City of Redmond, Decision 8879 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

REDMOND POLICE ASSOCIATION, Complainant,	)	CASE 16910-U-02-4403
vs.	)	DECISION 8879 - PECB
CITY OF REDMOND, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER

David A. Snyder, Attorney at Law, for the union.

Summit Law Group, by *Bruce L. Schroeder* for the employer.

On November 13, 2002, the Redmond Police Association (union) filed a complaint alleging that the City of Redmond (employer) interfered with employee rights in violation of RCW 41.56.140(1) and refused to bargain in violation of RCW 41.56.140(4). The union alleged the employer breached its good faith bargaining obligations by making a regressive wage proposal and failing to provide a wage survey as previously promised. A preliminary ruling issued September 8, 2003, found such causes of action sufficient to hold a hearing. Examiner Paul T. Schwendiman held a hearing on June 18, 2004. The parties filed written argument.

At issue is whether the employer refused to bargain in good faith and/or interfered with employee rights by:

1. On October 18, 2002, replacing its June 20, 2002, wage proposal of 3.51 percent with a regressive proposal of 2.53 percent; and

2. By failing to timely respond to the union's July 15, 2002, request that the employer provide the union a wage survey.

The Examiner concludes that the employer committed an unfair labor practice by refusing to bargain in good faith and interfering with employee rights by replacing its wage proposal of 3.51 percent with a regressive proposal of 2.53 percent, and by its failure to timely respond to the union's request that the employer provide the union a wage survey.

Issue 1 - Regressive Bargaining

Applicable Legal Standard

Collective bargaining includes a duty to bargain in good faith. RCW 41.56.030(4). To refuse to engage in collective bargaining in good faith is an unfair labor practice. RCW 41.56.140(4). In determining whether a party engaged in bad faith bargaining, the totality of conduct or circumstances surrounding the negotiations must be considered. *Kennewick Public Hospital District 1*, Decision 4815-B (PECB, 1996); *Federal Way School District*, Decision 232-A (EDUC, 1977).

"Conduct referred to as 'moving the target', *i.e.*, changing demands or proposals at an advanced stage of the bargaining process . . . is subject to 'close scrutiny', and can constitute unlawful conduct." *Spokane County Fire District 1*, Decision 3447-A (PECB, 1990). In regard to conditional "what if" inquiries and unconditional offers, the Commission further explained:

> If a conditional offer, *e.g.*, one made in response to a 'what if' inquiry from the mediator, does not produce agreement during mediation, we would agree that the party making that offer retains the right to change its position. The same is not true for unconditional offers. The fact an unconditional offer is made during mediation does not provide the offeror with the absolute right to change it thereafter. Absent intervening circumstances that justify the change in position, *i.e.*, to establish that the diminishing of an offer was not done in bad faith, the offeror should be bound.

In *Whatcom County*, Decision 7244-B (PECB, 2004), the Commission also explained:

> "[W]hat if" inquiry [through a mediator] can be a lawful means to explore alternatives without committing the party to the contents of the proposal. The party making a "what if" inquiry retains the right to change its position and, unlike formal proposals, such inquiries are subject to neither acceptance nor impasse.

In *Asotin County*, Decision 4568-C (PECB, 1996), cited by the employer, the county argued it should not be bound forever to compromises offered during the negotiation or mediation of a labor dispute. However, the Examiner in *Asotin County*, like the Commission, distinguished "conditional offers (*e.g.*, offers made in a 'what if' mode in mediation, or as part of a package proposal) from unconditional offers," stating, "[w]hile a party retains the right to change its position if a conditional offer does not produce agreement, the same is not true for unconditional offers."

Application of the Standard

On June 20, 2002, employer negotiator Doug Albright proposed a 3.51 percent wage increase effective January 1, 2002, by voice mail message to union negotiator Jeff Julius. On June 21, Albright clarified that the employer's "negotiating team will recommend a 3.51 percent across the board increase retroactive to January 1, 2002 to the City Council if that is the only change in compensation, and the process does not drag out." Exhibit 3. On October 18, 2002, the employer withdrew its 3.51 percent offer and proposed instead a 2.53 percent wage increase effective January 1, 2002. Citing *Spokane County Fire Protection District 1*, Decision 3447-A; *Whatcom County*, Decision 7244-B; and *Asotin County*, Decision 4568-C, the employer argues that it properly withdrew its 3.51 percent offer on October 18. However, the employer's June 20, 2002, offer was neither a "what-if" question posed through a mediator nor a "concept package" discussed in those cases.

The employer made its June 20 3.51 percent offer in the context of a wage *only* reopener for the last year of an existing agreement. Thus, the employer proposed no packaging of specified multiple items.[1] The employer also did not ask a "what-if" question, but made an actual proposal to the union. Unlike a mediator's "what-if" question, the employer offer was subject to acceptance by the union on October 18, 2002.

While the employer's offer was not conditional in the sense of the conditional "what-if" offers discussed in previous Commission cases, the offer was conditioned on two contingencies: the first was that the proposed 3.51 percent across the board wage increase was the *only* change in compensation and the second was that the process "not drag out."

The employer correctly argues that departure from a conditional proposal where the conditions are not satisfied does not necessarily subject the proposing party to a finding of regressive bargaining. However, the Examiner finds both contingencies for the employer's 3.51 percent wage offer were satisfied as of October 18, when the employer repudiated its 3.51 percent wage offer and regressively offered 2.53 percent.

As to the first contingency, that the proposed 3.51 percent across the board wage increase is the *only* change in compensation, employer negotiator Albrecht testified, "[t]he only change in compensation I believe that -- that condition generally has been satisfied." The Examiner accepts Albright's testimony as consistent with the record as a whole and finds that the first contingency was in fact satisfied by October 18, 2002.

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[1] Even a "concept package" were involved, the union made no counteroffer that might be deemed a rejection of a concept package justifying withdrawal of the package.

The Examiner also finds the second contingency, that the "process not drag out," was satisfied prior to repudiation of the 3.51 percent wage offer on October 18 because:

- "Not drag out" is so vague as to not afford the union notice as to any actual time frame in which it might accept the employer's wage offer. The term "not drag out" might be read to condition acceptance as including October 18, 2002, when the employer repudiated its 3.51 percent wage offer. As the employer drafted the words "not drag out," the Examiner construes the ambiguity created against the employer to find the offer remained in effect through October 18.

- On July 15, 2002, Julius advised Albright that "The RPA appreciates the City's most recent offer but cannot finally accept or reject that offer until the RPA has an opportunity to review the results of the City wage survey." Albright responded later the same day: "Unfortunately, Amie Frickle is not longer with the city, so someone else is picking up the survey. I have inquired about their timing and will get back to you." The union clearly put the employer on notice that the union expected the employer's offer to be held open at least until the employer provided the requested wage survey. The employer promised to "get back" to the union, but did not do so until December 16, 2002, when the employer provided the requested wage survey, thus implying "not drag out" extended to December 16.

- On July 17, 2002, the union and employer jointly requested mediation. No further communication occurred between the parties until the only mediation session was held on October 18, 2002, when the employer immediately repudiated its 3.51 percent wage offer. The Examiner also finds "not drag out" to include October 18, 2002, because that was the first jointly scheduled mediation date. Had the employer felt the jointly requested mediation on October 18, 2002, "dragged out"

> negotiations, it may have so communicated to the union, and even requested an earlier meeting without a mediator. In not so communicating with the union or scheduling an earlier meeting, the employer implicitly acknowledged that the negotiations had not "dragged out" until the October 18 mediation session concluded.

Both contingencies satisfied, the employer's 3.51 percent wage offer became a firm offer that the union might have accepted on October 18, 2002, had the employer not repudiated it and replaced it with its regressive 2.53 percent wage offer.

The significant reduction of the wage offer with no positive offset is sufficient evidence of the employer's lack of good faith to find an unfair labor practice violation. Without proof of a sufficiently significant intervening change of circumstance justifying the regressive offer, the employer's October 18, 2002, repudiation of its 3.51 percent wage offer and regressive 2.53 percent wage proposal constitutes unlawful conduct.

No significant change of circumstance. The record discloses no significant change of circumstance between the June 20 3.51 percent wage offer and its repudiation and the regressive 2.53 percent offer made on October 18. While there may be good reason to make an offer contingent on the passage of time, the mere passage of time is not itself a change of circumstance sufficient to repudiate a wage offer and replace it with a regressive wage offer. On the contrary, here, retroactive wage payment was involved. The employer may have earned additional interest on the retroactive wage payment further delayed by the mere passage of more time, thus, enhancing its ability to pay while maintaining its 3.51 percent through additional time.

The employer's explanation for repudiating its 3.51 percent offer. The only "change of circumstance" suggested by the employer to the

union when attempting to justify its repudiation of its 3.51 percent offer occurred on October 18, 2002, when "[t]he employer indicated that they had done a study and . . . that 3.51 was not warranted. [The employer] then produced the document that is marked as Exhibit 6 to indicate why circumstances had changed." Transcript 40. As other evidence does not contradict the testimony of Julius, the Examiner accepts the testimony as the "change of circumstance" offered the union during negotiations to explain the reason for repudiating the 3.51 percent offer to the union.

"Good faith bargaining requires that the reasons and rationale for a proposal be fully explained." *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992). Thus, the Examiner considers the employer's only explanation presented to the union on October 18, 2002, *i.e.*, Exhibit 6, as the most crucial evidence concerning the employer's good faith or lack of good faith regarding repudiating its 3.51 percent wage offer and its regressive bargaining.

Exhibit 6, presented to the union on October 18 is a document entitled "2002 Market Trend Adjustment."[2] It presents averages of "Predicted 2002 Range Adjustments," an "Other Cities Survey," and a "Private Companies Survey" as yielding a bottom line "Proposed 2002 Market Trend Adjustment" weighted average of the three components increase equal to 2.53 percent, which is equal to the regressive wage offered by the employer on October 18, 2002.

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[2] The "Market Trend Adjustment" document (Exhibit 6) contains only averages of unspecified public and private employers but contains no wage data for the employees of any particular employer. It is not the employer's "wage survey" (Exhibit 10) requested by the union on July 15, 2002, and provided by the employer on December 16, 2002, which contains specific wage data for similar employees of the cities of Bellevue, Everett, Federal Way, Kent, Kirkland, Renton, and other employers of similar employees.

The "2002 Market Trend Adjustment" document is dated November 2001, *more than six months* before the employer offered its 3.51 percent wage increase on June 20, 2002. Thus, there is *no* change of circumstance evidenced by this document. It existed prior to the employer's June 20, 2002, wage offer of 3.51 percent, and does not legitimatize the employer's repudiation of its 3.51 percent offer and its regressive 2.53 percent offer.

Other circumstances considered -- Albright's personal reason. Albright testified as to his personal reason for repudiating the 3.51 percent wage offer:

> [W]hen we make an offer that we're willing to recommend to the council it's based upon what we believe we can sell to the council at that time. And things change over time and this is over three months later that the mediation occurred, so we felt at that time that the process had drug out and that it wouldn't be appropriate to renew the 3.51 percent offer if we didn't believe the council would accept it and, therefore, we elected to make -- make an offer -- indicate we'd recommend a settlement [of 2.53 percent] to the council that we believed the council would have a reasonable chance of accepting.

On October 18, Albright personally believed that there was not a reasonable chance that the city council would accept a tentative agreement of a 3.51 percent wage increase. However, his subjective belief was not offered to the union prior to repudiating the 3.51 percent offer, let alone evidence proving an *objective* circumstance had in fact significantly changed since making the 3.51 percent wage offer. A mere change of mind causing a regressive offer by employer officials is not sufficient evidence of "change of circumstances" justifying regressive bargaining.[3]

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[3] Additionally, Albright's belief that he was unable to sell the 3.51 percent offer could be tested by acceptance of the 3.51 percent offer by the union, and submitting the agreement to a good faith vote by the city council for ratification.

Reinstatement of the 3.51 percent wage offer. Albright's observation that "things change over time" proved correct. Two years after first offering the union the 3.51 percent wage increase on June 20, 2002, the employer continued bargaining the 2002 wage reopener in a slightly different context, as evidenced by Albright's e-mail to Julius dated June 14, 2004:

> The City bargaining team will recommend to the Mayor and City Council to settle for the following wage . . . package, subject to the other open issues being resolved in a manner that is satisfactory to the City, and based on the RPA withdrawal of the ULP relating to the bargaining of the 2002 salary adjustment:
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> A. *Salary*
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> *2002 3.51% across the board increase of 2001 steps*
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> 2003 1.35% across the board increase of 2001 steps
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> 2004 Implement City survey ranges and Merit system pursuant to the established implementation used by the City. . . .
>
> 2005 Market Based adjustment based on city formula previously provided.
>
> B. Medical - City proposal, plus City will agree to maintain the 20% dependent premium co-pay through the 3rd year of the agreement (2005).
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> The City makes this offer as an alternative means to maintain the integrity of the merit system and to apply it to this bargaining unit in a manner consistent with other City employees. *The 2002 and 2003 salary increases are based on 90% of the CPI, which is consistent with the increases provided to other City employees not on the merit system.* . . .

(emphasis added). While the employer's June 14, 2004, proposal is not at issue here as itself an unfair labor practice, the proposal is relevant evidence bearing on the employer's good faith in repudiating its 3.51 percent wage offer in 2002. The salary increase of 3.51 percent proposed on June 15, 2004, is effectively the same wage offer for the same time period offered and repudiated in 2002. Additionally, the same 3.51 percent wage increase was apparently also consistent with increases provided in 2002 to other

city employees. These facts are both consistent with the 3.51 percent offer made in 2002 being arguably acceptable to the city council. The later reinstatement of the 3.51 percent offer somewhat belies the accuracy of Albright's personal belief that he could not obtain city council approval for a 3.51 percent wage increase for the 2002 calendar year.

Conclusion on Regressive Bargaining

None of the circumstances surrounding the repudiation of the employer's 3.51 percent wage offer and its offer of 2.53 percent justify the employer's regressive bargaining. Thus, the Examiner concludes that the employer refused to engage in good faith collective bargaining and violated RCW 41.56.140(4) with derivative interference violation of RCW 41.56.140(1).

Issue 2 - Timely Response to the Union's Information Request

Applicable Legal Standard

As noted by the Commission in *King County*, Decision 6994-B (PECB, 2002), "the duty to bargain includes a duty to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process." The "duty to supply information and the type of disclosure that will satisfy that duty turn upon 'the circumstances of the particular case.'" *Public Utility District 1 of Snohomish County*, Decision 7656-A (PECB, 2003). "[I]t has long been established that the duty to disclose information during the course of collective bargaining includes the duty to disclose pertinent economic information." *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992).

In *City of Bellevue*, the union requested that the city disclose the identity of fire departments it intended to use for the comparisons

specified in RCW 41.56.465(c)(ii)[4] for use in interest arbitration procedures provided in RCW 41.56.450 - .490 for "uniformed personnel" defined in RCW 41.56.030(7).[5] The city refused to provide the requested information. In finding the employer refused to bargain in good faith, the Commission agreed with the Examiner's explanation that "'[f]urnishing such information, upon request, at the bargaining table would greatly aid each parties' evaluation of the proposals on the table.'" The Commission further stated:

> If, at any time, an employer has acquired information that it believes is relevant on the question of comparable wages, hours and conditions, it has the duty to disclose that information, upon request, during the course of negotiations.

City of Bellevue, Decision 3085-A. While the employees here are not "uniformed personnel" described in RCW 41.56.030(7) subject to statutory interest arbitration procedures, the Examiner finds the Commission's reasoning in *City of Bellevue* applicable to informa-

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[4] RCW 41.56.465(c)(ii):

> For employees listed in RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

[5] RCW 41.56.030(7):

> "Uniformed personnel" means: (a) [certain] Law enforcement officers . . . (b) [certain] correctional employees . . . (c) [certain] general authority Washington peace officers; (d) security forces established under RCW 43.52.520; (e) fire fighters . . .; (f) [certain] employees of a port district; (g) [certain other] employees of fire departments or (h) [certain] classes of advanced life support technicians . . .

tion requests for inherently relevant wage information during all collective bargaining.

"The party receiving an information request has a duty to explain any confusion about, or objection to, the request and then negotiate with the other party toward a resolution satisfactory to both." *King County*, Decision 6994-B. With or without an information request, good faith bargaining always requires parties "to explain and provide reasons for their proposals, as well as for their rejection of proposals made by the other party." *Grant County Public Hospital District 1, d/b/a Samaritan Healthcare*, Decision 8378-A (PECB, 2004). "Delay in supplying requested information necessary to the bargaining process is an unfair labor practice." *Fort Vancouver Regional Library*, Decision 2350-C, 2396-B (PECB, 1988), *aff'd*, Decision 2350-D (PECB, 1989).

Application of the Standard

On July 15, 2002, Julius e-mailed Albright, "[t]he RPA appreciates the City's most recent offer [3.51 percent] but cannot finally accept or reject that offer until the RPA has an opportunity to review the results of the City wage survey." The record is clear that in requesting the wage salary, the union was seeking inherently relevant information showing comparable wages, as an explanation of the employer's 3.51 percent wage offer and its rejection of the union's standing 5.9 percent offer.

The employer acknowledged the union request later on July 15 when Albright responded, "Amie Frickle is no longer with the city, so someone else is picking up the survey. I have inquired about their timing and will get back to you." In stating it would "get back" to the union, the Examiner finds the employer promised to get back to the union with the requested information after someone else was assigned to finish the survey. The employer did not "get back" to the union with the information until it provided the survey to the

union on December 16, 2002, after the union filed its complaint in this case.

When the employer got back to the union on December 16, Albright explained "the ULP was the first we understood that you intended to request the survey data." Exhibit 10. While the employer may have been confused about the union's July 15 information request, it had a duty to explain any confusion about the union's information request and then, if necessary, negotiate toward a resolution satisfactory to both. The employer did neither, but ignored or simply forgot about the information request until the union again brought the request to its attention by filing its unfair labor practice complaint.

Availability of the information requested. The employer defends its delay in providing the requested information by arguing that the union must "prove that the requested information was available to the employer at the time of the union's request," citing *City of Seattle*, Decision 3066 (PECB, 1988), *aff'd*, Decision 3066-A (1989).[6]

In *City of Seattle*, the union requested copies of "Standard Operating Procedures (SOPs)" that a city department was developing for a new performance evaluation system. The SOPs were not actually developed until shortly before the SOPs were provided the union, more than five months after the union requested them. However, the union information request in *City of Seattle* was not for inherently relevant wage data in the context of bargaining a change of the wage rate, and the union in *City of Seattle* had also waived bargaining changes in the SOPs during the term of an

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[6] The union did not appeal the Examiner's conclusion in Decision 3066 that the employer did not have a duty to provide the requested information. *See City of Seattle*, Decision 3066-A (PECB, 1989).

existing collective bargaining agreement. Additionally, there was no promise that the City of Seattle would provide the information.

Here, the facts are different than in *City of Seattle*. Unlike *City of Seattle*, there was no contractual waiver of the employer's duty to bargain. The information requested here was for economic data inherently relevant to the bargaining of a wage reopener. The union also requested the employer's wage data specifically to evaluate the employer's June 20 3.51 percent wage proposal, and, in response, the employer promised to get back to the union with the requested information. The Examiner also finds the requested information was available to the employer at the time of the union request. Thus, the reasoning in *City of Seattle* relied on by the employer is not persuasive.

Like the information requested in *City of Bellevue*, Decision 3085-A, it is not a specific document, here a wage survey, that is the concern, "but any relevant information showing comparable wages, hours or conditions." As noted by the Commission in *City of Bellevue*: "If, at any time, an employer has acquired information that it believes is relevant on the question of comparable wages, hours and conditions, it has the duty to disclose that information, upon request, during the course of negotiations."

While the requested "wage survey" document was probably not actually completed until after the October 18, 2002, mediation session and the later filing of the complaint in this case, the Examiner finds the employer probably had the relevant information concerning wages of employees at comparable employers, or that such information was readily available to the employer, because:

1. The employer's 2002 Market Trend Adjustment document dated November 2001 "is based on data collected by Human Resources from Local Cities" and "uses . . . customized surveys of pay structure adjustments reported by public and private enter-

prises." The document calculates an "Other Cities Survey" component that averages increase in the other cities surveyed wage rates as 3.3 percent. Thus, the employer had the relevant wage data about local cities necessary to calculate the average increase as early as November 2001.

2. Wage survey documents comparing wages of Redmond employees with the wages of similar employees of the cities of Bellevue, Everett, Federal Way, Kent, Kirkland, and Renton was e-mailed to the union on December 16, 2002, shortly after the union filed the complaint in this case, which was, as Albright testified, when he first "understood that you [union negotiator Julius] intended to request the survey data." Exhibit 10. The wage survey compares Redmond employees' actual wages with the wages paid by the other employers, and also compares employees' actual wages "adjusted by 3.51%" the wage increase offered by the employer on June 20 and repudiated on October 18. The implication of both the rapidity of response and the fact that the Redmond employees' wages were adjusted by 3.51 percent imply that the wage data was in fact actually available to the employer when the employer believed its 3.51 percent offer was in effect.

3. Amie Frickle had done work on an incomplete "wage survey" prior to her leaving employment prior to July 15, 2002. The use of the 3.51 percent adjustment factor in the employer's wage survey document implies that the wage survey probably was started by Frickle, with data then available justifying the employer's 3.51 percent offer even before the union requested it on July 15.

While the delay in providing the information to the union during the more than three months awaiting mediation may be partially attributed to Frickle's departure from employment and that no one else picked up work on preparing the document until after the union filed its complaint, the Examiner finds that the employer probably

had the requested economic wage data available prior to repudiating its 3.51 percent offer on October 18, 2002, and that the data was also available to the employer when the union requested the wage survey on July 15, 2002.

Good faith bargaining requires parties to explain and provide reasons for their proposals, as well as for their rejection of proposals made by the other party. As the union communicated that it "cannot finally accept or reject that offer [3.51 percent]" (Exhibit 4), the Examiner finds the union request for the employer's relevant wage information was a specific request for the employer's explanation of why the employer's wage offer of 3.51 percent should be accepted by the union and why the union's offer of 5.9 percent was being rejected by the employer.

Remedy

The customary remedies in refusal to provide information include an order to provide the information requested. In this case, the employer provided the union the requested information shortly after the union filed its complaint. Thus, the normal order to provide the requested information is unnecessary. The employer is ordered to cease and desist its unlawful conduct and inform its employees and the public of its unlawful actions by posting of the attached notice and publicly reading the attached notice at the next public meeting of its city council. The usual posting and reading of the attached notice at the next public city council meeting are sufficient to remedy the failure to provide information violation.

The requested information was provided by the employer too late for the union to use it to assess the merits of the employer's 3.51 percent wage offer, because it came after the employer repudiated the 3.51 percent wage offer and replaced it with a regressive 2.53 percent wage offer. Thus, the Examiner also orders the employer to

reinstate its 3.51 percent wage offer for wages effective January 1, 2002, without contingencies. If the union assesses the employer's 3.51 percent offer as meritorious and accepts it, the employer is ordered to act in good faith as necessary to implement the resulting agreement.

FINDINGS OF FACT

1. The City of Redmond (employer) is a public employer within the meaning of RCW 41.56.030(1).

2. The Redmond Police Association (union), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of all employees employed by the City of Redmond in its police department excluding the Chief of Police, uniformed employees within the meaning of RCW 41.56.060(7), confidential employees and supervisors.

3. Prior to May 30, 2002, the union and employer began bargaining pursuant to a wage only reopening provision of a three year collective bargaining agreement requiring good faith negotiation of wages for the final year of the agreement, January 1, 2002, through December 31, 2002.

4. On May 30, 2002, the union proposed a 5.9 percent wage increase effective January 1, 2002.

5. On June 20, 2002, employer negotiator Doug Albright proposed a 3.51 percent across the board wage increase effective January 1, 2002.

6. On June 21, 2002, Albright clarified that the employer's June 20, 2002, 3.51 percent wage offer was contingent on the 3.51

percent across the board increase being the only change in compensation, and that the process does not "drag out."

7. The employer's June 20, 2002, proposal was not a "concept package," or an offer made in a "what-if" question.

8. On July 15, 2002, the union requested a city wage survey, and advised Albright that the union could not accept or reject the employer's June 20 offer until the union had an opportunity to review the results of the city wage survey and that the union maintained its own May 30 5.9 percent wage proposal.

9. Later on July 15, 2002, Albright responded, "Unfortunately, Amie Frickle is not longer with the city, so someone else is picking up the survey. I have inquired about their timing and will get back to you." By so acknowledging the earlier union communication, the employer promised that it would provide the union the requested wage survey when someone else completed it.

10. No completed employer wage survey document existed on July 15, 2002, but the employer at that time had available the wage information sought by the union.

11. An employer "Market Trend Adjustment" document dated November 2001 was based in part on data collected by the employer's human resources department concerning local cities' wage rates. In preparing the document, the human resources department used customized surveys of pay structure adjustments reported by public enterprises. The document calculated an "other cities" component that averaged the wage increase in other cities at 3.3 percent.

12. Amie Frickle had done work for the employer on an incomplete wage survey prior to July 15, 2002.

13. The employer had the union-requested economic wage data available when the union requested the wage survey on and after July 15, 2002.

14. On July 17, 2002, the employer and the union jointly requested mediation. No other further communication occurred between the employer and union from July 17, 2002, to October 18, 2002.

15. On October 18, 2002, the employer repudiated its 3.51 percent wage offer and regressively bargained by replacing it with a 2.53 percent offer. The employer explained its regressive bargaining by giving the union a document entitled "2002 Market Trend Adjustment" dated November 2001. The document calculated 2.53 percent as the weighted average of wage increases at public employers, private employers, and projected 2002 wage increases by the Milliman company for the Puget Sound area. This document was not the "wage survey" requested by the union and did not contain the wage information sought by the union.

16. All contingencies specified in the employer's June 20, 2002, 3.51 percent wage offer were satisfied on October 18, 2002. The 3.51 percent offered was subject to union acceptance prior to its repudiation on October 18.

17. Albright's personal reason for repudiating the 3.51 percent offer was that he did not believe he could persuade the city council to accept a 3.51 percent increase.

18. An intervening change of circumstance sufficient to justify the employer's regressive bargaining did not occur between the employer's June 15, 2002, 3.51 percent wage offer, and its repudiation and the employer's regressive 2.53 percent wage offer of October 18, 2002.

19. On December 16, 2002, the employer provided the union the wage survey that the union requested and that the employer agreed to provide on July 15, 2002. The document compares Redmond employees' actual wages with the wages paid by the other employers including the cities of Bellevue, Everett, Federal Way, Kent, Kirkland, and Renton. The document also compares Redmond employees' actual wages "adjusted by 3.51%," with the wages of similar employees of the specified other employers.

20. On June 15, 2004, the employer proposed 3.51 percent wage increase effective January 1, 2002, as part of a proposal for a subsequent three agreement.

21. The employer's 3.51 percent wage increase offer for wages effective January 1, 2002, is consistent with the increases provided to other Redmond employees.

22. By not furnishing the union requested wage information by October 18, 2002, the employer denied the union use of the requested information to sift the potentially meritorious 3.51 percent employer wage proposal from the potentially unmeritorious 5.9 percent union wage proposal.

23. The employer failed to bargain in good faith by delaying supplying the union requested wage information by October 18, 2002.

24. By repudiating its June, 20, 2002, 3.51 percent across the board wage offer effective January 1, 2002, and regressive bargaining by offering 2.53 percent on October 18, 2002, the employer refused to bargain in good faith.

CONCLUSIONS OF LAW

1. By regressively bargaining on October 18, 2002, the employer failed to bargain in good faith and violated RCW 41.56.140(4),

and derivatively committed an interference violation of RCW 41.56.140(1).

2. By failing to furnish the union requested wage information by October 18, 2002, the employer violated RCW 41.56.140(4), and derivatively committed an interference violation of RCW 41.56.140(1).

ORDER

The City of Redmond, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from regressively bargaining; denying the Redmond Police Association relevant requested information in a timely manner; and by otherwise interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Reinstate the employer's 3.51 percent across the board wage offer without contingencies for wages effective on January 1, 2002. If the union accepts the reinstated offer, act in good faith as required to implement the resulting agreement.

   b. 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 be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the

respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice attached to this order into the record at a regular public meeting of the City Council of the City of Redmond, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

Issued at Olympia, Washington, on the 21st day of March, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

PAUL T. SCHWENDIMAN, 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.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT regressively bargain; deny providing the Redmond Police Association relevant requested information in a timely manner; or in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL reinstate our 3.51 percent across the board wage offer without contingencies for wages effective January 1, 2002. If the union accepts the reinstated offer, we will act in good faith as required to implement the resulting agreement.

DATED: _____

CITY OF REDMOND

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.