STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHELTON POLICE GUILD,	)	
	)	
Complainant,	)	CASE 15350-U-00-3877
	)	
vs.	)	DECISION 7602 - PECB
	)	
CITY OF SHELTON,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF
Respondent.	)	LAW AND ORDER
	)	
	)	

Cline & Associates, by *Karyl Elinski*, Attorney at Law, for the complainant.

Puget Sound Public Employees, by *Bette Meglemre*, Labor Relations Consultant, for the respondent.

On August 17, 2000, the Shelton Police Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Shelton (employer) violated RCW 41.56.140(1) and (4) by unilaterally changing medical insurance benefits. A preliminary ruling was issued on December 14, 2000, under WAC 391-45-110, finding a cause of action to exist on allegations summarized as follows:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative "interference" in violation of RCW 41.56.140(1)], by its unilateral change in medical insurance benefits concerning annual deductibles per dependent for doctor visits due to illness, without providing an opportunity for bargaining.

A hearing was held on July 31, 2001, before Examiner Sharrell Ables. The parties filed briefs.

On the basis of the evidence presented at the hearing, the Examiner holds that the employer did not unilaterally change the annual deductible for dependents. Thus, the employer did not fail or refuse to bargain in good faith or engage in unlawful interference. The complaint is dismissed.

BACKGROUND

Shelton is the only incorporated city in Mason County. It is governed by a three-member elected Board of Commissioners. The employer's organization is divided into several departments, with each department headed by a director who is responsible for day-to-day operations. One such department is the police department, whose commissioned employees meet the definition of "uniformed personnel" contained in RCW 41.56.030(7).

Currently, and at all relevant times, the employer's commissioned police personnel have been represented by the Shelton Police Guild.

The employer and union were parties to a collective bargaining agreement with a term from January 1, 1991, to December 31, 1993. Article 17 of that contract identified the medical, dental, vision, and life insurance benefit programs to be made available to the employees and their dependents and how they would be paid for, stating with regard to dependent coverage, "The City agrees to fund 100% of the premium including all deductibles for Kitsap Physicians Service. . . ." This provision was *expressly struck out* in the parties' subsequent contract, which was effective for the period

from January 1, 1994, through December 31, 1997.[1] The provision then remained unchanged in the parties' 1998-2000 agreement.

The employer provides health insurance through the Employee Benefit Trust of the Association of Washington Cities (trust). Carol Wilmes, a program coordinator for that trust, testified that the trust prepares and distributes an updated benefit plan booklet annually. Since at least 1994, that booklet has indicated that employees are required to pay an annual deductible.

Ms. Wilmes also testified as to the relationship between the insurance provider (Regence Blue Shield), Kitsap Physicians Service (KPS), and the City of Shelton. According to her testimony, Washington Physicians Service existed in 1994 as an umbrella organization comprised of 13 medical bureaus located throughout the state. Those medical bureaus were the claims processing arms of Washington Physicians Service. KPS was one of those agencies, processing claims for employees of public employers in Mason and Kitsap Counties. In early 1994, the trust discovered that KPS was having difficulty processing claims for City of Shelton employees. Apparently, the problem was so severe that KPS was required to a send a letter to all employees of the City of Shelton apologizing for the numerous claims processing errors.

In 2000, it was discovered that KPS had not been billing employees for the deductible negotiated in 1994. Regence Blue Shield then severed its relationship with KPS,[2] and began to bill the employees for the current-year deductibles in April 2000. Regence did not bill the employees for uncollected deductibles from previous years.

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[1] The signed contract was in bill-draft format.

[2] Why it took so long for Regence Blue Shield to sever its relationship with KPS was never made clear.

Sometime during the month of April 2000, Police Officer Greg Crivello, an employee in the bargaining unit represented by the union, contacted the Association of Washington Cities to inquire about whether there had been a change in medical benefits. Shawna Rice, a member services representative, responded to Officer Crivello by letter dated May 2, 2000, stating that the medical claims processing bureau had, for some unspecified period of time, erroneously processed claims for City of Shelton employees. She stated that, as a result of the processing errors, those employees received a "non-contracted extra benefit."

According to the testimony of former Police Chief Robert Holter, the issue of the deductibles first came to his attention in May of 2000, when Sergeant Virgil Pentz and Officer Crivello approached him. Until Chief Holter was approached, the employer did not know that the employees had not been billed for the deductible amounts for the previous five years. In the course of investigating their inquiries, Chief Holter discovered they were using the 1991-1993 contract as their authority for questioning the deductibles. Officer Crivello's testimony confirmed the Chief's statements, but he went on to state that, after researching the issue with the union, he told Chief Holter that "even though it was lined out, the status quo was that this was a past practice."

POSITIONS OF THE PARTIES

The union contends the employer, through its current claims processing bureau, has unilaterally implemented a new annual deductible for dependents without prior notice or negotiation with the union. The union also alleges that the employer changed the status quo by failing to pay the deductible. The union contends that the change in benefits deductibles involves a mandatory

subject of bargaining, that the status quo was the practice of imposing no deductibles, so that the employer was obligated to pay the deductibles. The union requests that the employer be ordered to reinstate the status quo ante, that the employer be ordered to bargain the issue, that the members of the bargaining unit be made whole for all costs incurred out of pocket for the deductible charges, and that the union be awarded attorney fees.

The employer defends that it did not violate any provision of the contract, that it did not unilaterally change a condition of work, and that the change which did occur resulted from an agreement reached by the parties in collective bargaining. The employer further asserts that serendipitous receipt of insurance benefits to which its employees were not entitled is not a condition of work which can be continued no matter how long the error creating the benefit existed before being discovered. It urges that the complaint should be dismissed.

DISCUSSION

These parties bargain collectively under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Their duty to bargain is defined in RCW 41.56.030(4), as follows:

> "Collective bargaining" means . . . to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, . . .

That duty is enforced through RCW 41.56.140(4) and unfair labor practice proceedings under RCW 41.56.160 and Chapter 391-45 WAC.

Where an unfair labor practice is alleged, the complainant has the burden of proof. WAC 391-45-270. The burden to establish affirmative defenses lies with the party asserting the defense.

The Standards to be Applied

Mandatory Subjects of Bargaining -

It is well settled that health care and life insurance benefits are alternative forms of wages, making them mandatory subjects of bargaining. *Spokane County*, Decision 2167 (PECB, 1985); *City of Kalama*, Decision 6737 (PECB, 1999); *Kitsap County*, Decision 6218 (PECB, 1998).

Unilateral Changes -

It is also well settled that an employer commits an unfair labor practice if it implements a change of existing wages, hours or working conditions on its represented employees, without having first exhausted its bargaining obligations under Chapter 41.56 RCW. The difficulty that an employer faces during a hiatus between contracts is addressed, in relevant part, in *City of Pasco*, Decision 4197 (PECB, 1992), as follows:

> The most difficult time for employers to change working conditions of its employees is the period where there has been no bargaining and no contract, . . . the employer comes under an obligation to maintain the status quo, and any change of practice that arguably is more onerous to employees could be seen as a threat or coercion, in violation of RCW 41.56.140(1). Even changes arguably favorable to the employees can be seen as unlawful enticements which interfere with employee rights under RCW 41.56.140(1). . . .

Thus, the status quo must be maintained regarding all mandatory subjects of bargaining, and employers are prohibited from unilaterally changing mandatory subjects of bargaining except where such changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3501-A (PECB, 1998), *aff'd* 117 Wn.2d 655 (1991); *Spokane County Fire District 8*, Decision 3661-A (PECB, 1991); *City of Tacoma*, Decision 4539-A (PECB, 1994).

A complainant alleging a "unilateral change" must establish the relevant status quo. *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1989). Unilateral change allegations have been rejected where historic practices, such as granting annual "cost of living" salary increases, have been taken for granted as the status quo ante, rather than an outcome of collective bargaining. *Cowlitz County*, Decision 7007 (PECB, 2000).

Application of Standards

The employer concedes that a change took place when bargaining unit employees were billed for their deductibles in 2000, but a "business necessity" defense applies here to a decision made by an independent third party. *Spokane County*, Decision 2167 (PECB, 1985) leaves open the possibility that no unfair labor practice will be found where a modification of employee benefits is outside the employer's control.[3] Similarly, the violation found in *City of*

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[3] In response to that employer's request, the insurance company developed alternatives that would save the employer money. The Examiner held that such a response was hardly the effort of an independent party, unexpectedly forcing the employer to make changes in existing benefits. Since that employer had initiated the changes in benefits, it logically owed the union there a duty to bargain on the proposed change.

Seattle, Decision 651 (PECB, 1979) was based on the attempt of that employer to un-do a unilateral change that it was not obligated to make in the first place. The situation before the Examiner in this case closely resembles *Cowlitz County, supra*, where an Examiner explained:

> The record fairly reflects that the collective bargaining agreement covering the corrections officers when they were represented by Local 58 placed control of the specifications of the medical, dental, vision, and life insurance plans in the hands of the trustees of the Oregon Teamster Employers Trust. The dental and medical plan specifically provided that the trustees reserved the right to change those plans. Although such control is not expressly pointed out in the descriptive summary of the vision program, it is inherent to the trust concept that the plan specifications were controlled by the trustees in the same manner as was specified for medical and dental benefits. *It is thus clear that Cowlitz County had no control over the plan provider or specifications*, or over when any benefits were made available to or eliminated for its corrections employees.

(emphasis added).

Similar to the situation in *Cowlitz County, supra*, the City of Shelton was not a guarantor of anything other than a fixed dollar amount per month for premiums.

The City of Shelton has neither violated any provision of the parties' contract, nor unilaterally changed the wages or working conditions of employees represented by the union. Indeed, the change in benefits deductibles conforms to and resulted from the explicit agreement reached by the employer and union during collective bargaining in 1994.

FINDINGS OF FACT

1. The City of Shelton is a public employer within the meaning of RCW 41.56.030(1). The employer maintains and staffs a police department.

2. The Shelton Police Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the certified exclusive bargaining representative of commissioned law enforcement personnel of the City of Shelton.

3. The employer and union were parties to a collective bargaining agreement which was in effect for the period from January 1, 1994, to December 31, 1997, in which they expressly deleted a provision of their previous contract that required the employer to pay benefit plan deductibles for employees' dependents.

4. The employees were made aware of the requirement to pay a deductible during and after 1994, by means of a benefit plan booklet which is updated annually.

5. Contrary to the explicit agreement reached by the employer and union in collective bargaining, bargaining unit employees were not charged for their benefit plan deductibles from 1994 to 2000, because of errors made by Kitsap Physicians Service, the agency responsible for processing claims for the insurance provider. The employer was unaware of those errors.

6. The employer and union were parties to a successor agreement which was in effect for the period from January 1, 1998, to December 31, 2000. That agreement did not reinstate a

requirement for the employer to pay the benefit plan deductibles.

7. During or about April of 2000, the insurance provider, Regence Blue Shield, discovered the error by Kitsap Physicians Service and began billing employees in the bargaining unit represented by the union for their benefit plan deductibles for the 2000 calendar year, in accordance with the agreement reached by the employer and union in 1994. No effort was made to recoup deductibles from employees for years prior to 2000.

8. In April 2000, an employee in the bargaining unit represented by the union inquired about whether there had been a change in medical benefits. By letter dated May 2, 2000, the bargaining unit employee was advised that City of Shelton employees had received a "non-contracted extra benefit" for some unspecified period of time, because of the error by the medical claims processing bureau.

9. The matter was brought to the attention of the employer in May of 2000, by two bargaining unit employees. Those inquiries provided the employer with its first notice that employees had not been billed for their benefit plan deductibles.

10. In the course of investigating those inquiries, the employer discovered that the employees making the inquiries were relying upon the 1991-1993 contract as their authority for questioning the deductibles.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. Shelton Police Guild has failed to sustain its burden of proof to demonstrate, by a preponderance of the evidence, that the City of Shelton has failed or refused to engage in collective bargaining under RCW 41.56.030(4), so that no violation of RCW 41.56.140(4) has been established in this case.

ORDER

The complaint charging unfair labor practices filed in this matter is DISMISSED on its merits.

Issued at Olympia, Washington, on the 25th day of January, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHARRELL ABLES, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.