The record indicates that after the smoking policy was implemented, specific exemptions and modifications were permitted on a case-by-case basis. However, the smoking policy has not otherwise changed by city council action.

⁵ The reason for the three week delay in responding is not set forth in the record.

POSITIONS OF THE PARTIES

Local 17 contends that the City of Seattle committed an unfair labor practice by implementing a no-smoking policy. While the union recognizes the benefits of regulating smoking, it argues that the employer did not engage in good faith negotiations before the policy was adopted, and that the policy was implemented over the union's objections to several matters, including employee discipline.

The police guild concurs with Local 17's assertion that the employer committed an unfair labor practice by implementing the smoking policy. Noting that smoking policies were more relaxed previously, the police guild maintains that it repeatedly asked to negotiate about the new policy, and that the "smoking committee" was not a substitute for collective bargaining within the meaning of commonly accepted practice.

The SPMA also contends that an unfair labor practice has been committed. It argues that it requested bargaining on the subject on several occasions, and that the "committee" process used by the employer was neither a substitute for collective bargaining on the matter, nor a waiver of bargaining rights on the smoking policy.

The dispatchers' guild joins the other unions in arguing that an unfair labor practice has been committed. It contends that it requested negotiations about the new smoking policy, and maintains that the policy directly affected working conditions of bargaining unit employees.

The City of Seattle contends that it did not commit an unfair labor practice by enacting a city-wide smoking policy. Noting that RCW 41.56.030(4) defines "collective bargaining" in terms

of wages, hours and working conditions "which are peculiar to an appropriate bargaining unit", the city contends that the smoking policy was enacted for all bargaining units, affects all city employees, and is not "peculiar" to any bargaining unit. Accordingly, it contends that the policy could be implemented without negotiations. The employer argues in the alternative that, even if it is determined that the policy was a subject of bargaining, the affected unions had ample opportunity to express concerns through the "smoking committee" meetings which were held on a regular basis. Further, the employer argues that it was willing to meet with individual unions to discuss specific questions arising from the various bargaining groups.

DISCUSSION

Analysis of the instant unfair labor practice allegations must be made in two parts. First to be addressed are the employer's arguments concerning its bargaining obligations when implementing a "city-wide" policy. The course of conduct leading to the implementation of the new policy shall then be examined.

Implementation of a "City-Wide" Ordinance

RCW 41.56.030(4) defines "collective bargaining" in the following manner:

... 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 make a concession unless otherwise provided in this chapter. (emphasis supplied)

As the respondent notes in its closing brief, the above-quoted language was interpreted by the Washington State Court of Appeals in Seattle vs. Auto Metal Sheet Workers, 27 Wn. App. 669, 620 P.2d 119 (1980), where the Court opined that there was a difference in bargaining subjects and "personnel matters":

The legislature's definition expresses a policy that certain incidents or public employment should be subject to the give and take of the bargaining table where peculiar needs of particular employees may be articulated and responded to, while other personnel matters involving employees as a class may fairly be left to the traditional system of personnel administration.

Auto Sheet Metal Workers at p. 679.

In City of Wenatchee, Decision 2216 (PECB, 1985), the employer argued that a new promotional examination procedure was to apply on a city-wide basis, and was, therefore, exempt from the bargaining process. The Examiner in that case presented a detailed analysis of the collective bargaining requirement imposed by RCW 41.56.030(4), in light of the Court's ruling in Auto Sheet Metal Workers, which casts serious doubt about the employer's argument here:

... The [Auto Sheet Metal] case arose outside of the context of the unfair labor practice procedure put in place by the legislature for determination of disputes arising under Chapter 41.56 RCW. The superior court had noted that there was no

complaint of unfair labor practice pending on the matter and that, if there was, the matter would probably be referred to the Public Employment Relations Commission for adjudication. Auto Sheet Metal thus stands as an isolated case, and is not taken as a statement of well-developed case law that identifies or segregates those terms or conditions of employment that are subject to the "give and take of the bargaining table", and can be described as mandatory subjects of bargaining.

City of Wenatchee, at page 2216-12.

Furthermore, the Wenatchee decision speaks directly to the issue of whether the "peculiar" language of RCW 41.56.030(4) allows a public employer to adopt a city-wide policy without participating in collective bargaining negotiations. As noted by the Examiner there, the disputed language has two distinctly different potential meanings:

One view, consistent with collective bargaining law and tradition, is that the bargaining rights of an exclusive bargaining representative are peculiar to its bargaining unit, i.e., that it has no right to bargain for the wages, hours or working conditions of persons outside of its certified or recognized bargaining unit. See: Orient School District, Decision 2174, 2174-A (PECB, 1985; Pend Orielle County, Decision 2266, 2266-A (PECB, 1985). The statute is capable of such an interpretation, so long as one does not inject punctuation where none exists, and that would seem to be the better (or at least less controversial) interpretation

An alternative view, and that which is advanced by the respondent here, is that the employer would have no bargaining obligations on standardized terms made applicable across bargaining unit lines. Acceptance of this view on broad terms would, when carried to its logical extremes, constitute a severe restriction

on the collective bargaining process. It would follow that most terms or conditions of employment could be generically characterized as a common or general condition as to which peculiarity was lacking. Wages would not be bargainable, because all employees earn them. Work schedules would not be bargainable because all employees have them, ignoring that some functions are operated around the clock, every day of the year, while others are operated only during "normal office hours". Promotions, too, could be observed generically as a normal condition of employment as to which peculiarity is lacking. Such a generic exclusion of promotions, wages, holidays and other conditions of employment from bargaining would make a mockery of the legislative purpose stated in RCW 41.56.010 and has been repeatedly rejected by PERC in defining mandatory subjects of bargaining. A more reasonable application of this theory for establishing peculiarity would be to determine whether the bargaining proposal is, when examined in detail, intended to effect the bargaining unit exclusively or to address differences between bargaining unit employees and other employees of the employer. (emphasis supplied)

Implicit in the Wenatchee decision is the conclusion that the underlying issue, promotions, was a mandatory subject of bargaining with the union representing one bargaining unit of city employees. Applying the same reasoning in the instant case, it must be determined that the imposition of a smoking policy is also to be bargained with the unions representing various bargaining units of city employees.

Are Smoking Policies Mandatory Subjects of Bargaining?

The Commission has examined the duty to bargain the imposition of smoking policies in two cases. In City of Chehalis,

Decision 2803 (PECB, 1987), the Examiner ruled that the employer's decision to implement a no-smoking policy was not a mandatory bargaining subject, but that the employer had a duty to bargain the effects of the decision on bargaining unit employees.⁶ In Kitsap County Fire District No. 7, Decision 2872, 2872-A (PECB, 1988), an Examiner ruled, and the Commission affirmed, that the imposition of a smoking prohibition was a mandatory subject of bargaining, such that the employer had an affirmative duty to negotiate the decision as well as the effects of the decision.

The Kitsap decisions set forth a detailed analysis of the smoking issue as a bargaining subject, and it would not serve any useful purpose to reiterate that research here. It is safe to state that a number of jurisdictions have addressed the smoking issue, and that it has been determined in a majority of those cases that the employer owes a duty to bargain the underlying policy as well as the effects that such a policy would have on bargaining unit employees. Examination of the record and briefs submitted in the instant matter clearly demonstrates that a similar finding is appropriate here, and that the respondent must bargain both the policy and its effects with the unions representing affected employees.

The Respondent's "Waiver" Arguments

Having concluded that the City of Seattle owes a duty to bargain over the imposition of a smoking policy, the final issues to be addressed concern whether the employer has satisfied its bargaining obligation and/or the unions waived their bargaining rights.

⁶ No petition for Commission review was filed in the case, so the Commission itself did not rule on the matter.

The "Smoking Committee" Process -

It must be remembered that the employer repeatedly stated while the smoking policy committee was in operation that the committee's function was not intended to be a substitute for collective bargaining. In that context, it is difficult to give any credence to later claims by employer officials that the discussions held during the committee process absolved the city of its duty to bargain.

The Subsequent Offers to Meet -

The city offered to meet with individual unions, although it showed a preference for a group process. The Examiner is not persuaded, however, that the city fulfilled its bargaining obligations by conducting several meetings with individual unions after the smoking policy committee finished its work, particularly when the city had disavowed that the committee's work was to be some form of collective bargaining. While individual union representatives were given the opportunity to express concerns about the committee's findings, the record indicates that the employer would not make substantive changes in the final committee report, nor would it make generalized modifications in the smoking policy. If the employer owed a duty to bargain over the adoption of the smoking policy, subsequent discussions about the impact of such a policy on individual bargaining units does not satisfy the original bargaining obligation. The unions did not waive their bargaining rights by discussing the smoking policy individually with representatives of the City of Seattle.

REMEDY

The employer will be ordered to cease and desist from taking any steps to implement or continue in effect the smoking policy

which is at issue here with respect to employees in the bargaining units represented by the unions which are complainants in these proceedings. Further, the city will be ordered to give notice to the complainant unions of any future proposal to implement any smoking policy affecting the employees they represent and, upon request, to bargain with those organizations concerning implementation of smoking policies in the units they represent.

In the case of the units represented by the police guild and the SPMA, where interest arbitration is in effect, the effect of an impasse in bargaining following good faith negotiations would result in submission of unresolved issues to interest arbitration. RCW 41.56.430, et. seq.; City of Seattle, Decision 1667-A (PECB, 1984).

FINDINGS OF FACT

1. The City of Seattle, a municipal corporation of the state of Washington, offers municipal services to its residents through a number of city departments, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. International Federation of Professional and Technical Engineers, Local 17, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of City of Seattle employees in several appropriate city-wide bargaining units.
3. The Seattle Police Officers' Guild, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of non-supervisory law enforcement

personnel of the City of Seattle who are "uniformed personnel" within the meaning of RCW 41.56.030(7).

4. The Seattle Police Management Association, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of supervisory law enforcement personnel of the City of Seattle who are "uniformed personnel" within the meaning of RCW 41.56.030(7).
5. The Seattle Police Dispatchers' Guild, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of non-supervisory emergency dispatch employees of the City of Seattle.
6. Prior to 1985, individual departments of the City of Seattle established their own smoking policies. Such policies were not uniform, and some departments did not have any restrictions on smoking.
7. On February 28, 1985, Acting Personnel Director Everett Rosmith sent a letter to all unions representing city employees in which the city expressed its desire to establish a new smoking policy for all city departments. The unions were invited to participate in a committee process without waiving any bargaining rights on the smoking issue.
8. On April 11, 1985, the newly formed "Smoking Policy Committee" held its first meeting. Committee members were nominated by department heads or union business representatives. The committee chose a consultant to work on the smoking issue, and established a weekly meeting schedule.

9. On May 14, 1985, Rosmith and City Councilmember Michael Hildt sent a letter to all unions, informing them that a survey about smoking in the workplace would be sent to city employees.
10. The smoking policy committee completed its work in the summer of 1985, and issued a preliminary report on August 9, 1985. A final report was issued on August 22, 1985.
11. The final report of the smoking policy committee proposed elimination of all smoking in "enclosed work and common areas", as well as the creation of "smoking areas" which would be separately ventilated. In addition, the final report specified that non-compliance with the new smoking policy could lead to progressive discipline, including termination.
12. On September 6, 1985, Local 17 sent a letter to Rosmith outlining Local 17's concerns about the smoking policy. The union stated that it did not believe the committee process to be a form of collective bargaining, and that the union desired to negotiate the issue.
13. On September 25, the Seattle Police Officers' Guild sent a letter to Councilmember Hildt, expressing the guild's contention that the smoking issue had to be negotiated.
14. On October 8, 1985, Hildt responded to the police guild, noting that an employee represented by the police guild had participated on the committee. Hildt went on to reiterate the employer's position that the committee process was not a form of bargaining, and that Rosmith would soon begin negotiations with the affected unions.

15. On October 15, 1985, Rosmith and Hildt met with union representatives in an "information session" where union officials were allowed to express concerns about the proposed smoking policy.
16. On October 16, 1985, the police guild sent another letter to Rosmith in which it set forth specific concerns about the smoking policy.
17. On October 22, 1985, Rosmith sent a letter to all union representatives in which the results of the October 15 meeting were listed. Rosmith restated the employer's contention that it was ready to bargain over the implementation of the policy, but reserved a right not to bargain over the policy itself.
18. In the October 22, 1985 letter, Rosmith suggested that the unions form a "small group" to meet with him to discuss specific concerns about the policy. In the event a small group could not be formed, the city was willing to meet with each of the affected unions individually.
19. On October 31, 1985, the Seattle Police Dispatchers' Guild sent a letter to Rosmith, expressing the union's desire to negotiate about the smoking policy.
20. On December 27, 1985, Local 17 sent another letter to Rosmith, expressing Local 17's desire to negotiate the smoking policy.
21. On February 6, 1986, Rosmith sent a letter to all union representatives in which he expressed the employer's desire to have a single, city-wide smoking policy. Rosmith also stated the employer's willingness to meet

with individual unions to discuss their particular concerns.

22. On February 10, 1986, the Seattle Police Management Association wrote to Rosmith complaining about the process used and demanding bargaining over the smoking policy.
23. On March 4, 1986, the city's Director of Labor Relations, Bill Hauskins, responded to the SPMA's letter by reiterating the employer's position that unions could address concerns individually.
24. On March 19, 1986, the SPMA sent a letter to Hauskins demanding bargaining over the smoking policy.
25. On March 14, 1986, Local 17 sent a letter to the employer in which the union made specific language proposals for the new policy.
26. On July 31, 1986, Rosmith mailed a copy of a modified smoking policy to union representatives. The changes were made as a result of the discussions held with the various unions. The policy still contained disciplinary measures, however, including termination.
27. On October 20, 1986, the Seattle City Council passed an ordinance codifying the modified smoking policy. The new policy was to go into effect in January, 1987.
28. On December 31, 1986, the Seattle Police Officers' Guild again demanded bargaining over the smoking policy.

29. On January 14, 1987, Rosmith sent a letter to department heads explaining the smoking policy and detailing the various forms of discipline to be imposed.
30. On January 23, 1987, Rosmith responded to the demand for bargaining made by the Seattle Police Officers' Guild on December 31, 1986, by stating that the city was satisfied by the process used to that point, and that further discussion was unnecessary.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The demands made by the complainant unions herein for collective bargaining concerning the imposition and effects of a smoking policy on employees in the various bargaining units they represent are mandatory subjects of collective bargaining under RCW 41.56.030(4).
3. By events described in the foregoing findings of fact, the City of Seattle has failed and refused to bargain in good faith concerning the imposition and effects of a city-wide smoking policy upon employees within the bargaining units represented by the complainant unions and has, as to each such union, committed unfair labor practices in violation of RCW 41.56.140(4).
4. By the events described in the foregoing findings of fact, International Federation of Professional and Technical Engineers, Local 17, the Seattle Police Officers' Guild, the Seattle Police Management Association, and the Seattle Police Dispatchers' Guild have not waived their right to

bargain concerning the imposition or effect of a smoking policy on employees in the bargaining units for which they are the exclusive bargaining representatives.

ORDER

Pursuant to RCW 41.56.160 of the Public Employees' Collective Bargaining Act, it is ordered that the City of Seattle, its officers, elected officials, and agents shall immediately:

1. Cease and desist from:
 - a. Implementing the city-wide no smoking policy with respect to employees in bargaining units represented by the complainants herein.
 - b. Refusing to bargain collectively with International Federation of Professional and Technical Engineers, Local 17, with respect to the imposition and effects of a smoking policy upon employees within the bargaining units represented by Local 17.
 - c. Refusing to bargain collectively with the Seattle Police Officers' Guild with respect to the imposition and effects of a smoking policy upon employees within the bargaining unit it represents.
 - d. Refusing to bargain collectively with the Seattle Police Management Association with respect to the imposition and effects of a smoking policy upon employees within the bargaining unit it represents.
 - e. Refusing to bargain collectively with the Seattle Police Dispatchers' Guild with respect to the

imposition and effects of a smoking policy upon employees within the bargaining unit it represents.

2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes of Chapter 41.56 RCW:
 - a. Give notice to and, upon request, bargain collectively in good faith with International Federation of Professional and Technical Engineers, Local 17, Seattle Police Officers' Guild, Seattle Police Management Association, and Seattle Police Dispatchers' Guild, or any of them as may be appropriate, concerning the imposition and effects of any smoking policy to be adopted in the future with respect to employees represented by those organizations.
 - b. In the case of the bargaining units represented by the Seattle Police Officers' Guild and the Seattle Police Management Association, proceed to interest arbitration as provided by RCW 41.56.430, et. seq., in the event an impasse is reached in collective bargaining conducted pursuant to sub-paragraph "a." of this paragraph.
 - c. Post, in conspicuous places on the employer's premises where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix". Such notice shall, after being duly signed by an authorized representative of the City of Seattle, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the employer to ensure that said notices are not removed, altered, defaced, or covered by other material.

- d. Notify each of the complainants, 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 each of the complainants with signed copies of the notice required by this Order.

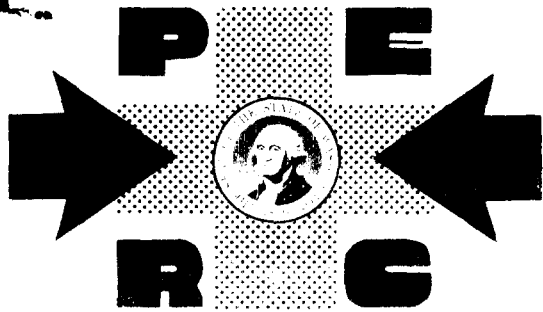
- e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time, provide the Executive Director with a copy of the notice required by this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

DATED at Olympia, Washington, this 2nd day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KENNETH J. LATSCH, Examiner

This Order may be appealed
by filing a petition for
review with the Commission
pursuant to WAC 391-45-350.



NOTICE

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

WE WILL NOT refuse to bargain with International Federation of Professional and Technical Engineers, Local 17; Seattle Police Officers' Guild, Seattle Police Management Association, and Seattle Police Dispatchers' Guild concerning the adoption and effects of a smoking policy affecting employees in the bargaining units represented by those organizations.

WE WILL NOT give effect to the city-wide smoking policy until the issue has been negotiated in good faith.

WE WILL, upon request, bargain in good faith over the adoption and effects of a smoking policy.

DATED _____

CITY OF SEATTLE

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE This notice must remain posted for sixty (60) days from the date of posting and must 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.