STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,	)	CASE 7526-U-88-1576
Complainant,	)	DECISION 3218-A - PECB
vs.	)	
MUNICIPALITY OF METROPOLITAN SEATTLE (METRO),	)	DECISION OF COMMISSION
Respondent.	)	

Richard D. Eadie, Attorney at Law, appeared on behalf of complainant.

Preston, Thorgrimson, Ellis & Holman, by J. Markham Marshall, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a timely petition of International Federation of Professional and Technical Engineers, Local 17, for review of a decision issued by Examiner William A. Lang.

Local 17 filed a complaint charging unfair labor practices with the Public Employment Relations Commission on August 15, 1988, alleging that the Municipality of Metropolitan Seattle (METRO) had violated RCW 41.56.140(1), (2) and (4), by conducting a meeting with a group of supervisors and non-supervisory employees falling within Local 17's jurisdiction, to discuss METRO's position regarding the right of those employees to be represented by Local 17. Examiner Lang held a hearing in the matter and dismissed the complaint on the merits.

BACKGROUND

In April, 1984, the City of Seattle and METRO entered into an intergovernmental agreement to transfer a "commuter pool" operation from the City of Seattle to METRO. The transfer agreement stated, in relevant part:

> METRO shall succeed to the City's obligations under its collective bargaining agreement with the International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, (Exhibit "B") as to the represented employees transferred.
>
> METRO will take the place of the City in any pending employee grievance (represented and non-represented) and any labor arbitration proceeding involving transferred employees.

METRO, Decision 2358-A (PECB, 1986).

Since the transfer, METRO has declined to recognize Local 17 as the exclusive bargaining representative for any of the commuter pool employees. Instead, it filed a unit clarification petition with the Commission. Local 17 countered with an unfair labor practice complaint filed with the Commission, and brought a civil suit against METRO to enforce the intergovernmental agreement.

In the unit clarification case, the Executive Director and the Commission ruled that Local 17 was entitled to recognition as the exclusive bargaining representative for a unit of the transferred commuter pool clerical employees. Id. That ruling was affirmed by the Superior Court for King County in November, 1987. On the same day, the Superior Court for King County also ruled in favor of Local 17 in its civil action against METRO, holding that METRO had acted in bad faith. The Court ordered METRO to recognize Local 17 as the exclusive bargaining representative of the commuter pool employees, and ordered METRO to pay Local 17's attorneys fees in that litigation. METRO appealed in both cases, but the Court of

Appeals subsequently affirmed the decision of the Commission as well as the decision of the Superior Court on Local 17's civil suit, ending those proceedings. Public Employment Relations Commission et al. v. Municipality of Metropolitan Seattle, (Division I, October 4, 1989) (unpublished opinion).

In July, 1988, the Commission found that METRO had violated RCW 41.56.140(4) and (1) by refusing to recognize and bargain with Local 17. Based on a conclusion that METRO had asserted frivolous defenses, the Commission ordered extraordinary remedies that included attorneys fees to the union and interest arbitration in the event that the parties could not agree upon the terms of a collective bargaining agreement. METRO, Decision 2845-A (PECB, 1988). A representation case and another unit clarification petition filed by METRO to challenge Local 17's status as exclusive bargaining representative have been dismissed. METRO, Decision 2985 (PECB, 1988). METRO petitioned for judicial review in the unfair labor practice case, and the Commission's decision was affirmed by the Superior Court for King County in February, 1990. METRO has petitioned for Supreme Court review.

With regard to the present dispute, the following "Agreed Facts" have been stipulated to:

> 1. On April 19, 1988, Ms. Bonnie McBryan, Acting Manager of Metro's Sales and Customer Services Division, directed a memo to managers of Metro's Public Transportation Development Department announcing that on April 21, 1988, Metro's Personnel Manager Gene Matt would "meet with interested staff to discuss Metro/ Local 17 issues." (Exhibit 1) The meeting was to respond to questions that had arisen among Metro employees as a result of an article published by the Seattle Post-Intelligencer that focused on litigation between Metro and Local 17 relating to the transfer of the City of Seattle's Commuter Pool to Metro (Exhibit 2).

2. At the meeting on April 21, 1988, the following Metro employees were present:

    1. Catelin Williams, Market Development Planner
    2. Becky Davis, Senior Secretary
    3. Sharron Shinbo, Supervisor, Sales and Promotion Section
    4. Lois Watt, Pass Sales Program Coordinator
    5. Dianna Sumabat, Pass Sales Coordinator
    6. Cathy Cole, Commuter Service Representative
    7. Victor Obeso, Commuter Service Representative
    8. Heidi Stamm, Special Promotions Coordinator
    9. Mary Peterson, Supervisor, Customer Services and Ridematch Section
    10. Kay Porter, Chief, Telephone Information
    11. Andrea Maillet, Ridematch Services and HERO Coordinator
    12. Mika Bucholtz, Ridematch Services and HERO Coordinator
    13. Gwen Mighell, Customer Assistant Representative
    14. Laurel Cruce, Customer Assistant Representative
    15. Bonnie McBryan, Supervisor, Customized Services Section (then-Acting Manager, Sales and Customer Services Division)
    16. Ann Haruki-Pinedo, Customized Services Coordinator
    17. Dawn Billingsley, Vanpool Accounting Specialist
    18. Karen Martin, Student Intern
    19. Filomena Brauner, Clerical Services Coordinator
    20. David Regnier, Supervisor, Employee and Labor Relations

    This list was not based on a sign-up sheet but was reconstructed by Ms. Bonnie Bryan and Ms. Andrea Maillet the day following the April 21, 1988 meeting.

3. Attendance by Metro employees at the meeting of April 21, 1988, was voluntary. The meeting was on Metro's premises during normal work hours. Local 17 does

not contend that anything said during the meeting constitutes an unfair labor practice.

4. Following the meeting, later on April 21, 1988, Mr. Michael T. Waske, Business Manager for Local 17, telephoned Metro Personnel Manager Matt. Waske told Matt he was aware that Matt had conducted the meeting earlier that day, and that Local 17 members had attended the meeting. Waske told Matt that he did not consider it appropriate for Metro to have had the meeting. Matt told Waske that the reason for the meeting was to respond to employee questions regarding the newspaper article published by the Post-Intelligencer. Waske told Matt that he wanted to have a reciprocal right to have a meeting and to post the announcement of the meeting in the same manner as Metro had posted the announcement of the April 21st meeting and to have no restrictions on what Waske could say at the meeting. Matt replied that he would have to discuss the matter with Metro's legal counsel.

5. Still later on April 21, 1988, Local 17's legal counsel Richard D. Eadie telephoned Metro's legal counsel J. Markham Marshall. Marshall was then unaware that the meeting had been held. Eadie told Marshall that Local 17 wanted equal time for a meeting with Metro employees. Marshall said he would have to find out information about the meeting and that he would respond to Eadie. Subsequently, on April 27, 1988, Marshall wrote a letter to Eadie about the subject. . . . Local 17 rejected the offer stated in Marshall's letter. On August 15, 1988 Local 17 filed the unfair practice complaint.

The newspaper article referred to in the first paragraph of the stipulation was published on April 6, 1988. That and the other documents referred to were stipulated in evidence. The parties rested without calling any witnesses.

POSITIONS OF THE PARTIES

The union requests review of paragraphs 4, 5 and 7 of the Examiner's findings of fact, paragraphs 2, 3 and 4 of the Examiner's conclusions of law and the Examiner's order dismissing the complaint. The union asserts that METRO's act of holding a meeting with employees to discuss its position on litigation with Local 17 should be deemed a per se violation of RCW 41.56.140.

METRO agrees with the Examiner's decision. It contends that an employer has "free speech" rights to address its employees so long as the communication is non-coercive and does not invite direct bargaining. METRO contends it acted within those limitations.

DISCUSSION

The Examiner's References to Pending Judicial Review

Paragraphs 4 and 5 of the Examiner's findings of fact state:

> 4. The Public Employment Relations Commission and the Superior Court for King County have issued decisions supporting the claim of Local 17 to be exclusive bargaining representative of the METRO employees referred to in paragraph 2 of these findings of fact. METRO has asserted its statutory right to pursue appeals on those matters.
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> 5. The Public Employment Relations Commission has found that METRO committed an unfair practice by refusing to bargain with Local 17, and that METRO asserted frivolous defenses warranting the imposition of extraordinary remedies. METRO has asserted its statutory right to petition for judicial review of the Commission decision in that matter.

The union takes issue with the last sentence in each of those findings of fact, not on the basis that the sentences are inaccurate, but because the union fears inclusion of the sentences could suggest that the decisions referred to are interlocutory and not binding. We find no such implication. The statements need not be stricken as superfluous, although the statement in paragraph 4 can now be amended slightly to reflect subsequent developments.

The Examiner's Deviation from the Stipulated Facts

Paragraph 7 of the Examiner's findings of fact states:

> 7. On April 21, 1988, Matt conducted a meeting of supervisors and interested employees for the purpose of discussing the newspaper article described in paragraph 6 of these findings of fact. The parties stipulated that nothing was said at the meeting that constituted an unfair labor practice.

The union takes issue with the last sentence, on the basis that it differs from the parties' stipulation. We agree with the union that there is a slight difference, and we revise paragraph 7 of the findings of fact to reflect the language of the actual stipulation. We do not, however, find that the change alters the outcome of the case.

The Union's "Per Se Violation" Theory

The union's objections to paragraphs 2, 3 and 4 of the Examiner's conclusions of law are based on the union's view that, regardless of what may have been said at the meeting METRO called, the meeting itself should be found a form of direct dealing in circumvention of the union. In light of the background of litigation between the parties, the union would have the meeting be con-

sidered, on its face, to be violative of the statute as an attempt to restrain, control, dominate or interfere with Local 17 and employees in exercise of their statutory rights.

We concur with the Examiner's conclusion that a per se violation should not be found, even in the context of METRO's prior behavior. In prior rulings by this Commission and the courts, METRO has been directed to bargain with Local 17 as the exclusive bargaining representative for the commuter pool employees. In light of those rulings, our analysis treats Local 17 as already being in the position of "exclusive bargaining representative". Even where a bargaining relationship exists, however, an employer does not lose all rights to address its employees without the presence of the exclusive bargaining representative.

No part of RCW 41.56.140 supports a per se approach. The "interference" prohibitions of RCW 41.56.140(1) and (2) circumscribe an employer's right to address its employees only insofar as they contain threats of reprisal or force or promises of benefit. The "refusal to bargain" prohibition of RCW 41.56.140(4) only enforces the concept of "exclusive" representation, whereby employer may not bargain directly or indirectly with employees regarding wages, hours or working conditions. City of Yakima, Decision 1124-A (PECB, 1981).

Numerous decisions of the Commission have addressed the issue of direct contact between an employer and its employees without the presence or knowledge of the exclusive bargaining representative. None of those precedents suggest that the fact of a meeting being held is, per se, violative of the statute. To the contrary, the cases turn on the purpose of the meeting, whether the meeting was mandatory in nature, whether the meeting related to a mandatory subject of collective bargaining, and/or whether the meeting was coercive in nature, involving threats of reprisal or force or promises of benefit. See, e.g., Centralia School District, Deci-

sion 2757 (PECB, 1987); Lyle School District, Decision 2736-A (PECB, 1987); City of Raymond, Decision 2475 (PECB, 1986); METRO, Decision 2197 (PECB, 1985); Seattle-King County Health Department, Decision 1458 (PECB, 1982); and Royal City School District, Decision 1419 (PECB, 1982).

In the present case, METRO called a meeting at which attendance was voluntary. The meeting was triggered by employee questions generated by a newspaper article that focused on the litigation regarding METRO's obligation to recognize and bargain with Local 17. There is no evidence that anything said at the meeting amounted to a threat of reprisal or force or a promise of benefit. Nor is there any evidence that the subject of wages, hours or working conditions was mentioned.

This Commission has previously held that a "circumvention" violation does not arise under RCW 41.56.140(4) unless the subject matter of the direct communication is a mandatory subject of collective bargaining at the time of the dialogue between the employer and employees. Lyle, supra; City of Wenatchee, Decision 2216 (PECB, 1985). In the present case, the Examiner correctly noted that there is no allegation, let alone evidence, that METRO was or is bargaining with employees involved in Local 17's bargaining unit. To the contrary, the history of antecedent litigation all relates to METRO's refusal to engage in any bargaining for a separate unit of "commuter pool" employees.

The union argues that the meeting must necessarily have been intended to justify METRO's conduct in refusing to recognize Local 17. That is not an issue upon which the employees have any impact, however. The subject of METRO's bargaining obligation was and remains before the courts; it was not for the members of the bargaining unit to decide. In that sense, the parties are not in the posture of a pre-election campaign, where captive audience speeches by an employer could affect a subsequent vote by bargain-

ing unit members as to their choice of an exclusive bargaining representative.

Everything in the record suggests that the meeting at issue was strictly informational and non-coercive. METRO's subsequent offer to allow the union to address the same employees evidenced a good faith attempt to address the union's concern,[1] regardless of whether a legal right to "equal time" existed. The union takes issue with the sufficiency of that offer, but its attempt to seek access to far more than the affected bargaining unit members shows overreaching on the union's part. We decline, therefore, to find that METRO's holding of a voluntary meeting to explain its position in the pending litigation was a per se violation of RCW 41.56.140.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact issued by Examiner William A. Lang are affirmed and adopted as the findings of fact of the Public Employment Relations Commission, except as follows:

   a. Paragraph 4 is amended to read:

      4. The Public Employment Relations Commission and the Superior Court for King County have issued decisions supporting the claim of Local 17 to

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[1] The offer of a one hour meeting on METRO's premises, at which a Local 17 representative could discuss the issues discussed at METRO's April 21, 1988 meeting, was made in a letter from METRO's counsel to the union. A copy was attached to the statement of "Agreed Facts". METRO was willing to send the notice to the same employees who had attended the April 21 meeting. METRO emphasized that attendance at the meeting would be voluntary.

be exclusive bargaining representative of the METRO employees referred to in paragraph 2 of these findings of fact. METRO asserted its statutory right to pursue appeals on those matters.

b. Paragraph 7 is amended to read:

7. On April 21, 1988, Matt conducted a meeting of supervisors and interested employees for the purpose of discussing the newspaper article described in paragraph 6 of these findings of fact. Local 17 does not contend that anything said during the meeting constitutes an unfair labor practice.

2. The conclusions of law and order of dismissal issued by Examiner William A. Lang are affirmed and adopted as the conclusions of law and order of the Commission.

Issued at Olympia, Washington, the 11th day of April, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Janet L. Gaunt

JANET L. GAUNT, Chairperson

Mark C. Endresen

MARK C. ENDRESEN, Commissioner

Joseph F. Quinn

JOSEPH F. QUINN, Commissioner