STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SERVICE AND INDUSTRIAL EMPLOYEES, LOCAL 1239,	)	CASE NO. 6517-U-86-1283
Complainant,	)	DECISION 2935 - PECB
vs.	)	
CITY OF SEATTLE,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Noel McMurtray, Attorney at Law, appeared on behalf of the complainant.

Douglas N. Jewett, City Attorney, by Marilyn Sherron, Assistant City Attorney, appeared on behalf of the respondent.

On August 12, 1986, Public Service and Industrial Employees, Local 1239, filed a complaint with the Public Employment Relations Commission wherein it alleged that the City of Seattle had committed unfair labor practices within the meaning of RCW 41.56.140(1) and (4). Rex L. Lacy was designated as Examiner to make and issue findings of fact, conclusions of law and order. The city filed a post-hearing brief. The union did not file a post-hearing brief.

BACKGROUND

Among other municipal services the City of Seattle maintains and operates a Parks and Recreation Department. Among the

facilities maintained by the Parks and Recreation Department is the Jackson Park Public Golf Course. City employees are assigned to perform the day-to-day upkeep of the golf course, including mowing the grass, watering and maintaining the fairways, greens and tee areas. The city has leased the clubhouse facility to a private concessionaire, who collects an $8.00 greens fee from patrons of the golf course for each full round of golf they play. The concessionaire rebates a specified percentage of the greens fees to the city. The concessionaire has no authority over the city employees who maintain the facility.

Public Service and Industrial Employees, Local 1239,[1] is the exclusive bargaining representative of a bargaining unit of City of Seattle employees which includes the Parks and Recreation Department employees assigned to the Jackson Park Public Golf Course. The precise duration of that bargaining relationship date is not established in this record.[2]

The parties to this proceeding were parties to a collective bargaining agreement between the City of Seattle and a Joint Crafts Council for the period from September 1, 1983 to August 31, 1986. That agreement delineated the work jurisdiction of the unions within the Joint Crafts Council, and set forth the wages, hours, and working conditions of the employees covered, including those assigned to the Jackson Park Golf Course.

The City of Seattle has used volunteers for many years to assist in maintaining it's public parks. One of the most

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1 The union is affiliated with the Laborer's International Union of North America, AFL-CIO.

2 The decision in City of Seattle, Decision 2923 (PECB, May 11, 1988) suggests that the relationship predates 1973.

widely practiced volunteer programs is the "Adopt-a-Park" program, under which volunteers notify the city which park they wish to adopt, what project they wish to perform, and when they are available to work. Upon acceptance of a project proposal by the park department, the volunteers are permitted to do the proposed work. Volunteers in the "Adopt-a-Park" program receive no pay from the City of Seattle for their efforts.

Members of the public who use the Jackson Park Public Golf Course have formed two user groups. One is identified in this record as the Olympic Hills Mens Club. The other is referred to in this record only as the "ladies club". The clubs proposed in 1986 to re-seed some barren areas, to pick up debris, and to fill in some potholes and ruts at the Jackson Park Public Golf Course. Additionally, a member of the ladies club offered to plant some flowers around the golf course clubhouse, to enhance the appearance of the area. The parks management accepted the offer.

About July 9, 1986, Local 1239 became aware that the City of Seattle was planning to allow members of the two golf course user groups to volunteer to perform some low priority cleanup, repair, and beautification projects at the Jackson Park Public Golf Course. Upon becoming aware of the proposed volunteer projects at Jackson Park, Wes LeMay, who was then Secretary-Treasurer of Local 1239, notified the employer of the union's desire to negotiate with the employer concerning the work the volunteers were to perform.

Two representatives of the department, Jan Craft and Kerry Laskow, met with LeMay on the afternoon of Friday, July 11, 1986, to discuss the issue. LeMay contended that the work to be performed by the volunteers was bargaining unit work, and that the work should not be done until an agreement between the

parties was worked out. Craft and Laskow informed LeMay that it was too late to delay work scheduled to commence on the next Monday morning. Further, they stated that the Jackson Park project was within the employer's long-standing practice of using volunteers for maintenance and beautification projects of the type planned at Jackson Park. Craft and Laskow informed LeMay that the employer would not be compensating the volunteers for their efforts on July 14, 1986.

Between about 6:00 a.m. and 8:00 a.m. on July 14, 1986, about 50 volunteers performed maintenance and beautification work at the golf course before the facility was open to the public. Thereafter, the concessionaire at the golf course provided each of the volunteers a free round of golf. The concessionaire, in accordance with it's lease agreement, compensated the city for the complimentary rounds of golf.

POSITIONS OF THE PARTIES

The union contends that the City of Seattle has unilaterally changed conditions of employment by permitting volunteers to perform bargaining unit work, that the volunteers should be compensated by the city for the work performed on July 14, 1987, and, further, that regular golf course employees should be compensated for the wages they lost due to the city's actions.

The employer responds that it has not changed the conditions of employment for the affected employees, that the work was of such low priority that it would not have been done by the city's regular workforce at the golf course, that the employer has, for many years, accepted the services of volunteers to accomplish projects like the one at Jackson Park. The employer

points out that it was the concessionaire, rather than the City of Seattle, that provided the volunteers with complimentary use of the golf course in response to their efforts.

DISCUSSION

RCW 41.56.140 defines unfair labor practices for public employers as follows:

> **RCW 41.56.140 Unfair labor practices for public employer enumerated.** It shall be an unfair labor practice for a public employer:
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> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this section.
>
> (2) To control, dominate or interfere with a bargaining representative.
>
> (3) To discriminate against a public employee who has filed an unfair labor practice.
>
> (4) To refuse of engage in collective bargaining.

Collective bargaining imposes an obligation upon an employer to refrain from making any changes in the wages, hours or working conditions of its organized employees, without first giving notice to the exclusive bargaining representative of the employees and providing that organization with the opportunity to bargain the subject. See, City of Bremerton, Decision 2733-A (PECB, 1987), where the Commission recently affirmed an Examiner's finding of an unfair labor practice violation (and an extraordinary remedy) in a case of this type. The federal and state precedent on the subject of "unilateral changes" was thoroughly reviewed in the decisions of this Examiner in City of Kelso, Decision 2633 (PECB, January 15, 1988) and Municipality of Metropolitan Seattle (METRO), Decision 2845 (PECB, January 19, 1988).

The prohibition against unilateral changes applies only to mandatory subjects of bargaining. See, Federal Way School District, Decision 232 (EDUC, 1977); Allied Chemical and Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass, 404 U.S. 157 (1971); and other cases reviewed in City of Kelso, supra, and METRO, supra. The Commission, the NLRB and the courts have found matters to be mandatory subjects of bargaining if they set a term or condition of employment or regulate the relationship between employer and employee. If the actions concern a managerial decision of the sort that is at the core of entrepreneurial control, or decisions involving fundamental changes in the scope, nature or direction of the enterprise, rather than labor cost, then there is no duty to bargain. First National Maintenance Corp., 452 U.S. 666 (1981); Otis Elevator Company, 269 NLRB 162 (1984). City of Yakima, Decision 2380 (PECB, 1986).

While decisions to contract out bargaining unit work[3] and decisions to transfer bargaining unit work to employees outside of the bargaining unit[4] are mandatory subjects for collective bargaining, the project at Jackson Park does not fall into that category. The employer did not initiate the project. The evidence clearly indicates that the user groups submitted a proposal to perform certain maintenance and beautification work on a volunteer basis. The work to be performed by the members of the user groups was of such low priority that it would not have been performed by the employees assigned to maintain the golf course. The City of Seattle accepted the user groups' offered gift of their time, and gave them permission to proceed with the project. The members of the user groups were

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3 City of Kennewick, Decision 482-B (PECB, 1979).

4 South Kitsap School District, Decision 472 (PECB, 1978).

never employees of the City of Seattle, and they received no compensation from the city for the clean up and maintenance work they performed on July 14, 1986. Neither did the City of Seattle compensate the concessionaire for the work performed by the members of the user groups. The free round of golf they received was simply due to the generosity of the concessionaire, who paid the city what it was due for their use of the golf course. The Examiner concludes that the City of Seattle did not have a duty to bargain with the union concerning its acceptance of volunteer services, and that the employer has not unilaterally changed any condition of employment of employees represented by Local 1239.

FINDINGS OF FACT

1. The City of Seattle is a municipal corporation within the meaning of RCW 41.56.020 and a "public employer" within the meaning of RCW 41.56.030(1).

2. Public Service and Industrial Employees, Local 1239, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative certain employees of the City of Seattle, including the laborers who maintain the public golf course at Jackson Park.

3. The parties were signatory to the collective bargaining agreement between the City of Seattle and a Joint Crafts Council which was in effect from September 1, 1983 to August 31, 1986.

4. On July 14, 1986, members of users groups performed some maintenance and beautification work at the Jackson Park

Public Golf Course, consisting of filling in holes, re-seeding bare spots in the fairways, and picking up debris on the golf course grounds. Additionally, a member of the user groups planted flowers obtained at her own expense around the golf course clubhouse. All such services were provided on a volunteer basis, without compensation from the City of Seattle.

5. Upon the completion of the maintenance and beautification projects described in paragraph 4 of these Findings of Fact, the concessionaire of the golf course complimented the volunteers a free round of golf. The concessionaire paid the fees for the complimentary rounds of golf to the City of Seattle under the contract between the concessionaire and the City of Seattle.

6. The City of Seattle did not transfer any bargaining unit work to its own employees outside of the bargaining unit represented by Local 1239.

7. The City of Seattle did not transfer any bargaining unit work to the employees of any contractor performing services for the City of Seattle.

8. None of the employees represented by Local 1239 suffered any reduction in wages, any reduction in hours of work, or any denial of overtime opportunities because of the work performed by the volunteers. The projects performed by the volunteers were low priority items not scheduled to be done by the regular staff.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

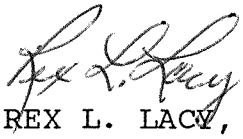
2. The City of Seattle has not unilaterally changed the wages, hours, or conditions of employment of any employees in the bargaining unit represented by Local 1239 by allowing volunteers to perform low priority maintenance and beautification projects at Jackson Park Public Golf Course, and has not violated RCW 41.56.140(1) and (4).

ORDER

The complaint charging unfair labor practices filed in the above-entitled matter is hereby dismissed.

DATED at Olympia, Washington, this 23rd day of May, 1988.

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.