

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 2083, AFSCME, AFL-CIO,)	CASE NO. 2586-U-80-379
)	DECISION NO. 1199 - PECB
Complainant,)	
vs.)	
CITY OF SEATTLE LIBRARY BOARD,)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.)	

Pamela G. Cipolla, General Counsel, appeared on behalf of the complainant.

Douglas N. Jewett, City Attorney, by P. Stephen DiJulio, Assistant City Attorney, appeared on behalf of the respondent.

In a complaint filed February 5, 1980 and amended May 30, 1980 and March 18, 1981, Washington State Council of County and City Employees, Local 2083, AFSCME, AFL-CIO ("complainant") alleged that the City of Seattle Library Board ("respondent") committed certain unfair labor practices within the meaning of RCW 41.56.140(1). A formal hearing was conducted on March 18, 1981. The parties submitted post-hearing briefs.

BACKGROUND:

The Seattle Public Library is a department of the City of Seattle. The library is unique in that it is the only city department operated by an independent policy making body. The Seattle Library Board is composed of five trustees appointed by the mayor and confirmed by the Seattle City Council. The Library Board appoints the City Librarian who has administrative authority over the library's various facilities. Like other city departments, the library must submit its proposed budget to the City Council. The council establishes the total amount of library expenditures, but the Library Board has independent authority to allocate budgeted funds for specific library operations. The Library Board can transfer funds between the library's departments and divisions. The board can also move positions and personnel among departments and divisions.

Washington State Council of County and City Employees, Local 2083, AFSCME, AFL-CIO is the bargaining representative of a unit which, among others,

includes employees in the Librarian II classification. Events leading to this unfair labor practice case began with the announcement of a vacant Librarian II position in the Central Library's Literature Department.

In March, 1979, a librarian in the Literature Department retired. The resulting vacancy was posted as a Librarian II position, and the library conducted interviews to fill the position. The interviewing process led to a dispute between the complainant and the respondent. Six bargaining unit employees applying for the position were interviewed by Norma Arnold, who was then acting head of the Literature Department. Applicants from outside the bargaining unit were interviewed by Nancy Wildin. Wildin was the head of the Literature Department but was on temporary assignment as coordinator of the Central Library's renovation program. As a result of the interviews, Ray Serebrin, a non-bargaining unit applicant, was hired.

On May 25, 1979, the complainant filed a grievance challenging the selection process. The complainant argued that because library employees were not interviewed by Wildin, the collective bargaining agreement had been violated. On June 2, 1979, the respondent offered to re-interview the six bargaining unit employees for a Librarian II position in the Literature Department as a settlement of the grievance. The complainant agreed to the proposed settlement on July 2, 1979.

Jan Van Wyk, a Librarian I in Media and Program Services, was selected following the re-interview process, and she was transferred to the Literature Department as a Librarian II on October 1, 1979. Serebrin was retained as a Librarian II in the Literature Department. Funding for Van Wyk's position came from the elimination of two temporary positions in the department which had been created when Arnold assumed the position of the acting head of the Literature Department.

In December, 1979, Wildin returned to the Literature Department as department head. As a result of Wildin's return, the Literature Department's budget exceeded allocated funds by one 40 hour position. Verda Hansberry, Director of Central Library Services, explored several alternatives to correct the budget problem, but it was determined that additional funds could not be transferred to the Literature Department. Hansberry decided that an employee transfer was necessary. After examining available positions and employee qualifications, Pat Davis was transferred from the Literature Department to a Librarian II position in the Media and Program Services Department. Davis had served as president of Local 2083, and she participated in several negotiation sessions as union representative. The decision to transfer Davis was based, in part, on Davis' prior experience in the Media and Program Services Department. The employer also indicated a reluctance to transfer Van Wyk who, though she had less seniority than Davis in the Literature Department, had obtained her position as a result of the

previous grievance settlement. Davis was informed of the transfer on December 18, 1979.

On January 7, 1980, the complainant filed a grievance challenging Davis' transfer. The unfair labor practice charges involved in this matter were filed by the complainant on February 5, 1980. The grievance resulted in an arbitration hearing before Arbitrator Richard B. Peterson on May 20, 1980. In his award rendered June 13, 1980, Arbitrator Peterson determined that the transfer violated the collective bargaining agreement, and Davis was given the right to return to the Literature Department.

Disagreement arose over the arbitration award, and the matter was reconvened before Arbitrator Peterson on December 22, 1980. Arbitrator Peterson issued his clarification on January 5, 1981. In the clarification, Arbitrator Peterson ruled that the original arbitration award did not create specific staffing levels in the Literature Department, and that the respondent was not precluded from transferring another employee from the Literature Department to make room for Davis's return. Shortly thereafter, Ray Serebrin was transferred from the Literature Department to the Media and Program Services Department.

POSITION OF THE PARTIES:

Complainant argues that respondent has violated RCW 41.56.140(1) by making bargaining unit members bear the consequences of discriminatory and retaliatory personnel actions. Complaint contends that the personnel actions resulted from bargaining unit members filing grievances under terms of a collective bargaining agreement, and complainant maintains that bargaining unit members have been intimidated from filing further grievances because of respondent's actions. Complainant argues that the deferral principles set forth in Spielberg Manufacturing Co., 112 NLRB 1080 (1955), should not be followed in this case. Since allegations of discrimination are involved, complainant urges the Public Employment Relations Commission to follow recent National Labor Relations Board (NLRB) policy concerning deferral to arbitration awards. See: Suburban Motor Freight, 247 NLRB No. 2, 103 LRRM 1113 (1980).

Respondent contends that the Examiner should defer to Arbitrator Peterson's award. Respondent further contends that complainant has failed to show any right guaranteed to public employees in Chapter 41.56 RCW which was violated by events described in the unfair labor practice complaint.

DISCUSSION:

The Commission has adopted deferral principles as a matter of policy. See: City of Richland, Decision No. 246, (PECB, 1977), City of Kennewick, Decision No. 334 (PECB, 1977). Deferral is not required by statute or rule. Neither is the Commission bound to follow NLRB precedent in all matters.

Under the Spielberg doctrine, an unfair labor practice complaint can be deferred to an earlier arbitration award when the arbitration proceeding was fair and regular, the issue was raised in the arbitration hearing, the decision of the arbitrator was binding on both parties, and the results of the arbitration were not repugnant to the statute. The complainant's only challenge to deferral rests with an argument that Arbitrator Peterson did not address the statutory violation concerning discrimination against the bargaining unit as a whole. Examination of Arbitrator Peterson's award shows that the issue of discrimination was considered. In the May 20, 1980 arbitration award, Arbitrator Peterson ruled in favor of the complainant, but specifically held that respondent's personnel actions were not motivated by a retaliatory intent against Pat Davis for her union activities. At page seven of the award, Arbitrator Peterson also ruled that the disputed personnel actions were not "arbitrary, capricious or discriminatory." More importantly, in the clarification issued on January 5, 1981, Arbitrator Peterson discussed the impact of personnel transfers on the entire bargaining unit, and ruled that the respondent did not have an obligation to create specific staffing levels in the Literature Department and could transfer employees on the basis of budgetary constraints. Arbitrator Peterson noted that such transfers could create an adverse effect on the employees to be transferred, but noted that such effects are a logical and necessary outgrowth of a situation in which too many employees are placed in a department which does not have adequate funds to support their positions. In this case, complainant has failed to show that employee rights would be seriously infringed if the Commission followed the deferral policy as set forth in Spielberg, supra.

It appears that complainant is attempting to create "minimum manning" levels for library departments through this unfair labor practice proceeding. The collective bargaining agreement does not establish staffing levels and Arbitrator Peterson refused to impose staffing requirements. The Commission cannot re-write the collective bargaining agreement. Examination of the record reveals that respondent acted in accord with an arbitration award and did not act with discriminatory or retaliatory intent. Further litigation of the issues raised in the arbitration proceeding is unnecessary.

FINDINGS OF FACT

1. The City of Seattle is a municipal corporation located in King County and is a "public employer" within the meaning of RCW 41.56.030(1). The City of Seattle Library is a department of the City of Seattle operated by an independent policy making body, the Seattle Library Board. The Library Board has authority to allocate budgeted funds and move employment between library departments and divisions without Seattle City Council approval.
2. Washington State Council of County and City Employees, Local 2083, AFSCME, AFL-CIO, is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union is the representative of a bargaining unit of employees of the Seattle City Library which, among others, includes the classification of Librarian II. Pat Davis has served as president of Local 2083 and has also participated in collective bargaining negotiations on behalf of the union.
3. In March, 1979, the employer conducted interviews for a vacant position in the Central Library's Literature Department. A non-bargaining unit candidate, Ray Serebrin, was hired, and the union filed a grievance challenging the interviewing process. The grievance was settled when bargaining unit employees were re-interviewed for a second position in the department. Jan Van Wyk, a bargaining unit member, received the second position. Serebrin was unaffected by the re-interviewing process.
4. In December, 1979, the employer determined that the Literature Department was 40 hours per week over budget and that an employee transfer was necessary to correct the budget difficulty. Pat Davis was transferred to the Media and Program Services Department. The employer informed Davis that the transfer was necessary because of budget problems, and also expressed reluctance to interfere with the prior grievance settlement by transferring Van Wyk.
5. On January 7, 1980, the union filed a grievance challenging Davis' transfer. An arbitration hearing was conducted before Richard B. Peterson on May 20, 1980. Arbitrator Peterson found a violation of the collective bargaining agreement, but ruled that the transfer was not motivated by discriminatory or retaliatory intent.
6. A clarification of the arbitration award was issued on January 5, 1981 at the request of both parties. In the clarification, Arbitrator Peterson ruled that the employer was not compelled to establish specific staffing levels in the Literature Department, and could transfer another employee to make room for Davis in the department. As a result of the clarification, Serebrin was transferred from the Literature Department to the Media and Program Services Department.

7. The arbitration proceedings were fair and regular in their conduct, and the parties agreed to be bound by the terms of the arbitration award. The issues set forth in the complaint of unfair labor practices have been addressed in the arbitration award and the clarification of award issued by Arbitrator Richard B. Peterson.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The arbitration award and subsequent clarification of the award are not repugnant to RCW 41.56. The Examiner defers to Arbitrator Peterson's awards in this case.

ORDER

The complaint charging unfair labor practices is hereby dismissed.

DATED at Olympia, Washington this 13th day of July, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner