STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

YAKIMA COUNTY, Complainant, vs. YAKIMA COUNTY LAW ENFORCEMENT OFFICERS' GUILD, Respondent.	)	CASE 21632-U-08-5519 DECISION 10204 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Menke Jackson Beyer Elofson Ehlis & Harper, LLP, by *Rocky L. Jackson,* for the complainant.

Cline & Associates, by *James M. Cline,* Attorney at Law, for the union.

On April 2, 2008, Yakima County (employer) filed an unfair labor practice complaint against the Yakima County Law Enforcement Officers Guild (guild) charging the guild with inducing the employer to commit an unfair labor practice and refusal to bargain by insisting to impasse on two bargaining proposals. On April 15, 2008, the Commission issued a preliminary ruling finding that a cause of action existed and Examiner Robin A. Romeo was designated to conduct further proceedings. The preliminary ruling also suspended the interest arbitration proceeding on the two issues. Following the Examiner's pre-hearing conference, the employer submitted a motion for summary judgment. The guild responded and both parties submitted reply briefs.

ISSUES

1. Should the motion for summary judgment be granted?

2. Did the guild commit an unfair labor practice when it submitted a proposal concerning union release time for guild training to interest arbitration?

3. Did the guild commit an unfair labor practice when it submitted a proposal concerning union release time for guild meetings to interest arbitration?

Based upon the submissions of the parties, the Examiner finds that there are no genuine issues of fact, that the proposals are both mandatory subjects of bargaining, and that the union did not commit an unfair labor practice by insisting on submitting the proposals to interest arbitration. Therefore, the complaint is DISMISSED in its entirety.

ISSUE - 1 MOTION FOR SUMMARY JUDGMENT

APPLICABLE LEGAL STANDARDS

Motions for summary judgment are processed under WAC 10-08-135, which states in pertinent part:

> A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A motion for summary judgment invites the Examiner to make final determinations without the benefit of a full evidentiary hearing and should only be done where it is plain that there are no material facts in question. *Snohomish County,* Decision 8733-C (PECB, 2006); *Port of Seattle,* Decision 7000 (PECB, 2000).

ANALYSIS

During negotiations for a successor collective bargaining agreement, the employer introduced a demand to alter Article 7.3A, Guild Meetings by changing the time off to leave without pay. The union response at issue here is to continue the current contract language but restrict the time off to training in labor issues concerning administration of the contract.

The employer also introduced a demand during negotiations to delete Article 7.3B, Guild Meetings, which grants employees leave to attend meetings concerning guild business. The union response at issue here is the demand to continue the current contract language but restrict the type of meetings to those concerning collective bargaining or enforcement of the agreement.

My examination of the record reveals that there is no genuine issue as to any material fact. The employer has argued that the union committed an unfair labor practice when it submitted two bargaining proposals for consideration in the interest arbitration proceedings. The union agrees that the facts are not in dispute. Therefore, the only remaining question is whether the employer is entitled to judgment as a matter of law and the employer's motion for summary judgment is granted.

ISSUES 2 AND 3 - UNFAIR LABOR PRACTICES

APPLICABLE LEGAL STANDARDS

Applicable provisions of Chapter 41.56 provide:

> RCW 41.56.150 Unfair Labor Practices for bargaining representative enumerated.
>
> It shall be an unfair labor practice for a bargaining representative:
>
> (2) To induce the employer to commit an unfair labor practice.
>
> . . . .
>
> (4) To refuse to engage in collective bargaining.

A union commits an unfair labor practice when it insists to impasse a subject which is deemed to be a non-mandatory subject of bargaining. *Klauder v. San Juan County Deputy Sheriff's Guild,* 107 Wn2d. 338 (1986); *Snohomish County* Decision 8733-C (PECB, 2006).

In determining whether a matter is a mandatory subject of bargaining, the Commission analyzes whether it directly impacts the wages, hours, or working conditions of bargaining unit employees. *Port of Seattle*, Decision 7271-B (PECB, 2003). When a subject does not directly affect wages, hours or working conditions, the Commission uses a balancing test, analyzing the employer's need for entrepreneurial judgment against the employees' interest in the terms and conditions of employment.

In general, leave to conduct union business is a mandatory subject of bargaining. *Axelson, Inc v. NLRB,* 599 F.2d 91 (5th Cir.,1979)(remunerating members of a collective bargaining unit for time spent in negotiation is a mandatory subject); *Media General Operations,* 181 LRRM 2632 (2007); *NLRB v. BASF Wyandotte Corp.*, 798 F.2d 849 (5th Cir, 1986) (Four hours of paid leave time a day to employees to conduct union business was similar to other types of leave such as sick leave, military leave and jury duty leave and was bargainable).

Numerous state courts and public employment boards have also held that the issue of union leave is a mandatory subject of bargaining. *Mich. State AFL-CIO v. Mich. Civil Serv. Comm,* 566 N.W. 2d 258 (reasoning that union leave provides a mutual benefit to the union and the employer by contributing to a peaceful and productive relationship between the state and its employees); *Pinto v. State Civil Service Comm.* 912 A. 2d 787. *See also In re: Petition of the Assoc. Of Mental Health Specialists,* WI.Emp.Rel.Com. Dec. No. 30787-A.

The question of whether union leave equates to direct financial assistance to a union in violation of 302(a)(1) of the LMRA has also been addressed by several circuit courts, and their findings are that it does not. *Caterpillar, Inc., v. International Union, United Auto., Aerospace and Agr. Implement Workers of America,* 26 F.3d. 121 (3rd Cir. 1997) cert dism 523 U.S. 1015 (1998)(payments

of salary and benefits to union grievance chairpersons did not violate provisions of LMRA); *International Association of Machinists and Aerospace Workers v. B.F. Goodrich,* 387 F.3d 1046 (9th Cir. 2004); (the court also examined section 8(a)(2) of the NLRA which provides an exception to the payment of an employee's wages while performing union duties, known as "no docking" provisions); *BASF Wyandotte Corp. v. Local 227, Intern. Chemical Workers Union, AFL-CIO,* 791 F.2d 1046 (2nd. Cir 1986). See also, 13 A.L.R. 3d 569, section 10; (payment for services by a union representative are not barred where a valid employer-employee relationship exists).

The Washington State Supreme Court has also issued a decision that including a provision in a collective bargaining agreement for union leave was not an unfair labor practice. *State v. Northshore School District,* 99 Wn.2d 232 (1983). The court cited NLRB cases which recognized a distinction between illegal support and desirable cooperation between a company with a union.

The Commission has narrowed the grounds for finding union leave an appropriate subject of bargaining. In 1977, using NLRB precedent, the Commission issued a declaratory ruling that a union proposal concerning union leave was legal in part and illegal in part. *Enumclaw Education Association,* Decision 222 (EDUC, 1977). The acceptable part of the demand was a request for union leave time for the union president for one class period a day to conduct union business where the association would recompense the school district for that portion of salary. The unacceptable portion was the request for twenty days of pay to employees to use for union business. The rationale for finding the later part illegal was that the use of the leave was unspecified and therefore, could be used for any other union business including organizing another employer.

In 1991, the Commission affirmed a decision of the Executive Director on a motion for summary judgment finding that a union insistence to impasse on a proposal for ninety-six hours of union leave was an unfair labor practice. *City of Pasco,* Decision 3582-

A, (PECB, 1991). The Executive Director carefully reviewed the history of the Wagner Act and the legislative history of the Act seeking to prevent "company unions." The Wagner Act prohibition was memorialized in section 302(a)(1) which disallows direct payments by an employer to a union. The Executive Director also relied on NLRB cases, the Developing Labor Law and distinguished the court's decision in *Northshore* by stating that the court there had examined existing contract language as opposed to a bargaining demand which would potentially bind the parties in the future. A similar analysis was enunciated in *Washington State Patrol,* Decision 2900, (PECB, 1988). The Commission affirmed the decisions in *Enumclaw* and *Pasco* in 1997, and in *City of Burlington,* Decision 5840 (PECB, 1997), finding that a proposal for paid union leave to attend labor conventions, conferences, or seminars was illegal as it would induce the employer to dominate or interfere with the bargaining representative by financially contributing to the union.

UNION RELEASE TIME FOR TRAINING

The current contract language in Article 7.3A, grants employees twelve days of leave time to attend state or national guild meetings or conferences. In bargaining, the employer introduced a proposal to alter the contract language to grant the leave but without pay. The guild responded by demanding an increase in the number of days of leave from twelve to twenty. Following an objection by the employer to the union's proposal that the language was not mandatory, the union added language to the demand to include the caveat that the meetings concern "training in labor issues concerning administration of the agreement." The employer objects to the demand arguing that it is permissive or illegal.

The union's proposal is a mandatory subject of bargaining. Its proposal is for employees to have time off with pay to conduct union business and it does not differ from requests for sick leave, vacation leave or military leave. Therefore, it directly impacts the wages, hours, or working conditions of bargaining unit employees.

The employer has argued that the demands are not negotiable based on Commission decisions in *Pasco* and *Burlington*. Those cases are distinguishable. In *Pasco*, the union's proposal had no parameters on the way the union leave could be used. In *Burlington*, the leave requested was for the purpose of attending unspecified union meetings and conferences. Here, the proposal was modified to state that the leave would be used for the specific purpose of training related to the administration of the collective bargaining agreement. There is no danger that the leave could be used for union purposes unrelated to the employer. Thus, the use of the leave is not unrestricted.

The employer's concern that the leave will be used for matters besides the relationship between the employer and the guild, such as organizing another employer, are speculative at best. The employer can monitor the use of the leave as it monitors other types of leave and the union members can monitor the use of the benefit under the collective bargaining agreement. The members can also weigh whether to submit the proposal to interest arbitration when measured against all bargaining demands. Such is the nature of bargaining which should be encouraged, not restricted.

The union's proposal would not induce the employer to commit an unfair labor practice. An unfair labor practice would exist if the employer were interfering or dominating the union by giving it direct financial assistance (thus in effect being a "company union"). Granting the union leave will not amount to a payment to the union but will grant employees time off from work with pay to conduct the business of representing other employees in the relationship between the employer and the guild. Therefore, the proposal is not illegal.

UNION RELEASE TIME FOR GUILD MEETINGS

The union's proposal sought to continue an existing contract provision, Article 7.3B, that granted leave to attend union meetings. The proposal to continue current contract language was

in response to the employer's demand to delete it. Following the employer's objection to the union's demand, the union resubmitted the proposal but deleted language in the provision that allowed leave to attend meetings "concerning union business" and added the caveat that the meetings had to be "concerning collective bargaining or enforcement of the agreement."

The employer argues that the proposal is permissive or illegal on the same grounds as the proposal concerning Article 7.3A. Again, I find that it is distinguishable from those cases for the same reasons enunciated above. The leave is specifically for meetings concerning enforcement of the agreement. Thus, the leave is directly related to the relationship between the employer and the guild.

CONCLUSION

The bargaining proposals as refined by the bargaining precess and eventually submitted to interest arbitration involve mandatory subjects of bargaining. The union did not commit an unfair labor practice by submitting them to interest arbitration. The bargaining proposals did not induce the employer to commit an unfair labor practice by financially assisting the union. Therefore, the complaint is dismissed.

FINDINGS OF FACT

1. Yakima County is a public employer within the meaning of RCW 41.56.030(1).

2. The Yakima Law Enforcement Officers Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of commissioned deputies and sergeants employed by Yakima County.

3. The employer and the guild are parties to a collective bargaining agreement that expired on December 31, 2006.

4. During negotiations for a successor collective bargaining agreement, the employer introduced a demand to alter Article 7.3A, Guild Meetings by changing the time off to leave without pay. The union response, which is at issue here, was to continue the current contract language but restrict the time off to training in labor issues concerning administration of the contract.

5. During negotiations for a successor collective bargaining agreement, the employer introduced a demand to delete Article 7.3B, Guild Meetings, which grants employees leave to attend meetings concerning guild business. The union response, which is at issue here, was to continue the current contract language but restrict the type of meetings to those concerning collective bargaining or enforcement of the agreement.

6. Following mediation between the parties, unresolved, open issues were certified for interest arbitration. The union has proposed that the two amended proposals be submitted to interest arbitration.

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. There is no genuine issue of fact under WAC 10-08-135 and the motion for summary judgment is granted. However, the employer is not entitled to judgment as a matter of law.

3. The union's bargaining proposals concerning employee leave to conduct union business are mandatory subjects of bargaining and the union's moving those proposals forward to interest arbitration is not an unfair labor practice. The complaint is dismissed.

ORDER

The complaint charging unfair labor practices filed in case 21632-U-08-5519 against the Yakima County Law Enforcement Guild is DISMISSED on the merits.

Issued at Olympia, Washington, on the 16th day of October, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBIN A. ROMEO, 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.