STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, LOCAL 589, Complainant,	)	CASE NO. 4898-U-83-843
vs.	)	DECISION NO. 2068 - PECB
CITY OF POULSBO, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Davies, Roberts, Reid, Anderson and Wacker, by Herman L. Wacker, Attorney at Law, appeared on behalf of the complainant.

Ogden, Ogden and Murphy, by Douglas E. Albright, Attorney at Law, appeared on behalf of the respondent.

On October 10, 1983, the above-named complainant filed a complaint with the Public Employment Relations Commission wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. Rex L. Lacy was designated as Examiner to make and issue Findings of Fact, Conclusions of Law and Order. Hearing on the complaint was held on April 18, 1983 at Olympia, Washington. The parties filed post-hearing briefs.

BACKGROUND

The City of Poulsbo is located in Kitsap County, Washington. The city is governed by a city council. June Atack is mayor; Richard Goodpasture is clerk/treasurer. Richard Mitchusson is public works superintendent and chief negotiator.

Teamsters Local 589 was certified on May 11, 1978 as the exclusive bargaining representative for a bargaining unit of City of Poulsbo employees consisting of police officers, administrative employees and public works employees. Employees of the technical support department and the confidential secretary to the mayor are excluded from the bargaining unit. Doug Bush is business representative for Local 589, and Richard Lang, an employee of the city, served on the union's negotiating committee.

The parties have engaged in collective bargaining since the union was certified and have executed a series of collective bargaining agreements,

the latest expiring on December 31, 1982. The 1982 collective bargaining agreement contains language for Article VIII - HEALTH CARE which reads as follows:

> ARTICLE VIII - HEALTH CARE
>
> The Employer agrees to contribute 100% of the premium to cover employees with Teamsters Health and Welfare Plan #102; such medical plan shall also be made available to all full-time City employees, regardless of bargaining unit status.
>
> The Employer agrees to contribute 100% of the premium to cover employees with Teamsters Dental Plan 200 commencing January 1, 1980 and continue this plan through December 31, 1981. On January 1, 1982 the Employer agrees to contribute 100% of the premium to cover employees with Teamster Dental Plan 300 for the remainder of this Agreement; such dental plans shall also be made available to all full-time City employees, regardless of bargaining unit status.

In early November, 1982, Local 589 submitted proposed amendments to the expiring agreement, including a wage increase and benefits improvements. Some of the union's proposals were in specific contract language form; some were general in nature. The proposal for Article VIII -HEALTH CARE stated:

> ARTICLE VIII - Increase dental to plan R.C., cost of $28.00 per month. Vision Plan: Add this coverage for employees at cost of $6.00

The employer's initial response was for no increase in wages or fringe benefits.

Between November 19, 1982 and February 3, 1983 the parties engaged in at least six bargaining sessions. During the course of negotiations, the employer changed its no increase position. About December 22, 1982, it offered to provide the employees a choice of the improved dental plan or the vision plan. Finally on February 3, 1983, the employer offered to improve the dental plan to the RC plan, and to provide a vision plan. The union agreed to the employer's request for no increase in wages. The parties each took action purporting to ratify the agreement.

The employer prepared a draft of the 1983 agreement for signature. The proposed language for Article VIII - HEALTH CARE read as follows:

> ARTICLE VIII - HEALTH CARE
>
> The Employer agrees to contribute 100% of the premium to cover employees with Teamsters Health and Welfare Plan #102; such medical plan shall also be made available to all full-time City employees, regardless of bargaining unit status.

> The Employer agrees to pay $28.00 per month to cover employees with Teamsters Dental Plan RC; such dental plan shall also be made available to all fulltime (sic) employees, regardless of bargaining unit status.
>
> The employer agrees to pay $6.00 per month to cover employees with teamsters (sic) vision plan; such vision plan shall also be made available to all fulltime (sic) City employees regardless of bargaining unit status.

While proof-reading the employer's draft, Bush discovered two discrepancies. One involved pay rates for sergeants and other employees. The other discrepancy involved the proposed contractual language for Article VIII. Bush telephoned Mitchusson regarding the discrepancies, and was informed that the errors would be corrected. Based upon Mitchusson's representations that all the discrepancies would be corrected, Bush executed the agreement. The employer commenced paying for the improved insurance benefits.

In April, 1983, the premiums for dental plan RC increased from $28.00 to $43.00 per month. The premium cost for the vision plan increased from $6.00 to $8.19 per month. The employer paid the increased premiums for the dental and vision plans for April, 1983.

Starting with May, 1983, the employer reverted to paying only $28.00 for the dental insurance and $6.00 for the vision insurance, and it deducted the premium increase from employees' pay checks. Bush then met with Mitchusson and Goodpasture regarding the employer's decision to discontinue paying the premium increases on the dental and vision plans. During the course of the meeting the city's negotiators proposed a settlement to the union which called for the city to pay the premium increases in exchange for exclusion of the deputy clerk/treasurer from the bargaining unit. The union agreed to the city's proposal. The city council subsequently refused to agree to pay the premium increases. Thereafter, the union filed this unfair labor practice case.

POSITIONS OF THE PARTIES

The union contends that the employer has violated RCW 41.56.140(4) by refusing to bargain in good faith. It argues that the employer expressly agreed that fringe benefit provisions of the collective bargaining agreement would be funded completely by the employer, including increases in premiums necessary to maintain the level of benefits, and that the employer has refused to honor its agreement. It asks that the employer be ordered to execute a written agreement which accurately reflects the collective bargaining negotiations.

The employer contends that it has bargained in good faith pursuant to RCW 41.56.140(4); that it never intended to fund the dental and vision premium increases, and so informed the union during collective negotiations; and that the collective bargaining agreement executed by the parties on March 1, 1983 presents the agreement reached by the parties in collective negotiations.

DISCUSSION

The statutory responsibilities of parties engaging in collective bargaining are contained in RCW 41.56.030(4), which reads as follows:

> (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 repsect (sic) 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 that 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 41.56.030(4) is similar to Section 8(d) of the National Labor Relations Act. Both statutes require the parties to meet at reasonable times to confer and negotiate in good faith with respect to wages, hours, and working conditions. Additionally, both statutes require the parties to execute a written agreement that reflects the agreements reached through collective bargaining. Since 1941, the Supreme Court has regarded the refusal to sign a written agreement as a per se refusal to bargain. H. J. Heinz v. NLRB, 311 U.S. 514 (1941). The NLRB has consistently found an independent refusal to bargain violation of Section 8(d) of the National Labor Relations Act when either party has refused to execute a written agreement reflecting the final unconditional agreement upon the issues between the parties. Consolidation Coal Co., 253 NLRB 104 (1980); Western Truck Services, Inc., 252 NLRB 96 (1980); Maywood Do-Nut Co., 248 NLRB 80 (1980); NLRB v. General Brewing Company, 628 F.2d 1357 (C.A. 9, 1980); McKinzie Enterprise, Inc., d/b/a Cherokee United Sugar and Westpark United Sugar, 250 NLRB 14 (1980). The Public Employment Relations Commission has also decided that the failure to follow through in good faith with ratification procedures, and to sign a written memorandum of agreement reflecting terms previously agreed upon, is a per se refusal to bargain in good faith. Island County, Decision 857 (PECB, 1980). See, also: Olympic Memorial Hospital, District No. 2, Decision 1587 (PECB, 1983).

This dispute arises from the written agreement requirement of the statute. At issue is whether or not the parties ever reached a final unconditional agreement on the employer's contractual obligation to provide and maintain full coverage for the employees dental and vision insurance benefits. The parties agree that the employer is obligated to pay the full cost of medical insurance, including any and all premium increases. The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). The Commission commonly "defers" to contractual dispute resolution machinery in order to obtain arbitral interpretation of contracts involved in unfair labor practice proceedings under RCW 41.56.140(4). This is not, and never has been, a case ripe for deferral to arbitration or for contractual or judicial contract enforcement proceedings, since it is the terms and validity of the contract itself which are at issue.

Both parties cite the course of negotiations, including written proposals and oral conversations to support their respective positions on the premium increase for dental and vision benefits. The NLRB will consider the advancement of proposals made by parties as a factor when making determinations regarding good faith bargaining. Reismans Bros., Inc., 165 NLRB 390 (1967); Channel Master Corp., 162 NLRB 632 (1967); Andersons, 161 NLRB 358 (1966); Proctor & Gamble Mfg. Co., 160 NLRB 344 (1966). In the above-mentioned cases the NLRB based its decisions upon proposals wherein the subject matter of the parties' proposals and counterproposals were clearly defined and fully discussed. The Board has also stated:

> Interchange of ideas, communication of facts, peculiarly within the knowledge of either party, personal persuasion and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process.

Hanson-Whitney Machine Co., 8 NLRB 153 (1938).

In the case at hand, the union's initial written proposal for Article VIII - HEALTH CARE, made in generalized terms, requested that the previously existing dental insurance coverage be upgraded to the RC (reasonable and customary) plan at a premium cost of $28.00 per month. Local 589 also proposed that the employer provide a new vision plan, which cost $6.00 per month. The employer acknowledged receipt of the union's proposed amendments to the agreement, and responded to the proposal by taking a "no increase" position on wages and benefits. Thereafter, the employer made two written proposals which were identical to Article VIII of the expiring agreement, thus having the effect of rejecting the improved benefits.

The parties were aware that premium increases usually occurred in April. During the course of negotiations, the parties discussed the possibility of premium increases for all the insurance plans. Bush was able to secure estimates on medical insurance premium increases. He could not obtain any information on premium increases for the RC dental plan or the vision plan. The employer's negotiator mentioned that fringe benefit costs were becoming a financial problem, and that the employer was desirous of limiting the employer's contributions.

The parties eventually reached an agreement involving some compromise by both sides. The union accepted the employer's "no increase" wage position, while the employer acceded to union demands for improved benefits. Testimony indicates that the matter was settled informally, without the parties' final agreement being reduced to contract language. The respondent argues that the union's proposal for settlement of the dental and vision insurance issue was not provided to the employer in writing. That particular argument cuts both ways in this instance. The record also clearly establishes that the employer twice modified its offer without providing its proposed contract language for Article VIII -HEALTH CARE in writing. The parties each left the last bargaining session believing that its position on the dental and vision plans had been agreed upon by the other party.

On the surface the expression of the parties agreement may appear to be perfectly clear. However, because of subsequent facts, the expression of these parties' agreement may be reasonably interpreted in either of two ways. Thus, at the time the 1983 contract was formed there was a latent ambiguity. In this situation the following possibilities exist:

(1) Neither party was aware of the ambiguity at the time of contracting. In this situation, there is no contract unless both parties happened to intend the same meaning;

(2) Both parties were aware of the ambiguity at the time of contracting. In this situation, there is no contract unless both parties in fact intended the same meaning; or

(3) One party was aware of the ambiguity and the other party is not. Here, a contract will be enforced according to the intention of the party who was unaware of the ambiguity.

Historically, the employer had paid 100% of the cost of medical and dental insurance, including premium increases in April. The employer's two written proposals reflected exactly that. If, as the respondent asserts, the employer intended to change the practice (so that it would not fund future premium increases in dental and vision benefits), the burden was on the employer to establish the clarity of its oral proposals on the issue. East Columbia Irrigation District, Decision 1404-A (PECB, 1982). It did not do so. The union left the February 3, 1983 mediation session believing the employer had agreed to fully fund the RC plan and the vision plan, including any future premium increases. Mitchusson's previous comments regarding the employer's desires to cap its insurance premium did not clearly establish the employer's position that the employer was only agreeing to the $28.00 and

$6.00 per month amounts. Therefore, situation (1), above, applies. Neither party was aware of the ambiguity at the time of contract, and further, the parties had not reached a final unconditional mutual agreement on the issue. The facts indicate, however, that the analysis cannot end there.

Another factor in determining good faith bargaining is the authority of the parties collective bargaining representatives. The parties are under a duty to vest their negotiators with sufficient authority to carry on meaningful bargaining. NLRB v. Fitzgerald Mills, 133 NLRB 877 (1961) enforced 313 F.2d 260 (C.A. 2, 1963), cert. denied 375 U.S. 834 (1963). The series of events following the conclusion of the negotiations presents another problem. The employer presented the union with a draft of the successor agreement. Bush, while proof-reading the draft, discovered some errors in the salary schedule. He also, for the first time, saw the employer's proposed language for the dental and vision provision of Article VIII. Bush raised the issues with Mitchusson and was advised that the employer would pay all the dental and vision insurance premium costs. Reassured by Mitchusson's representations, Bush signed the agreement. While it may have been better practice to amend the questioned language to eliminate the ambiguity which Bush had detected, the examiner concludes that Bush reasonably understood Mitchusson's statements as an acceptance of the union's interpretation of the language. Mitchusson's representations and Bush's acceptance convert this situation to situation 3, above.

Consistent with the union's interpretation of the disputed language, the employer increased the benefits to employees following the April, 1983 premium increase. That action, in and of itself, reinforces the conclusion that Mitchusson left Bush with the true interpretation of the agreement reached by the parties. The employer then unilaterally cut the benefits. In doing so, it committed an unfair labor practice. See: City of Seattle, Decision 651 (PECB, 1979), where a similar sequence of unilateral premium increase and then unilateral cutback were found to violate the statute.

After receiving the employer's communication requiring the employees to pay the premium increases beginning with May, 1983, Bush and Lang, independently and jointly, had further discussions with Goodpasture and Mitchusson. Both employer representatives, possibly for the first time, indicated that the city council had approved the improved dental plan and the new vision plan contingent upon the cost being the amounts set forth in the union's initial proposal. Further conversations ensued, with no change in either of the parties' positions. In a meeting in May, 1983, Mitchusson and Goodpasture indicated to Bush and Lang that the employer might continue to pay the

premium increases if the deputy clerk/treasurer was excluded from the bargaining unit.[1/] The union, after consulting the affected employee, agreed. The employer's negotiators were rebuffed by the city council.

The examiner is convinced that the totality of the employer's representatives conduct violated the good faith provision of RCW 41.56.140. The failure to make early disclosure of the limited approval by the city council, the misrepresentations regarding the dental and vision plan premiums being paid by the employer, the unilateral change of benefits, the withdrawal of the change without bargaining and the making of proposals which management negotiators were unable to deliver, clearly violate the statute.

The statute requires the parties to execute a written agreement reflecting the parties final unconditional agreement upon the issues. The union is entitled here to an order requiring the employer to sign a contract which reflects the terms represented to Bush to induce his signature and actually implemented by the employer in April, 1983. The employer, citing Restaurant Employees vs. Rhodes, 90 Wn.2d 162 (1978), argues against reformation of the collective bargaining agreement. In Restaurant Employees a party to contract enforcement proceedings sought reformation of the agreement based upon misrepresentations made during the bargaining process. The case is distinguishable from Restaurant Employees on several grounds, the first of which is that this case arises through the administration of the statutory duty to bargain in good faith, rather than as an action under the contract itself. Further, the employer herein implemented its agent's misrepresentations, then withdrew its tacit assent the following month without offering to bargain the misrepresented contract language. In the case at hand, the situation goes beyond the mere disagreement as to the terms of a contract. The employer, by its agents, has tampered with the process of collective bargaining, thereby bringing itself within the scrutiny of the Public Employment Relations Commission under RCW 41.56.030(4), 41.56.140(4) and RCW 41.56.160.

1/ The structure of bargaining units is the sole jurisdiction of the Public Employment Relations Commission. Insisting upon changes in the bargaining unit, a permissive subject of bargaining in exchange for another benefit could be found to be an independent violation of RCW 41.56.140(4). See: Spokane School District, Decision 718 (EDUC, 1979). The union did not include this sequence of facts in its allegations and has not argued the issue separately. Accordingly, the examiner has refrained from finding an independent violation.

FINDINGS OF FACT

1. The City of Poulsbo, Washington, is a municipality of the state of Washington and is a public employer within the meaning of RCW 41.56.030(1).

2. International Brotherhood of Teamsters, Local 589, is a bargaining representative within the meaning of RCW 41.56.030(3). The union represents employees of the employer in an appropriate bargaining unit defined in the collective bargaining agreement as:

> "Bargaining unit" as used herein shall include regular fulltime (sic) employees in the City of Poulsbo as follows:
>
> a. Police Department employees below the rank of Chief, except that the sergeant shall be excluded at his own request and the police/municipal court clerk shall be included.
>
> b. Public Works Department employees below the position of Assistant Public Works Superintendent.
>
> c. Administrative Department employees below the position of City Clerk/Treasurer.
>
> All other employees shall be excluded including the Technical Support Group and the confidential secretary to the Mayor.

3. Teamsters, Local 589, and the City of Poulsbo, Washington, have been parties to a series of collective bargaining agreements, the latest of which expired December 31, 1982.

4. On November 8, 1982, Doug Bush, business representative for Teamsters, Local 589, notified the employer of the union's desire to negotiate amendments to certain provisions of the collective bargaining agreement expiring on December 31, 1982. The union's list of amendments were presented to the employer in generalized terms. Among the improvements proposed were improvement of the dental insurance coverage to the "RC" plan and addition of a vision benefit.

5. On November 15, 1982, Richard Goodpasture, clerk/treasurer, and a member of the employer's negotiating team, responded to Local 589's proposals. The employer proposed no increases in wages or benefits.

6. Bargaining sessions were held on November 19, 1982, December 13, 15, and 22, 1982, and February 3, 1983.

7. During the December 22, 1982 bargaining session, the employer offered to upgrade Teamsters Dental Plan 300 to the RC plan, or to provide a vision plan at the employees choice. No contract language was proposed.

8. During the bargaining session held on February 3, 1983, Richard Mitchusson, public works superintendent, informed Bush that the employer agreed to provide the RC dental plan and the vision plan. The union agreed to accept no wage increase for 1983. The parties orally reached a tentative agreement on that date, subject to ratification.

9. About February 22, 1983, the employer furnished the union with a draft for a collective bargaining agreement to be effective from January 1, 1983 to December 31, 1983. The proposed language for Article VIII - HEALTH CARE reads as follows:

> ARTICLE VIII - HEALTH CARE
>
> The Employer agrees to continue contributing 100% of the premium to cover employees with Teamsters Health and Welfare Plan #102; such medical plan shall also be made available to all full-time City employees, regardless of bargaining unit status.
>
> The Employer agrees to pay $28.00 per month to cover employees with Teamsters Dental Plan RC; such dental plan shall also be made available to all fulltime (sic) City employees; regardless of bargaining unit status.
>
> The employer (sic) agrees to pay $6.00 per month to cover employees with teamsters vision plan; such vision plan shall also be made available to all fulltime (sic) City employees regardless of bargaining unit status.

By tendering the draft to the union, the employer implied that the tentative agreement had been ratified by the city council, and did nothing to indicate there had been a limited ratification or partial rejection of the tenative agreement.

10. About March 1, 1983, Bush contacted Mitchusson about errors in the salary schedule and about the dental and vision language, which was different than that contained in the previous agreement. Mitchusson assured Bush that the employer intended to pay 100% of the cost for the two new plans. Based on Mitchusson's answers, Bush signed the agreement.

11. In April, 1983, the dental plan premiums were increased from $28.00 to $43.00 and the vision plan premiums were increased from $6.00 to $8.19. The employer paid the premium increases in April, 1983. Thereafter, the employer deducted the premium increase from the employee's salaries.

12. Bush and Lang thereafter met with Mitchusson and Goodpasture regarding the dental and vision plan premium increases. Mitchusson and Goodpasture then disclosed that the city council had not agreed to pay the premium increases. During the conversation, the employer's representatives made a proposal to pay the entire medical, dental and

vision premium costs in exchange for an unrelated concession by the union. The union agreed to the employer's proposal. The city council refused to ratify the proposal made by its negotiators.

CONCLUSIONS OF LAW

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

2. By making unclear oral proposals on the employer's intent regarding subsequent premium increases on the dental and vision insurance plans, by failing to fully disclose the terms of ratification by the city council; by inducing the union representative to sign an agreement upon a false assertion that premium increases would be paid by the city; by unilaterally implementing and then withdrawing increased benefits; and by failing to fully discuss and consciously explore the intent of the employer's final settlement offer with the union, the employer has violated Chapter 41.56 RCW.

3. By failing to provide its collective bargaining representatives with authority to implement their concessions and agreements made in collective negotiations, the employer has violated Chapter 41.56 RCW.

ORDER

Upon the basis of the above Findings of Fact, Conclusions of Law and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the City of Poulsbo, Washington, its elected officials, officers, and agents shall immediately:

1. Cease and desist from:

   a. Failing to bargain in good faith regarding funding and premium maintenance for medical, dental and vision insurance programs set forth in Article VIII - HEALTH CARE.

2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:

   a. Execute a written collective bargaining agreement for 1983 containing an Article VIII - HEALTH CARE to provide that the employer shall pay all premium costs for dental and vision insurance plans for 1983.

b. Reimburse all affected employees for the amount of improperly deducted dental and vision insurance premiums during 1983.

c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized agent the City of Poulsbo, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the employer to ensure that said notices are not removed, altered, defaced or covered by other materials.

d. Notify the Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 21st day of November, 1984.

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL NOT refuse to bargain in good faith with Teamsters, Local 589, by refusing to execute a collective bargaining agreement which reflects the actual final unconditional mutual agreement reached by the employer and the union in collective negotiations.

WE WILL reimburse our affected employees for improperly deducted dental and vision insurance premiums during 1983.

CITY OF POULSBO

By: _____
Mayor

By: _____
Chairperson, City Council

DATED _____

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

This notice must remain posted for sixty (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 Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.