STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BREMERTON POLICE OFFICERS GUILD, Complainant,	CASE 15352-U-00-3879
vs.	DECISION 7739 - PECB
CITY OF BREMERTON, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline & Associates, by *Karyl Elinski*, Labor Consultant, for the union.

Perkins Coie, by *Charles N. Eberhardt*, Attorney at Law, for the employer.

On August 21, 2000, the Bremerton Police Officers Guild (BPOG) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Bremerton (employer) as respondent. A preliminary ruling was issued on December 14, 2001, finding a cause of action to exist on allegations of:

> Employer interference with employee rights in violation of RCW 41.56.140(1), by its inclusion of "me too", or parity provisions in collective bargaining agreements covering other bargaining units, whereby the wages and employee contributions for dependent medical insurance of non-unit employees are linked to conditions of employment negotiated with unit employees.

The employer answered the complaint. A hearing was conducted on October 30, 2001, before Examiner Kenneth J. Latsch. Under a

stipulation reached at the hearing, the parties submitted post-hearing briefs on December 21, 2001.

After reviewing the record and arguments submitted, the Examiner rules that the complaint must be dismissed as untimely.

BACKGROUND

The employer provides the customary municipal services, and has had collective bargaining relationships with organizations representing four separate bargaining units within its workforce:

- Teamsters Local 589 (Teamsters) represents a bargaining unit of public works and support employees;
- International Association of Fire Fighters, Local 437 (IAFF) represents a bargaining unit of non-supervisory fire fighters;
- The Bremerton Police Management Association (PMA) represents a bargaining unit of supervisory law enforcement officers; and
- The BPOG represents a bargaining unit of approximately 57 non-supervisory law enforcement officers in ranks up to sergeant.

The employer has historically negotiated and signed separate collective bargaining agreements with those organizations.

Onset of the Current Controversy -

In the early part of 2000, the employer and BPOG were engaged in negotiations for a successor collective bargaining agreement. In a letter sent to the employer on January 11, 2000, the BPOG's attorney, James Cline, complained about the existence of "me too"

clauses in several collective bargaining agreements and demanded that all "me too" clauses be rescinded. Cline wrote:

> [B]oth the [PMA] contract and the Teamster agreement contain "me too" clauses. The [PMA] contract contains a "me too" clause concerning the wage rate. The Teamsters' agreement contains a "me too" clause concerning medical benefits. In neither case is it lawful for the City to reach an agreement with another labor organization tying their wages of benefits in any way to that of the [BPOG]. "Me too" clauses have been recognized as unlawful precisely because they impair the ability of the organization to whom the "me too" clause is tied to reach an agreement.

On January 19, 2000, Human Resources Manager Carol Conley gave the employer's response in a letter to Cline. In pertinent part, Conley wrote:

> [P]lease be advised that the "me too" contract language you are referring to is not "new" language that was recently negotiated into the Teamsters or [PMA] Contracts. The language to which you refer has been in place in both previous contracts with the Teamsters and [PMA] . . . .

Conley went on to ask that Cline provide cases where "me too" clauses were found to be illegal.

In a letter to Conley dated January 24, 2000, Cline acknowledged that the Public Employment Relations Commission had not issued a decision stating that "me too" clauses were illegal. Cline argued, however, that other state labor boards had found them inappropriate. Cline wrote:

> The rationale other labor boards have used for finding these to be illegal is that essen-

> tially they interfere with the good faith bargaining process. A "me too" clause necessarily means that a benefit conferred upon the one bargaining unit will have a ripple impact on the other bargaining units. This necessarily means that, in this case for example, the Guild is carrying the water for other groups. This is not only fundamentally unfair to the Guild, it is unfair bargaining. The [BPOG] ends up bargaining for people it does not represent and the City would, or at least may, take into account the impact of the negotiable items on employees who are not even represented at the bargaining table at the time . . . .

On January 27, 2000, Conley responded to Cline's letter, reiterating the employer's belief that the disputed clauses were not illegal, and that the employer had no intention of modifying them. Conley went on to warn Cline that his earlier correspondence could be considered a threat of litigation against the city.

<u>The Challenged Clauses</u> -

The employer and the Teamsters were parties to a collective bargaining agreement in effect from January 1, 1998, through December 31, 2000, which contained the following provision:

> 13.2.2 In the event the City negotiates an agreement with both the Police and fire bargaining units during the term of this agreement which provides for employee contributions toward dependent coverage greater than seven dollars ($7.00) per month per dependent to a maximum of twenty-one ($21.00) per month for full family coverage or if employee contributions are changed to a percentage of premium for dependent coverage, the same arrangement will become effective for employees covered by the terms of this agreement at the same time as it becomes ef-

> fective for employees covered by such other agreement.

The record reflects that the above-quoted language has been in collective bargaining agreements between the employer and the Teamsters since 1992, and that it has never been invoked.

The employer and the IAFF were parties to a collective bargaining agreement in effect from January 1, 1999, through December 31, 2001, which contained the following provision dealing with medical insurance:

> Employee's premium is paid in full by the City. Employee contribution toward dependent coverage will be three dollars fifty cents ($3.50) per month per dependent to a maximum of ten dollars fifty cents ($10.50) per month for full family coverage.

Thus, the contribution levels in that contract appeared to differ from those specified in the contract negotiated by the employer with the Teamsters effective a year earlier.

On March 15, 2000, the employer and the PMA signed a collective bargaining agreement covering the period from January 1, 2000, through December 31, 2001. That contract set wages and benefits for bargaining unit employees, and contained the following language concerning salary rates:

> 4.1.1 The salary rates for Police Lieutenant and Police Captain will be set so as to maintain the following differentials:
>
> 4.1.2 The Police Lieutenant top base salary step will be not less than 15% above the top step Police Sergeant base wage rate.

> 4.1.3 The Police Captain top base salary step will be not less than 13% above the top step Police Lieutenant base salary rate.

While the "police lieutenant" and "police captain" classifications mentioned in that contract are clearly within the bargaining unit represented by the PMA, the "police sergeant" classification mentioned in Section 4.1.2 is clearly within the bargaining unit represented by the BPOG.

<u>The Parties' New Contract</u> -
On March 27, 2000, the employer and the BPOG signed a collective bargaining agreement to be effective from January 1, 2000, through December 31, 2000. Medical insurance was addressed in that contract, as follows:

> Article 14.2 INSURANCE PREMIUM PAYMENTS:
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> Payment of insurance premiums shall be made as follows:
>
> Employee premium paid in full by the City. Employee contributions toward dependent coverage shall be seven dollars ($7) per month per dependent to a maximum of twenty-one dollars ($21) per month for full family coverage for enrollees in the Kitsap Physician's Plan; and, ten dollars ($10) per month per dependent to a maximum of thirty dollars ($30) per month for full family coverage for enrollees in the Group Health Cooperative Plan.

In August of 2000, after this unfair labor practice complaint was filed, the employer and BPOG agreed to a successor collective bargaining agreement to be effective from January 1, 2001, through December 31, 2001.

POSITIONS OF THE PARTIES

The BPOG argues that the employer committed unfair labor practices by using "me too" or "parity" clauses in its collective bargaining agreements with organizations representing other bargaining units. The BPOG maintains that the existence of those clauses interfered with its right to fully bargain monetary issues, including base wages and medical insurance premium payments. The BPOG argues that the existence of parity clauses inhibits its right to bargain without condition, and that the employer must rely on the existence of such provisions in its bargaining with the BPOG. While noting that the Commission has not ruled on this subject before, the BPOG contends that parity clauses have been found to be unlawful by a number of other state boards and commissions that have been asked to address the issue. As a remedy, the BPOG asks that the employer be ordered to cease and desist from using such clauses in its collective bargaining, and that it post appropriate notices detailing the unfair labor practices found.

The employer contends that it did not commit any unfair labor practice through the events described in the complaint. It argues that the complaint was not filed in a timely manner, because the disputed language had existed in Teamsters contracts since 1992 and the BPOG had knowledge of the disputed clause long before the instant unfair labor practice was filed. The employer further argues that parity clauses are not illegal, and that they actually foster labor peace. The employer maintains that the BPOG cannot show that other jurisdictions consistently find that parity clauses are illegal, and urges the Commission to reject the arguments advanced by the BPOG in this case.

DISCUSSION

RCW 41.56.010 expresses the purpose of the Public Employees Collective Bargaining Act, as follows:

> The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

The Public Employment Relations Commission is given broad discretion to ensure that the collective bargaining process is conducted in a fair and balanced manner.

The Duty to Bargain

Obligations of both employers and unions flow from RCW 41.56.030(4), as follows:

> "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 respect 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.

In this case, the Commission has been asked to determine whether two types of clauses violate Chapter 41.56 RCW:

The first type is the "me too" clause found in the Teamsters contract, under which employees represented by the Teamsters are to receive the same increase negotiated by the employer with the unions representing the employer's police officers and fire fighters.

The second type is the "parity" clause found in the PMA contract, which specifically relates the pay rate for employees in that bargaining unit to a pay rate negotiated by the employer with the BPOG.

The Commission has issued a number of decisions interpreting the parties' mutual obligation to bargain in good faith, but this is the first instance where the existence of such a clause is alleged to be an unfair labor practice.

The parties have presented well-researched precedents for their respective arguments, which reveals that counterpart agencies in other jurisdictions have come to a variety of conclusions about the legality of such contractual provisions. Parity clauses have been discussed in a number of federal decisions.[1] In *Dolly Madison Industries*, 182 NLRB 147 (1970), the National Labor Relations Board (NLRB) dealt with a "me-too" situation between two different employers. In that case, an employer automatically received the benefit of a contract that the exclusive bargaining representative signed with a competitor. In ruling that such a circumstance did not violate the National Labor Relations Act, the NLRB stated that

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[1] The employer correctly notes that the Commission traditionally relies upon NLRB precedent in cases of first impression. *Nucleonics Alliance v. WPPSS*, 101 Wn.2d 24 (1984).

the disputed contractual provision: "set forth an agreed-upon procedure by which the respondent could conform benefit levels of the contract established for its employees to those negotiated by the union for employees of its competitors." The NLRB went on to rule that "most favored nations" clauses were mandatory subjects of collective bargaining. Similar results were reached in *Doral Beach Hotel*, 245 NLRB 774 (1979) and *Control Services, Inc.*, 303 NLRB 481 (1991). In addition to the substantial body of federal case law on the subject, review of state precedent is also very instructive:

- Clauses have been found unlawful in some jurisdictions. The New Jersey Public Employment Relations Commission ruled that parity clauses are inherently destructive to the bargaining process. *City of Plainfield*, 4 NJPER 4130 (1978). The Maine Employment Relations Board reached the same conclusion in *Lewiston Fire Ass'n v. City of Lewiston*, 354 A.2d 154 (1976).

- Clauses have been found unlawful in other jurisdictions, based on case-by-case analysis of the facts presented. For example, the Connecticut State Board of Labor Relations ruled that a clause found in a fire fighters contract requiring parity with a police guild contract unlawfully interfered with the opportunity of the police guild to bargain. *In re City of New London*, Decision 1128 (Conn. St. Bd. Of Labor Rel., 1973).[2] The Connecticut board ruled that any other result would cause a "double loading" on the police guild: Not only would it be responsible for bargaining for its own members, but it would also take on the responsibility of bargaining for the fire

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[2] The Connecticut board noted that the parity concept may be a "fact of life" in many municipalities which are forced to keep a balance between several bargaining units, but disallowed the use of a parity clause as a shortcut.

fighter unit, which was not even at the bargaining table at the time. In *Local 1219, International Ass'n of Fire Fighters v. Connecticut Labor Relations Board*, 370 A.2d 952 (1976) the Connecticut Supreme Court ruled that most parity clauses would be found illegal as void against public policy. The Massachusetts Labor Relations Board adopted the "double loading" analysis in *Town of Methuen, Police and International Brotherhood of Police Officers*, 545 Gov't Empl. Rel. Rep. (BNA, 1974), finding that employer committed an unfair labor practice by using the police guild negotiations to establish a common settlement for other bargaining units, where all of the other contracts contained "me-too" clauses that forced the police guild to assume responsibility for a wage increase that would apply far beyond the limits of the bargaining unit it represented.

- The legality of the disputed clause has been side-stepped in some jurisdictions. The New York Public Employment Relations Board declined to rule that parity clauses were illegal *per se* in *City of Albany*, 7 N.Y. Pub. Empl. Rel. Bd. 7-3079 (1976), but did find that such clauses were permissive subjects of bargaining. In ruling that a public employer could not insist on such a clause to the point of impasse, the New York board adopted the "double loading" analysis, and noted that it would be unfair to force a union to carry a number of "silent partners" at the bargaining table through the imposition of a parity clause. In *Plainedge Federation of Teachers*, 30 NYPER 6607 (1997) the New York board ruled that parity clauses can be nullified if they impact other collective bargaining.

- There are also a number of decisions where parity clauses have been upheld as a normal part of the bargaining process. In *City of West Allis*, WERC Decision 12706 (1974), the Wisconsin

Employment Relations Commission found that a parity clause could be used as legitimate bargaining device. In a memorandum accompanying its decision, the Wisconsin board noted:

> Such agreements are not rare or limited to police and fire settlements and do, as the Complainant urges, affect the calculations of a municipal employer in its subsequent negotiations with other labor organizations. However, even in the absence of such agreements, employers, whether in the public or private sectors, calculate the effects of proposed settlements upon their relations with other groups or employees, both unorganized and represented by other unions. This is a "fact of life" in collective bargaining. The Complainant realizes this, but distinguishes the present case on the basis of a formal agreement. This distinction, in turn, focuses on the legally binding nature of the instant parity agreement, as contrasted to the practical considerations of the more common tacit practices to which we refer.
>
> We hold that this distinction is artificial and not to be adopted herein. The parity agreement does not place an absolute "ceiling" on settlements with the Complainant. It adds to the costs of higher settlements. The normal, unformalized, considerations of employers, on the other hand, are very compelling, not only because of cost considerations, but because of very significant tactical considerations that an employer dealing with a number of unions must make respecting the relative positions of such unions. . .

In *Banning Unified School District*, 8 PERC 15202 (1984), the California Public Employment Relations Board reasoned:

> The Charging Party argues that by a prior committing of some of its available resources to classified salaries, the Respondent has limited its flexibility with respect to its salary negotiations with the Association. Such an approach erroneously suggests that the Respondent is required to commit or make available all its resources for its negotiations with the Association. Nothing in the law, however, mandates such a result.

The California board thus upheld a parity clause where the specific language allowed a bargaining unit of school district employees to receive additional wage increases if such increases were given to any other bargaining unit in the same school district.

From the range of results presented, it is clear that the states have not come to a uniform conclusion on the subject of parity clauses. While some states ban them completely, others embrace the parity concept as part of the normal course of bargaining.

<u>Application of Precedent to the Instant Complaint</u>

The BPOG aptly notes the principle that the provisions of Chapter 41.56 RCW are to be construed liberally "in favor of the dominance of that chapter." *City of Pasco v. Public Employment Relations Commission*, 102 Wn.2d 381 (1992). Based on the precedents discussed under the preceding heading, the Examiner must conclude that an outright bar on parity clauses is not warranted. Further, it must be remembered that the scope of this decision is limited to analysis of the provisions of the employer's contracts with the PMA and the Teamsters in the context of the employer's negotiations with the BPOG. As the BPOG acknowledges, the parity concept may

arise in different settings.[3] It is thus prudent to analyze the disputed clause in the context of the parties' bargaining process.

Absence of Specific Conflicts -

The Examiner notes the absence of evidence of any specific issues or proposals in the parties' contract negotiations, where the presence of a disputed clause is alleged to have inhibited the full performance of the good faith obligation imposed by RCW 41.56.030(4). The BPOG was free to demand any wage increase that it felt it could justify. In fact, the BPOG demand for abolition of the disputed clauses appears to have come up as an after-thought or as a tangential issue to the parties' negotiations. Simply put, the BPOG has not met its burden of proof that the disputed clauses created any burden on it in the collective bargaining process. Accordingly, the complaint charging unfair labor practices filed in the above-captioned matter must be dismissed.

Applicability of Statute of Limitations -

In RCW 41.56.160, the Commission is directed to prevent unfair labor practices with a specific limitation that is found to be applicable in this case:

> (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That *a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.* This power shall not be affected or impaired by any means

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[3] Issues could arise from a classic "me-too" provision, which would automatically grant a particular benefit to a bargaining unit which is not at the table, or could arise in the context presented by the reference found in the PMA contract, which could preclude the BPOG from narrowing or broadening the gap between ranks.

> of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law . . . .

(emphasis added).

Under the specific terms of RCW 41.56.160, quoted above, the Commission has long held that a complaint charging unfair labor practices must be filed within six months following the act(s) or event(s) giving rise to the complaint. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990). The six month period may be tolled if the complainant could not reasonably know of the existence of the facts giving rise to the complaint. *See Reardan-Edwall School District*, Decision 6205-A (1998).

As the employer notes in its brief, the BPOG asks the Commission to find a violation of RCW 41.56.140(1) because of the very *existence* of the disputed clauses in the employer's collective bargaining agreements with other unions. The BPOG counters by arguing that the mere existence of such an article inhibits and frustrates meaningful collective bargaining, but WAC 391-45-270 imposes the burden of proof in unfair labor practice proceedings on the complaining party, and the precedents discussed above do not support finding an inherent and ongoing violation of the statute. Thus, the complaint filed by the BPOG must also be dismissed on procedural grounds. In this case, the unfair labor practice complaint filed in August of 2000 can only be considered timely for conduct occurring during or after February of 2000.

The BPOG provided testimony that it was aware of the disputed language in both the PMA and the Teamsters contract by January, 2000. The BPOG specifically referenced both the Teamster contract and the PMA contract in its January 11, 2000, letter. The Examiner acknowledges that the filing of an unfair labor practice complaint

can distract attention from (or have a detrimental effect on) the overall course of bargaining, but a complainant cannot wait until well after the expiration of the statutory six month period to file a complaint. The essence of RCW 41.56.160 is to promote *timely* resolution of unfair labor practice claims. The BPOG knew of the disputed language in both contracts, and did not act in a timely manner to address the employer's alleged wrongdoing.[4] Once the BPOG expressed its knowledge of the disputed provisions, the statutory period for filing an unfair labor practice began and the parties' further bargaining did not "toll" the operation of the statute of limitations. If the BPOG truly believed that the employer had committed an unfair labor practice by including the questioned language in the Teamsters and PMA contracts, the complainant certainly had to file its complaint by July 11, 2000. Given this situation, the complaint must be dismissed.

FINDINGS OF FACT

1. The City of Bremerton has collective bargaining relationships with several bargaining units, and is a "public employer" within the meaning of RCW 41.56.030(1).

2. The Bremerton Police Officers Guild represents a bargaining unit of non-supervisory uniformed law enforcement officers of the City of Bremerton, and is a "bargaining representative" within the meaning of RCW 41.56.030(3).

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[4] Although the "me too" language had existed in the Teamsters contract since 1992, and the record clearly reflects that the language had never been changed, the tardiness by the BPOG in 2000 makes it unnecessary to rule on whether the claim was lost even earlier.

3. The employer and the police guild have had several collective bargaining agreements. In 2000, the parties were in negotiations for a successor contract.

4. On January 11, 2000, the guild's attorney, James Cline, sent a letter to city officials, complaining about the existence of several "me-too" clauses in contracts between the city and two other bargaining representatives: International Brotherhood of Teamsters and the Bremerton Police Management Association.

5. Cline specifically complained about the following parity language in the Teamster contract:

> In the event the City negotiates an agreement with both the Police and fire bargaining units during the term of this agreement which provides for employee contributions toward dependent coverage greater than seven dollars ($7.00) per month per dependent to a maximum of twenty-one ($21.00) per month for full family coverage or if employee contributions are changed to a percentage of premium for dependent coverage, the same arrangement will become effective for employees covered by the terms of this agreement at the same time as it becomes effective for employees covered by such other agreement.

The Teamster language had been in effect since at least 1992, and had never been used as a "trigger" for enhanced medical insurance payment.

6. Cline's concern about the police management contract arose from the following language:

> The salary rates for Police Lieutenant and Police Captain will be set so as to maintain the following differentials:

> The Police Lieutenant top base salary step will be not less than 15% above the top step Police Sergeant base wage rate.
>
> The Police Captain top base salary step will be not less than 13% above the top step Police Lieutenant base salary rate.

7. The city denied that the contractual provisions set forth in Findings of Fact 5 and 6 had any detrimental effect on the ongoing negotiations between the employer and the police guild.

8. Negotiations continued between the police guild and the city, and reached agreement for a one year (January 1, 2000, through December 31, 2000) collective bargaining agreement on March 27, 2000.

9. On August 21, 2000, the guild filed the instant unfair labor practice complaint, alleging that the city violated RCW 41.56.140(1) by maintaining the parity language in the Teamster contract and in the police management contract.

CONCLUSIONS OF LAW

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

2. The Bremerton Police Guild had specific knowledge of the existence of "parity language" in the collective bargaining agreement since at least January 2000, but did not file its unfair labor practice complaint until August 2000, thus violating the terms of RCW 41.56.160.

3. The "parity language" found in the Bremerton Police Management Association contract does not impose any undue burden on the Bremerton Police Guild in its free negotiation of wages, hours and working conditions with the employer.

4. The Bremerton Police Officers Guild has not met its burden of proof that the existence of the disputed language in the police management contract created any impediment or precondition on its ability to bargain.

5. The Bremerton Police Officers Guild has not sustained its burden of proof that the City of Bremerton violated RCW 41.56.140(1) by maintaining the disputed language in the police management contract while still negotiating with the police guild for a successor bargaining agreement.

ORDER

Based on the foregoing and the record as a whole, the complaint charging unfair labor practices filed by the Bremerton Police Officers Guild in the above-captioned matter is hereby DISMISSED.

DATED at Olympia, Washington, this 6th day of June, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, 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.