STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, AFL-CIO,	)	CASE 6972-U-87-1415
Complainant,	)	DECISION 3329-B - PECB
vs.	)	
CITY OF SEATTLE,	)	FINDING OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.	)	

Wayman N. Alston, Business Representative, appeared on behalf of the union.

Douglas N. Jewett, City Attorney, by Leigh Ann Tift, Assistant City Attorney, appeared on behalf of the employer.

On August 11, 1987, International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had committed unfair labor practices in violation of RCW 41.56.140(1) and (4). Specifically, the union alleged that the employer refused to provide information needed by the exclusive bargaining representative for the processing of a bargaining unit member's grievance. The Executive Director of the Commission issued a preliminary ruling pursuant to WAC 391-45-110 on October 6, 1989, finding that the complaint stated a cause of action. The matter was assigned to Examiner Jack T. Cowan for further proceedings.

On March 23, 1988, Examiner Cowan issued a notice setting hearing on the matter for May 17, 1988, and establishing May 3, 1988 as

the date for the employer to file its answer. The employer's answer on May 3, 1988 specifically admitted that it had refused to furnish the union with the information it sought regarding a grievance filed on behalf of Gera Tilahun. On May 17, 1988, the employer requested, and was granted, a continuance in this matter.

Rescheduling of a hearing on this case was delayed until April 27, 1989, because of other litigation involving the same individual. Prior to that date, there was a change of employer attorneys on the case, and a further continuance was granted so that the new counsel could become acquainted with the issue. Thereafter, the parties entered into settlement discussions in an attempt to resolve their differences.

On September 18, 1989, the Executive Director sent a letter to the parties, setting forth an abbreviated compilation of the history of the case, and expressing concern about the delay in processing this matter. The parties were notified that the matter would be dismissed, unless good cause was shown on or before September 29, 1989 as to why such action should not be taken. By joint request of the parties, that deadline was delayed until October 6, 1989.

Nothing further was heard or received from the parties before October 6, 1989. Although no copy of the correspondence was provided to the Commission at the time, the union sent a letter to the employer on October 18, 1989, responding to the employer's proposed stipulation of facts in this matter, suggesting some changes, and setting forth the reasons for the changes proposed by the union.

On November 1, 1989, the Executive Director issued an order dismissing the complaint. City of Seattle, Decision 3329 (PECB, 1989). On November 13, 1989, the union filed a request for reconsideration of the dismissal order, asserting that the parties were finalizing stipulated facts for the Examiner to use in lieu of

holding a hearing on the matter. On November 16, 1989, the Executive Director issued an order withdrawing the order of dismissal. City of Seattle, Decision 3329-A (PECB, 1989).

On January 17, 1990, Rex L. Lacy was substituted as Examiner to make and issue findings of fact, conclusions of law and order in the matter. On January 18, 1990, the Examiner established February 16, 1990 as the date for submission of post-hearing briefs. The union requested, and was granted, a continuance. The parties filed their briefs on March 2, 1990.

FACTS

This case arises out of the City Light Department of the City of Seattle. The union is the exclusive bargaining representative of certain employees of the City of Seattle, including employees at the City Light Department.

The entire record in this case consists of stipulated facts submitted by the parties on January 3, 1990, as follows:

1. Union files grievances on December 11, 1986 and January 26, 1987. (Exhibits No. 1 and 2).

2. Union requests investigative reports prepared by the Department on April 22, 1987. (Exhibit No. 3).

3. The City responds on May 7, 1987. (Exhibit No. 4).

4. Union files a Demand for Arbitration with the American Arbitration Association (AAA) on May 26, 1987. (Exhibit No. 5).

5. Union makes a second request for reports on July 1, 1987. (Exhibit No. 6).

6. Union files lawsuit in Federal Court, April 28, 1987. (Exhibit No. 7).

7. City Light refuses July 1, 1987 request to release reports on July 24, 1987. (Exhibit No. 8).

8. Union files unfair labor practice with the Public Employment Relations Commission (PERC), August 10, 1987. (Exhibit No. 9).

9. City provides reports to Gera Tilahun's Attorney Richard Eadie on October 6, 8, and 13, 1987. Reports provided are contained in Exhibits #12, #13, with the exception of documents numbered 2, 3, 4, 5, 6, 22, 24, 27, 31 and 33 in the October 13, 1987 letter. The documents will be provided by the Union to the extent they are locatable.

10. Stipulation to hold reports confidential entered on October 26, 1987. (Exhibit No. 14).

11. Confidentiality stipulation vacated December 14, 1987. (Exhibit No. 15).

12. City answers complaint filed with PERC on May 3, 1988. (Exhibit No. 16).

13. PERC hearing held and adjourned on May 17, 1988. (Exhibit No. 17).

14. Findings of Facts and Conclusions of Law in lawsuit August 26, 1988. (Exhibit No. 18). Appeals of both parties were thereafter filed. (Exhibits No. 18A and 18B).

15. Arbitrator's conference call with parties, evidenced by November 10, 1988 letter which stays arbitration demand.

16. Letter which effected withdrawal of arbitration demand dated April 26, 1989. (Exhibit No. 20).

The parties also submitted 20 stipulated exhibits conforming to the foregoing.

POSITIONS OF THE PARTIES

The union contends that the employer refused on two occasions to provide the union with information that it needed to process a grievance.

The employer acknowledges that it has the duty to furnish information necessary for the union to process grievances. It contends that the employer's actions were good faith conduct, because the union pursued the matter in the courts and before an arbitrator. It also contends that the remedy requested by the union has been effected so that the issue is moot.

DISCUSSION

On December 11, 1986, and January 29, 1987, the union filed two separate grievances on behalf of Gera Tilahun. The first grievance involved allegations that the employer had committed three contract violations. The second grievance alleged that the employer had discriminated against Tilahun because she had filed the initial grievance. As a result of the first grievance, the employer investigated and prepared a report concerning Tilahun's allegations. On April 22, 1987, the union requested that the results of the employer's investigation be provided to the union. On May 7, 1987, the employer refused to provide the information, because the union was also litigating the discrimination issue before an arbitrator and in the courts. The employer relied at that time on the fact that the parties were in an "adversarial relationship" and that the information would be provided when the employer was directed to do so in those forums.

It is well settled, and beyond reasonable challenge, that an employer under the National Labor Relations Act (NLRA) has a statutory duty to turn over, upon request, information that is

needed by the exclusive bargaining representative for the proper performance of its duties. NLRB v. Truitt Mfg. Co., 351 US 149 (1956). This duty also extends to requests for information necessary for the processing of grievances. NLRB v. Industrial Co., 385 US 432 (1967). The failure to do so constitutes an unfair labor practice. Once a good faith demand is made for relevant and necessary data, the information must be made available promptly, and in useful form. If the employer claims that compiling data will be unduly burdensome, it must assert that claim at the time the request is made, so that an arrangement can be made to lessen the burden. J. I. Case Co. v. NLRB, 253 F.2d 149 (7th Circuit, 1958), enforcing 145 NLRB 152 (1963).

The Public Employment Relations Commission gives due consideration to decisions of the National Labor Relations Board (NLRB) and federal courts which enforce NLRA provisions generally similar to the provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Clallam County, Decision 1405-A (1982). Since the duty to bargain under RCW 41.56.030(4) is similar to the duty to bargain under Section 8(d) of the NLRA, federal precedent developed in "refusal to bargain" cases under Section 8(a)(5) of the NLRA is persuasive in determining "refusal to bargain" allegations under RCW 41.56.140(4). The question of whether a public employer is compelled to produce information which the union believes necessary for collective bargaining or for the processing of grievances and unfair labor practice complaints has been addressed in several cases. The Commission ruled in City of Yakima, Decision 1124, 1124-A (PECB, 1981) that an employer's refusal to supply information in collective bargaining violates RCW 41.56-.140(4) as a failure to bargain in good faith. As under federal precedent, the bargaining representative must make a request for specific information. Once requested, the employer must promptly furnish data relevant to the situation at hand. Toutle Lake School District, Decision 2474 (PECB, 1986) upheld the right of a union to receive information relevant and necessary to its respon-

sibilities in administering the collective bargaining agreement. Accord: Pullman School District, Decision 2632 (PECB, 1987).

King County, Decision 3030 (PECB, 1988) dealt with the separate obligations imposed by Chapter 42.17 RCW. Although RCW 42.17.310(1)(b) exempts personal information in files "to the extent disclosure would violate their right to privacy" from disclosure under the state public records law, that limitation does not apply to requests for information made under the separate authority flowing from the duty to bargain in good faith.

To make a long litigation story short, the employer committed an unfair labor practice on each of the dates when it denied the union's specific requests for information necessary for the union to process the Tilahun grievances. The fact that the parties were involved in the grievance and arbitration machinery of their collective bargaining agreement does not excuse the employer's refusal, as grievance arbitration is a part of the collective bargaining process. RCW 41.56.122; RCW 41.58.020(4). The fact that the parties were involved in litigation in the federal court does not excuse the employer's refusal, as they were still involved in the grievance and arbitration process. Finally, the fact that the employer later furnished the requested information may have mitigated the severity of the situation and the remedies which might be ordered, but does not excuse or moot the violation of the statute which was committed.

The employer will be required to post a notice to employees, to remedy the technical violation which has occurred, and will be ordered to cease and desist from such conduct in the future.

FINDINGS OF FACT

1. The City of Seattle is a "public employer" within the meaning of RCW 41.56.030(1). It maintains and operates a public

utility known as Seattle City Light. Randy Hardy is superintendent of the City Light Department.

2. International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for employees of Seattle City Light. Michael T. Waske is business manager of Local 17 and Wayman Alston is business representative.

3. The employer and union were parties to a collective bargaining agreement that contained a grievance procedure, including provisions for final and binding arbitration of contractual grievances.

4. On December 11, 1986, and January 29, 1987, Local 17 filed two grievances on behalf of Gera Tilahun, an employee within the bargaining unit represented by Local 17. The initial grievance involved three alleged contractual violations. The later grievance involved allegations of discrimination for having filed the initial grievance.

5. On April 22, 1987, Local 17 made a specific, written request for information concerning the employer's investigation of the grievance allegations filed by Tilahun.

6. On April 28, 1987, the union filed suit in the United States District Court, alleging that Seattle City Light and several management employees of that department had unlawfully discriminated against Gera Tilahun.

7. On May 7, 1987, the employer refused to provide the information requested by the union on April 22, citing Local 17's litigation of the matter in other forums.

8. On May 26, 1987, the union referred the Tilahun grievance to the American Arbitration Association.

9. On July 1, 1987, the union again requested that the employer provide the union with the results of the employer's investigation of the Tilahun grievance.

10. On August 11, 1987, the union filed this unfair labor practice case, alleging that the employer had unlawfully refused to provide information necessary to the processing of Tilahun's grievance.

11. On October 6, 1987, the employer provided the union with the information it had requested on April 22, 1987 and July 1, 1987.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.160.

2. By failing and refusing to provide information in a timely manner, where such information was requested by and reasonably necessary to the performance by International Federation of Professional and Technical Engineers, Local 17, of its functions as exclusive bargaining representative in the processing of the grievance of Gera Tilahun, the City of Seattle, through its City Light Department, has engaged in unfair labor practices in violation of RCW 41.56.140(4) and (1).

ORDER

It is ordered that City of Seattle, its officers and agents, shall immediately:

1. Cease and desist from:

   A. Refusing to furnish International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, upon request, with information from official and unofficial personnel files and other documents in the possession of the employer that is relevant to and necessary for the preparation and processing of grievances and the representation of employees in collective bargaining.

   B. In any other manner interfering with, restraining or coercing its employees in the exercise of their right to organize and be represented by the organization of their own choosing.

2. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

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

   B. Notify International Federation of Professional and Technical Engineers, Local 17, in writing, within 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 complainant with a signed copy of the notice required by this order.

C. Notify the Executive Director of the Commission, in writing, within 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 this order.

DATED at Olympia, Washington, this _____ day of March, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

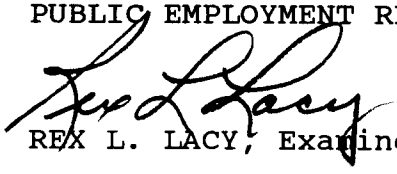
REX L. LACY, Examiner

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

C. Notify the Executive Director of the Commission, in writing, within 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 this order.

DATED at Olympia, Washington, this 20th day of March, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



REX L. LACY, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL, upon request, provide International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, with information from official and unofficial personnel files and other documents in the possession of the City of Seattle that is relevant to and necessary for the preparation and processing of grievances and the representation of employees in collective bargaining.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of their rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

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 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, FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.