

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 483,)	
)	
Complainant,)	CASE 11519-U-95-2699
)	
vs.)	DECISION 5049-B - PECB
)	
CITY OF TACOMA,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	and ORDER
)	
)	

Welch & Condon, by David B. Condon, Attorney at Law, appeared on behalf of International Brotherhood of Electrical Workers, Local 483.

George S. Karavitas, Senior Assistant City Attorney, appeared on behalf of the City of Tacoma.

International Brotherhood of Electrical Workers, Local 483, filed a complaint charging unfair labor practices under Chapter 41.56 RCW and Chapter 391-45 WAC on January 11, 1995, alleging that the City of Tacoma refused to bargain the effects and impacts of its decision to eliminate bargaining unit positions titled "consumer service consultant".¹ Katrina I. Boedecker was designated as

¹ When the employer filed its answer, on February 21, 1995, it also filed a motion to dismiss the complaint for "failing to identify whether there are any 'effects' of the decision to eliminate positions that are both the subject of mandatory bargaining and still unbargained". The motion to dismiss was denied, on the basis that the statements filed by both parties framed contested issues of material facts so that a summary judgment was not available under WAC 391-08-230. City of Tacoma, Decision 5049 (PECB, 1995).

Examiner in the matter.² The hearing was held February 8, June 10 and 11, 1996.³

BACKGROUND

The City of Tacoma owns a municipal utility which is governed by a five-member Public Utility Board, as well as by the city council. Once appointed, the Public Utility Board is fairly autonomous as the policy-making body for the Tacoma Public Utilities. However, the city council has final authority and approval for the utilities budget. Director of Utilities Mark Crisson oversees the activities of the Light Division, Water Division, and Belt Line railroad.

International Brotherhood of Electrical Workers (IBEW), Local 483, has represented employees of the Tacoma Public Utilities for approximately 80 years. David Smith is the business manager and financial secretary for IBEW Local 483.

² The scheduling of a hearing in this matter was repeatedly delayed, due to attempts by the parties to settle the dispute with the assistance of a Settlement Judge supplied by the Commission under WAC 391-45-260.

³ After the close of the evidentiary hearing, but prior to the submission of legal arguments by the parties, the complainant filed a motion to reopen the record for submission of additional testimony. The declaration of the union's business manager in support of that motion stated that he recently discovered that the Department of Utilities had created a new "energy service account executive" position which could perform work previously performed by the consumer service consultants. The motion was denied in City of Tacoma, Decision 5049-A (PECB, 1996).

After a history of about 70 years without any layoffs of employees represented by Local 483, the utility laid off about 27 employees in 1986 due to a technology change resulting in the automation of some hydro-electric plants. Following a union demand, the employer and union bargained the impacts and effects of the pending layoff. They reached an agreement providing for a transition period, retraining for the affected employees, and maintenance of the journey-level pay of the affected employees until they reached the journey-level in another job.

During the time when this controversy arose, Customer Service Manager Jeanette Neufeld was responsible for the Customer Service Department which included both "consumer service consultant" and "customer service assistant" positions. The "consultants" were in a Light Division bargaining unit represented by the union; the "assistant" and "assistant senior" positions were in a "customer and field services" bargaining unit represented by the union.

Smith was in the City Light building on October 3, 1994, when he was approached by a bargaining unit member and asked if he knew anything about a layoff of the consumer service consultants. Smith did not. He immediately went to see Crisson, who would neither confirm or deny the rumor since it was still under study.

In an executive session held at the noon hour on October 5, 1994, the Public Utilities Board recommended the elimination of 22 positions, including 4 consumer service consultant positions who reported to Assistant Director of Customer Finance and Administrative Services Lynnette Baugh. On that same afternoon, Baugh telephoned the IBEW office and spoke with Assistant Business Manager Steve Sweeney. At 3:00 p.m. that afternoon, Baugh met with Sweeney, the four consumer service consultants, and two managers, and outlined the support that the employer would give the employees

to help find other employment.⁴ Sweeney supported Baugh's comments, adding that the union would also work with the affected employees. One of the four employees, Roland Bach, announced that he was retiring.

In the October 7, 1994 edition of "Newslite",⁵ Crisson notified utility employees that 8 permanent employees and 10 project employees would be laid off effective April 1, 1995. The bargaining unit classification "consumer service consultant" was specifically listed among the affected permanent positions. Smith was advised of the newsletter announcement by a bargaining unit member.

On October 11, 1994, Smith hand-delivered a request to Personnel Manager Sedonia Young at the utilities department for:

Names and classifications of those affected.

Seniority ranking in present classifications and classifications held other than the affected classifications.

Present plans to help relocate or assist affected employees in job searches, letters of recommendations, or other placement services.

Smith testified that he did not receive a reply to his letter, but the evidence presented by the employer at the hearing included two letters addressed to Smith, dated October 13, 1994 and October 20, 1994, which each listed the names of the four consumer service consultants, indicated that they did not have any seniority in any other classification, and indicated that they had no bumping rights. The first of those letters also detailed steps that the

⁴ Smith was not available when Baugh telephoned, and did not attend this meeting.

⁵ The publication is an employee newsletter internal to the utilities department.

Personnel Department would take to assist the employees in their search for new positions, ranging from updating resumes to sending copies of job postings.⁶

After Consumer Service Consultant Renee Salmon complained to Smith that she was not getting any help writing her resume, Smith complained to Crisson. Young thereafter reviewed the personnel file of each consumer service consultant. She then invited Smith and the affected employees to a meeting, and outlined what the Personnel Department was offering to do. Young assured the employees that she would try to find a placement for each of them; Smith also told them he would be looking to assist them. On November 4, 1994, Young wrote to Smith and all of the affected employees, detailing additional steps arrived at during the meeting. Smith did not complain to Young that the information she provided was inadequate.

During this same time, the parties were negotiating a collective bargaining agreement for the customer and field services unit. Susan Piper was the recording secretary for the union bargaining team, and she testified that the parties negotiated at sessions held on November 29 and December 5 about which consumer service consultant duties would be assigned to the customer service assistant classes. Piper testified that there was considerable bargaining about the "application of rates". She stated that the parties agreed that large commercial special billings would be one duty, and that auditing the "miscellaneous debit and credit" report that is generated every day would be added to the work that was taken over by customer service. Some duties previously performed

⁶ Although Smith testified that he had not received either letter, he indicated that other people in the union office handle the mail and he was aware of previous times that he had not received mail that had been sent to him.

by both classifications, such as answering telephone inquiries, were to be solely customer service assistants duties. Special billings were to be handled by the customer service assistant senior class. When this task was performed (for approximately four days each month), the employee would receive an "applied rate" which was higher than the regular wage rate. By December 12, 1994, the parties agreed to new language in the collective bargaining agreement regarding the "applied rate." Piper testified that there was a great deal of bargaining regarding the "applied rate."

Smith also testified about the negotiations for the customer and field services contract, but his recall was that the management did not sit down to discuss the financial or career impacts on the four laid off employees. Smith testified that the union tried to talk the management into holding on to at least two of the positions, and/or into not altogether eliminating the classification.

On December 7, 1994, Smith wrote to Baugh stating, "... this letter is intended to serve notice to you to open negotiations on" the intended layoffs of the consumer service consultants. That letter also sought from the employer:

Expected impact of loss of this work

Intentions of the Department regarding any and all plans for dissemination of any work presently performed by this group

Any on-going efforts to maintain this function in your section or others after layoffs occur.

Smith testified that he did not receive any reply.

Two weeks later, Smith wrote Baugh asking her to respond to the request for information and to set meeting dates to begin negotiations. Young responded for Baugh, writing that some of the work would be returned to the customer service section where it was

originally located, some would be eliminated altogether, some would be assigned to other sections of the Light Division, and that the ultimate disposition of some work had not been determined. She invited Smith to attend the meetings of a transition team. Young took the position, however, that the union could only bargain the impact of the layoffs on "workloads and safety conditions". She wrote that the department was operating under the provisions of the management rights clause, so that the "action" was not a mandatory subject of bargaining. She did advise Smith that the employer would consider any information Smith provided, as well as negotiating other effects of the layoff if he identified any further mandatory subject of bargaining.

In response, Smith notified Baugh that the union was filing the instant unfair labor practice case. He also sought a schedule of transition team meetings.⁷

Baugh wrote Smith that the layoffs would not cause a significant effect on mandatory subjects of bargaining, but that the employer would negotiate if the union identified any mandatory subjects. Smith testified that he was interested in bargaining retraining or severance packages for the four employees. The union never disputed that the employer had the right to make the decision to lay off employees without the decision being subject to bargaining.

⁷ Smith received notice of the January meeting too late for him to reschedule a prior obligation. He did attend the February meeting, but testified that he felt like an unwanted guest. He attended the April meeting, where he received a copy of spreadsheets that showed the reassignment of all of the consumer service consultant work. Smith reasserted the union's position that the department had to negotiate the effects and impacts of the decision to lay off the four consumer service consultants. Smith did not supply any specific proposals regarding the effects or impacts of the layoffs.

Between January and April 1, 1995, both parties tried to locate possible placements for the employees who were to be laid off. Young and Baugh each gave positive recommendations for Salmon for a position in the employer's tax and license operation, and Salmon took that position with a \$.26 per hour pay reduction.⁸ Young sent the resume of Consumer Service Consultant Norm Crawford to the Engineering Department, because he had a master's degree in chemical engineering, but Crawford later told Young that he did not want to go back into engineering. Young then asked another manager to try Crawford in an opening in the Light Stores operation, and Crawford accepted a job as warehouse technician at \$16.21 per hour, or \$3.96 less than he had been making. Consumer Service Consultant Wade Ogg accepted a demotion into a project position as an electrical worker with the utility, making \$1.97 less per hour than he had been receiving before the layoff. Bach, who was age 67, retired as he had previously announced.

Later in April, after hearing that some duties formerly performed by the consumer service consultants had been transferred to the Conservation Section in Light Engineering, Smith requested a full accounting of the re-distribution of the work that had formerly been assigned to the laid off employees. The employer supplied the union with a three page table that delineated the 16 tasks assigned to the consumer service consultant and what happened to each task after the layoffs. Two tasks were discontinued; two were assigned to customer service;⁹ six other tasks were returned to customer service; two had been concurrently done by customer service; two

⁸ The employer carried Salmon on the books of the utility, in terms of budget and time card, until April 1, 1995, in order to insure that she would receive a pay increase that was due through the collective bargaining agreement.

⁹ These were the special billing and the monitoring of the credit debit report, mentioned above.

had been concurrently done in other programs. The final two duties were distributed as follows: (1) Investigation of television interference complaints, which took two hours per month, was returned to the Light Engineering; (2) investigation of rate questions when metering is revised, which also took two hours per month, was assigned to the management service office.

There was a discrepancy between the hours the consumer service consultants estimated they spent on certain tasks and the hours the transition team assigned for the tasks. The employer explained that part of the work that was no longer being done was in-depth analysis and site visits. The rest of the discrepancy was attributed to "productivity problems" of the former work group which led to the decision to implement the changes. The union and employer tried to determine if any consumer service consultant work was being performed by work groups that had not been previously recognized by the transition team, but none was identified.

Smith testified that by "effects bargaining" he was seeking to find where the work would go, who would do the bargaining unit work, and whether work was going to non-bargaining unit places. By "impact bargaining", Smith wanted to bargain the loss of revenue to the individuals and their retraining and re-employment. Smith was trying to minimize the impacts on the people and get them back into a productive stream at City Light by finding career paths appropriate to their skills so that the people would not have to completely reorder their whole life.

POSITIONS OF THE PARTIES

The union argues that the employer violated the act by its failure to bargain the impacts and effects of its decision to transfer bargaining unit work to employees outside the Light Division.

Additionally, the union claims the employer failed to provide requested information, in a timely manner, as to where the work of the positions that were eliminated was going, which also violated its duty to bargain. Finally, the union alleges the employer failed to bargain in good faith because it refused to bargain the financial and career impacts on the four laid off employees.

The employer contends that it never declined to negotiate any identified effects of the layoffs. The employer claims it acted in response to ambiguous demands by the union, by seeking clarification of the subjects the union wanted to bargain and identification of what effects the union was proposing. The employer argues that the union's lack of knowledge was not the responsibility of management, but rather the union's internal mail system. The employer concludes that certain work was eliminated, not transferred to others. It asserts that the union had full bargaining opportunity regarding the distribution of other work.

DISCUSSION

This entire dispute concerns narrow issues. The union does not challenge the employer's decision to lay off the consumer service consultants. Much of the discussion in City of Tacoma, Decision 5634 (PECB, 1996) is not relevant here, because the union's claim in that case was to an employer refusal to bargain a layoff decision severely handicapped negotiations on its impacts.

The employer gave the union timely notice of the intended layoffs. Baugh telephoned the union within hours after the matter was voted upon by the Public Utilities Board, and met with a union official as well as the affected individuals that same afternoon.

Providing Requested Information in a Timely Manner

An employer has a duty to provide, upon request, information that the union needs to fulfill its job as exclusive bargaining representative. Recent decisions reiterating that long-standing principle include Pasco School District, Decision 5384-A (PECB, 1996); Seattle School District, Decision 5542-B (PECB, 1997) and City of Tacoma, Decision 5439 (PECB, 1996).

In its first October letter, the union specifically requested the names and classifications of those affected by the layoff; their seniority ranking; a listing of other classifications they had held; and the employer's plans to help relocate or assist affected employees. It is unrefuted that the employer sent detailed answers to all of those questions. The union did not adequately explain why the letters sent to it in the normal course of business should not be regarded as an adequate response.¹⁰

The union acknowledges receiving some later letters from the employer on this dispute. Some of those employer responses seemed to impose pre-conditions on bargaining which might support a finding that the employer was evading its duty to bargain (e.g., that it only had a duty to bargain workload and safety impacts of the layoffs), but the parties were not just sending paper back and forth. The reality of the situation shows that both parties were bargaining a wide range of effects and impacts. The union was successful in bargaining to receive some of the work into another

¹⁰ In administrative procedure, a clear distinction is drawn between "filing" with an agency and "service" on other parties. Island County, Decision 5147-B (PECB, 1995). If the employer's letter had been a document filed and served in connection with this proceeding, its deposit in the mail with postage prepaid would have constituted adequate "service" even if it was never received.

of its bargaining units with a premium pay, was successful in bargaining to have Salmon kept on the utility pay records in order to receive the April 1 wage increase, and was successful in obtaining help for the affected employees in writing their resumes. Although the union argues that the employer steadfastly responded to all demands for bargaining and information in a negative manner, only providing minimal information, the facts prove otherwise.

The union attacks the employer's request that the union provide specifics of the effects it wanted to bargain. However, the employer's duty to provide information arises only upon request of the union. The union was given all the information it requested in the employer's October letters. The employer properly assumed that the letters reached Smith, as the addressee. The employer is not responsible for breakdowns in the union's office procedures. In the context of believing that it had fully responded to the union's requests, the employer acted correctly in asking the union to identify other specific proposals it had regarding the layoffs.

The union complains that a spreadsheet showing the re-distribution of the work was needed prior to April 1st, and that receiving it at the April transition team meeting made an effective analysis of the situation impossible. Again, the evidence belies the argument. Clearly, by December of 1995 the union had bargained to agreement on receiving certain of the consumer service consultant duties into another bargaining unit which the union represents. At the February transition team meeting or afterwards, the union did not contest where the rest of the consumer service consultant duties were slated to go.

Bargaining the Impacts and Effects of the Layoffs

The union argues that the employer used a paternal attitude toward its employees and their bargaining representative as a substitute

for good faith bargaining, and that the employer failed to bargain the impacts and effects of its decision to transfer bargaining unit work to employees outside the Light Division.

Nothing was presented as a fait accompli. Smith attended the transition team meeting in February. Although he testified that he believed that he was not to bargain at that meeting, there is nothing advanced to indicate that the employer took this position or would have refused to bargain with him if he had spoken up. Ironically, Smith complained that there was too much uncertainty about where the employer wanted some duties to go. It is in such an "uncertain" climate that parties can bargain most effectively, since minds are open to new ideas and not set on pre-ordained paths. When minds are not made up at the bargaining table, then ideas can be exchanged, alternatives can be formulated, and give-and-take collective bargaining that results in compromise and agreement can take place.

Bargaining of Financial and Career Impacts

Smith testified that he raised the importance of the financial and career impacts on the four employees at the outset, and that the employer denied any obligation to bargain those impacts. What is bargaining? It is the ability to communicate concerns and influence an outcome, not to control the outcome. The definition of "collective bargaining" in RCW 41.56.030(4) contains a traditional limitation which originated in the National Labor Relations Act: "... except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession ...". Several times, the union referred to the severance packages that the hydro-electric plant operators received when they were laid off due to modernization. While the placement efforts the employer provided to the consumer service consultant employees might not have been exactly what those individuals

wanted, it was the best deal the parties could reach. There was no "stonewalling" by the employer of the union's attempts to bargain the impacts and effects to frustrate the process.

FINDINGS OF FACT

1. The City of Tacoma, a "public employer" within the meaning of RCW 41.56.030(1), operates the Tacoma Public Utilities, which are governed by the public utility board as well as the city council. Mark Crisson is the director of utilities; Lynnette Baugh is the assistant director of customer finance and administrative services; Sedonia Young is the utilities personnel manager.
2. International Brotherhood of Electrical Workers, Local 483, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of at least two separate bargaining units of employees of Tacoma Public Utilities. A bargaining unit in the Light Division included "consumer service consultant" positions. A "customer and field services" bargaining unit includes "customer service assistant" and "customer service assistant senior" positions. David Smith and Steve Sweeney were union officials at all times pertinent hereto. Renee Salmon, Roland Bach, Norm Crawford and Wade Ogg were incumbents of the consumer service consultant positions.
3. On October 5, 1994, the public utilities board recommended the elimination of the consumer service consultant positions. The union does not contest the right of the employer to make that decision without having given notice to the union and without having provided opportunity for collective bargaining prior to making the decision.

4. Baugh notified the union immediately after the decision described in paragraph 3 of these findings of fact was made, and she met with Sweeney and the four consumer service consultant incumbents on that same day.
5. In October of 1994, Smith sent a written request to Young for specifics about the layoffs. Young wrote back twice, providing detailed answers to Smith's inquiries. Smith did not receive either letter, but acknowledged that he has not received mail addressed to his office on other occasions.
6. At Smith's request, Young met with Smith and the consumer service consultants on or about November 4, 1994. As a result of bargaining at that meeting, the employer undertook additional steps to secure employment for the affected employees.
7. During this same time period, the employer and union were negotiating a collective bargaining agreement for the customer and field services unit. By December 12, 1994, the parties had agreed to new "applied rates" language to be used when employees in the customer service assistant senior classification perform certain duties previously performed by the consumer service consultant classification.
8. The employer established a transition team to determine the ultimate disposition of the consumer service consultant work. Smith was invited to attend the meetings.
9. Between January and April 1995, both parties tried to locate possible placements for the three consumer service consultant incumbents who were interested in further employment.
10. The layoffs were effective April 1, 1995. By that time, Bach had retired. The remaining three consumer service consultant

employees were placed in other jobs with the City of Tacoma, earning from \$.26 to \$3.96 less per hour than they had received in the consumer service consultant positions.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The union failed to sustain its burden to prove that the employer failed to provide requested information in a timely manner, so that no violation of RCW 41.56.140(4) is established with respect to that allegation.
3. The union failed to prove that the employer refused to bargain the impacts and effects of the layoff of the consumer service consultants, so that no violation of RCW 41.56.140(4) is established with respect to that allegation.

ORDER

The complaint charging unfair labor practices filed in this matter is DISMISSED.

Dated at Olympia, Washington, on the 21st day of May, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Examiner

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