STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 763,	)	
Complainant,	)	CASE 19391-U-05-4923
vs.	)	DECISION 9452-A - PECB
CITY OF MUKILTEO,	)	DECISION OF COMMISSION
Respondent.	)	

Reid, Peterson, McCarthy and Ballew, by *Michael R. McCarthy*, Attorney at Law, for the union.

Ogden Murphy Wallace, by *Greg A. Rubstello*, Attorney at Law, for the employer.

This case comes before the Commission on a timely appeal filed by the International Brotherhood of Teamsters, Local 763 (union) seeking review and reversal of certain Findings of Fact, Conclusions of Law, and the Order of Dismissal issued by Examiner J. Martin Smith.[1] The City of Mukilteo (employer) supports the Examiner's decision.

ISSUE PRESENTED

Did the record support Examiner's conclusion that the employer did not commit an unfair labor practice when it continued to make contributions towards employee medical premiums at the same amount it did in 2004?

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[1] *City of Mukilteo*, Decision 9452 (PECB, 2006).

For the reasons set forth below, we affirm the Examiner's Findings and Conclusions that the employer did not commit an unfair labor practice when it continued to pay employee health benefits at the 2004 level following the expiration of the parties' collective bargaining agreement. The contractual language sets the status quo and, based upon this record, the employer maintained that status quo. The Examiner properly dismissed the union's complaint.

ISSUE 1 - Did the Employer Alter the Status Quo?

The facts of this case are straight forward. The parties' 2002-2004 collective bargaining agreement contained a provision for employee health benefits. On November 29, 2004, a little over one month prior to the expiration of the collective bargaining agreement, City Manager Richard Leahy informed the union that the employer would freeze the employer's contribution to employee health benefits at the 2004 level. The union sent a letter to the employer stating that the union disagreed that the employer 2004 contribution to health benefits set the status quo, and filed a grievance and demanded bargaining over the issue.[2] In late December, the employer started deducting additional money from employee paychecks to cover the increase in health benefits between the 2004 level and 2005 level.[3] The union then filed this complaint.

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[2] We note that an arbitrator's decision about the interpretation of a collective bargaining provision is not binding on this Commission.

[3] The record establishes that the employer deducted the employees' share of health benefits in advance, so the December 2004 deduction applied to the January 2005 benefits.

Applicable Legal Standard

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). "[P]ersonnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as the mandatory subjects of bargaining under *City of Richland*, Decision 2448-B (PECB, 1987), *remanded*, 113 Wn.2d 197 (1989); *Federal Way School District*, Decision 232-A (EDUC, 1977), *citing NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). An employer or union that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(1) and (4); 41.56.150(1) and (4).

This Commission has long held that medical benefits are mandatory subjects of bargaining. *See Snohomish County*, Decision 9834-B (PECB, 2008). Prior to any changes to mandatory subjects of bargaining, employers must give unions advance notice of the potential change, so as to provide unions time to request bargaining and, upon such requests, bargain in good faith to resolution or lawful impasse prior to implementing the change. The employees at issue in this case are uniformed employees eligible for interest arbitration under 41.56 RCW. Thus, the employer may not unilaterally implement a terms or condition of employment.[4]

The Status Quo Must be Maintained

Following the expiration of a collective bargaining agreement, an employer must maintain terms and conditions of employment that

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[4] Similarly, for non-interest arbitration eligible employees, an employer must maintain the existing terms and conditions of employment for one-year, but may implement after a lawful impasse in negotiations. RCW 41.56.123. *See Asotin County*, Decision 9549-A (PECB, 2007).

existed at the time the agreement expired during the subsequent negotiations for a new collective bargaining agreement. *See City of Seattle*, Decision 651 (PECB, 1979). An employer who alters a term or condition of employment during this period without first satisfying its bargaining obligation violates the statute.

The Examiner found the status quo to be the dollar amount the employer paid in 2004, basing this conclusion upon the language in the parties' collective bargaining agreement. The union claims that the Examiner erred when he concluded that the employer did not change the status quo for employee health benefits. Specifically, the union asserts that the Examiner failed to properly apply Commission and National Labor Relations Board (NLRB) precedent by setting the relevant status quo based upon a gross dollar amount. Thus, the union argues that the contractual language requires the employer to pay the full amount of health benefits, or at the very least, the rule contained in the expired agreement that called for the employer to pay ten percent over the previous years premium contribution should continue to be applied.

Percentage Based Contractual Provisions

Depending on how the parties craft the contractual language that applies to health benefits, the obligation of the employer and employees varies.[5] For example, in *City of Anacortes*, the parties' agreement stated that the employer agreed to pay one-hundred percent of health insurance premiums. Insurance premiums subse-

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[5] Contractual provisions like the ones described in this case should not be confused with the concept of dynamic status quo, which relates to actions taken to follow through with a change that was set in motion prior to a specific event, such as a representation petition. For a discussion regarding the dynamic status quo, see *Val Vue Sewer District*, Decision 8963, and *King County*, Decision 6063-A (PECB, 1998).

quently escalated, and when the existing agreement expired, the employer claimed it was only obligated to pay the actual dollar amount it had previously paid for premiums. The examiner found, and this Commission agreed, that the employer altered the status quo and committed an unfair labor practice by not continuing to pay one-hundred percent of the health insurance premiums as the contract mandated. Thus, in that case, because the employer's obligation was based upon a percentage and not a set amount, the actual amount the employer had to pay under the contract varied.

Similarly, in *Val Vue Sewer District*, the employees at issue had been previously unrepresented, and the employer paid one-hundred percent of the employees' health insurance premiums under existing terms similar to the language utilized in *City of Anacortes*. Following a representation election, the sewer district informed its employees that it would not pay one-hundred percent of the employees' health insurance premiums, but would instead pay the dollar amount the benefits had previously cost. Again , the examiner found that the employer committed an unfair labor practice because under the contract, the employer agreed to pay the full amount of the benefit, and not a set dollar amount. Thus, under that provision, payment by the employer of any amount less than one-hundred percent would constitute a change of the status quo. Thus, under *City of Anacortes* and *Val Vue Sewer District*, regardless of the cost of health insurance premiums, the employer was responsible for the full amounts until the parties reached a lawful impasse.[6]

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[6] We remind the parties that the Commission is the ultimate arbiter of the lawfulness of the parties' declaration of impasse and any subsequent decision to either implement the employer's last offer or, in the case of employees eligible for interest arbitration, certify the issue for an interest arbitration proceeding.

Other Similar Provisions

Certain contractual provisions may also call for the employees' contribution to health insurance premiums to be dynamic. In *City of Anacortes*, prior to the adoption of the language requiring the employer to pay one hundred percent of health insurance premiums, the employer was obligated to pay ninety percent of the premiums, while the employees were liable to pay the remaining ten percent. Under that type of contractual language, as long as the employer paid ninety percent and employees paid ten percent of the total cost of the health insurance premiums, no change to the status quo occurs, even if employees wind up paying significantly more out-of-pocket expenses for their share of the premium.

Fixed Health Insurance Provisions

In *Snohomish County*, Decision 9834-B, a different result was reached with respect to the employer's obligation. There, the contractual language capped the employer's health insurance contributions to a specific amount, $525 per month, and the employees were bound to cover any remaining premium costs. As a result of that language, the amount the employer paid towards health insurance premiums remained unchanged when the collective bargaining agreement expired, while the employees were required to pay the remaining amounts necessary for premiums beyond the employer's share until the parties reached a successor agreement.[7]

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[7] The NLRB follows similar precedent. *See, e.g., Brook Meade Health Care Acquirors, Inc.*, 330 NLRB 775 (2000), where the Board held that an employer may lawfully pass on an increase to health benefits to employees provided that the employer maintains the status quo, and noted that depending on the contractual language, the status quo could result in different burdens for employers and employees.

Application of Standard

In this case, while we agree with the union that the terms and conditions of employment outlined in the collective bargaining agreement mark the relevant status quo, we reject the union's claim that the Examiner misapplied established precedent on the subject or that the employer changed the status quo.

In reaching our conclusion we first examine the language of the collective bargaining agreement. In *City of Wenatchee*, Decision 8802-A (PECB, 2006), this Commission noted that the "Washington courts have adhered to an objective manifestation theory in construing words and acts of contractual parties, and impute to a person an intention corresponding to the reasonable meaning of the words and acts." *City of Wenatchee*, Decision 8802-A *citing Plumbing Shop, Inc. v. Pitts*, 67 Wn.2d 514 (1965). The Commission also noted that the courts have found the subjective intention of the parties irrelevant. *Everett v. Estate of Sumstad*, 95 Wn.2d 853 (1981). If the plain language used within the collective bargaining agreement demonstrates a meeting of the minds, there is no need to look further into the bargaining process to determine what was intended.

Here, we find that contract language provides that the employer's contribution is a fixed amount, while the employees were required to pay the remaining premium cost, no matter how much those costs escalated. It may be helpful to break down of Article 11.1 of the parties' collective bargaining agreement is necessary. Article 11.1 provides:

> Health Insurance - The employer shall pay each month on behalf of the regular full-time employee those amounts necessary to provide medical, dental and vision coverage for such employee and his/her eligible dependents. The [employer's] Health Insurance contribution increases

> shall be limited to a maximum increase of 11.0% above 2001 rates in 2002, 10% above 2002 rates in 2003 and 10% above 2003 rates in 2004. Any increases that exceed those amounts in 2002, 2003 and 2004 shall be paid by the employee via payroll deduction.

According to the collective bargaining agreement, the parties had initially agreed that for the first year of the contract, the employer would pay the entire amount necessary for employee health benefits. However, it also is clearly evident from the contractual language that after that first year, the employer's contribution level is a formula that would be capped at a certain amount, and bargaining unit employees would be required to cover any additional costs of health insurance premiums. It is also evident that the additional amount that the employer would have to contribute would depend upon how much rates actually increased. If the percentage increase was over the amount set forth by the collective bargaining agreement (ten percent between 2003 and 2004), employees would be responsible for the costs above the agreed upon employer's share.

The most important part of the formula at issue, however, is the fact that the contractual language ties the percentage based increase to a specific rate paid in a specific time period. The uniqueness of the formula used by the parties in this case is distinguishable from the formulae utilized by the parties in cases relied upon by the union, *City of Anacortes*, Decision 7004 (PECB, 2005), *aff'd*, Decision 7007-A (PECB, 2006) and *Val Vue Sewer District*, Decision 8963 (PECB, 2004), as well as NLRB precedent, and easily allow us to differentiate those cases from this one.

Conclusion

We find that the language at issue resembles the type of formula used in *Snohomish County* because the formula is tied to a specific

dollar amount to be paid by the employer during a specific year. Thus, under the pertinent language, only the employer's contribution became a fixed amount while the employees were obligated to pay all additional amounts. Because the employer did not change the status quo, the union's complaint must be dismissed.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order of Dismissal issued by Examiner J. Martin Smith are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of Dismissal of the Commission.

Issued at Olympia, Washington, the 23rd day of April, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner