

10/10/78

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RETAIL CLERKS INTERNATIONAL)	
ASSOCIATION, LOCAL UNION #1612)	
)	CASE NO. 1472-U-78-186
Complainant)	
)	DECISION NO. 703-PECB
vs)	
)	FINDINGS OF FACT,
CITY OF BENTON CITY,)	CONCLUSIONS OF LAW
WASHINGTON)	AND ORDER
)	
Respondent)	
)	
)	

APPEARANCES:

MICHAEL E. DEGRASSE, Attorney-at-Law, appearing for and on upon behalf of the complainant.

ROBERT SWISHER, Attorney-at-law, appearing for and upon behalf of the respondent.

Retail Clerks International Association, Local Union No. 1612, hereinafter called the "complainant," or the "union," filed a complaint charging unfair labor practices with the Public Employment Relations Commission on May 4, 1978. The complaint alleges that the City of Benton City, Washington, hereinafter referred to as the "respondent," or the "city," has committed certain unfair labor practices in violation of RCW 41.56.140 as follows:

BASIS FOR COMPLAINT

"Since on, or about, March 24, 1978, the City of Denton City and its Mayor, Webb Bateman, have refused to bargain with the Retail Clerks Union, Local #1612, the certified collective bargaining representative of the police dispatchers and office clerical employees at the city hall location. The Union has requested that negotiations commence on several occasions, but the mayor simply refuses to bargain."

The Union seeks relief, as follows:

"The employer should be required to immediately

commence negotiations with the union and bargain in good faith."

The Executive Director designated George G. Miller to act as Hearing Examiner and to make and issue findings of fact, conclusions of law and order. A hearing was conducted before the Examiner on June 15, 1979 at the Richland Community House, Richland, Washington.

BACKGROUND AND DISCUSSION

The union was certified as the exclusive bargaining representative for "all office clerical employees at the city hall location" on January 18, 1978 as a result of a representation election conducted by the Public Employment Relations Commission on January 10, 1978. (Decision No. 348-PECB.) The union was also certified as the exclusive bargaining representative for an additional bargaining unit consisting of "all police dispatchers employed at city hall location" on February 16, 1978 as a result of a representation election held by the Commission on February 8, 1978. (Decision No. 372-PECB.)

Subsequent to the certification of the two (2) bargaining units, Mr. Sean Harrigan, President, Retail Clerks Union, Local No. 1612 contacted the Mayor of Benton City, Mr. Webb Bateman on several occasions, (both by letter and telephone) requesting that representatives of Benton City meet and confer with the union on matters concerning the wages, hours and working conditions of the employees in the bargaining units. Harrigan was advised by Mayor Bateman that he would not bargain with the union until the Unfair Labor Practices complaints involving several city employees in the office clerical unit had been resolved. (Decision No. 436-PECB).

RCW 41.56.030 contains the statutory definition of collective bargaining:

"(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter."

RCW 41.56.100 "authority and duty of employer to engage in collective bargaining" state in part:

"A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative"....

"RCW 41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter.
- (2) To control, dominate or interfere with a bargaining representative.
- (3) To discriminate against a public employee who has filed an unfair labor practice charge.
- (4) To refuse to engage in collective bargaining. (Emphasis supplied.)

The duty to bargain in good faith imposes on the parties the obligation to confer at reasonable times and intervals. Obviously, refusal to meet at all with the union does not satisfy the positive duty imposed on the employer. ^{1/} The National Labor Relations Board ordered an employer ^{2/} to bargain upon request and provided that the initial year of certification would be deemed to begin on the date that the employer commenced to bargain.

^{1/} NLRB v. Little Rock Downtowner, 341 F2d 1020, 58 LRRM 2510 (CA8, 1965) enforcing, as modified, 145 NLRB 1286, 55 LRRM 1156 (1964).

^{2/} Groendyke Transport, Inc. (207 NLRB 381 (1973)) 84 LRRM 1458.

Analysis of the instant case certainly falls within the ambit of the foregoing paragraph and most certainly should not receive less constructive remedy.

The Hearing Examiner is convinced that the city willfully failed to engage in collective bargaining with the certified exclusive bargaining representative of two groups of Benton City employees, contrary to the statutory requirements placed upon public employers by RCW 41.56.

Having considered the evidence, testimony and arguments, the Examiner now makes the following

FINDINGS OF FACT

I

The City of Benton City, Washington is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

II

Retail Clerks International Association, Local Union No. 1612, is a "labor organization" within the meaning of RCW 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030(3).

III

Retail Clerks International Association, Local Union No. 1612 was certified by the Public Employment Relations Commission on January 18, 1978 as the exclusive bargaining representative of a bargaining unit consisting of "all office clerical employees at the city hall location" and on February 16, 1978 as the exclusive bargaining representative of a unit consisting of "all police dispatchers employed at the city hall location."

IV

During late February and early March 1978, the union attempted by letter and telephone calls to the Mayor to commence negotiations. The City refused to engage in the bargaining process until a pending unfair labor practice complaint was resolved and has not, to this date, engaged in collective bargaining as required by law.

V

The union is entitled to a one-year protected period following certification.

VI

The failure of the city to engage in collective bargaining as required by law prevented the union from getting a "fair shot" at bargaining during the twelve months following certification.

CONCLUSIONS OF LAW

I

The Public Employment Relations Commission has jurisdiction over this matter by virtue of Chapter 41.56 RCW.

II

The respondent, City of Benton City, has, by its refusal to bargain with the certified exclusive bargaining representative, violated the provisions of RCW 41.56.100 and has engaged in unfair labor practices within the meaning of RCW 41.56.140(4).

From the foregoing findings of fact and conclusions of law, the Examiner now makes the following

ORDER

A. IT IS ORDERED That the respondent, City of Benton City, its officers and agents, shall immediately:

1. Cease and desist from:

a. Refusing to engage in collective bargaining with the exclusive bargaining representative of the office clerical employees and the police dispatchers.

2. Take the following affirmative action:

a. Contact the exclusive bargaining representative of the office clerical employees and the police dispatchers within 10 days of receipt of this order relative to setting a collective bargaining meeting.

b. Post the accompanying notice for a period of sixty days on bulletin boards where notice to employees of the respondent are usually posted.

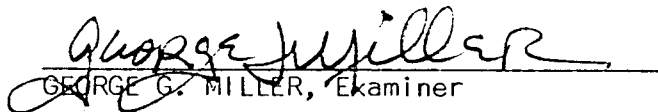
c. Inform the Public Employment Relations Commission, in writing, within twenty (20) days after the date of receipt of this order as to the steps taken to comply herewith.

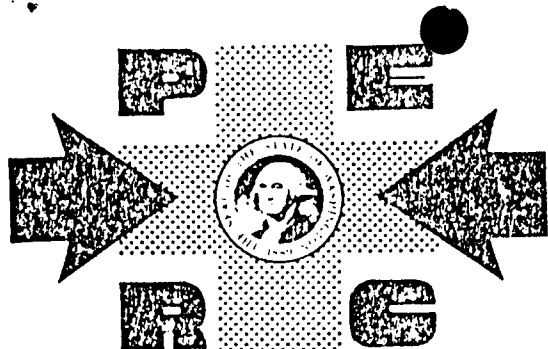
B. IT IS FURTHER ORDERED That:

a. The union's one year protected period as regards Decision No. 348-PECB (January 18, 1978) and Decision No. 372-PECB (February 16, 1978) shall commence on the date of the first bargaining session between the parties.

DATED at Spokane, Washington, this 21ST day of August, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL NOT refuse to bargain collectively with Retail Clerks International, Local No. 1612 as the exclusive representative of all our employees in the bargaining units consisting of 1) office clerical employees at the city hall location and 2) police dispatchers at the city hall location with respect to grievance procedures and personnel matters, including wages, hours and working conditions.

WE WILL NOT interfere with, restrain, coerce, or discriminate against any of our employees or group of employees in the free exercise of their right to join or assist Retail Clerks International Association, Local Union No. 1612, or any other labor organization, to bargain collectively through the representative of their own choosing as guaranteed by RCW 41.56.040, or to refrain from any and all such activities.

WE WILL bargain collectively with Retail Clerks International Association, Local Union No. 1612 as the exclusive representative of the employees in the aforesaid collective bargaining units, with respect to grievance procedures and personnel matters including wages, hours and working conditions and if an understanding is reached, embody such understanding in a signed agreement.

All our employees are free to become, remain, or refrain from becoming members of Retail Clerks International Association, Local Union No. 1612, or any other labor organization.

CITY OF BENTON CITY

BY _____

BY _____

DATED this _____ day of _____, 1979.

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

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Commission's office, East 3102 Trent Avenue, Spokane, Washington 99202. Telephone: (509) 456-2922.