Shoreline School District, Decision 9336 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925,	)	
Complainant,	)	CASE 19822-U-05-5026
vs.	)	DECISION 9336 - PECB
SHORELINE SCHOOL DISTRICT,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Kathleen Phair Barnard, Attorney at Law, and *Antonia K. Bohan*, First Vice President, appeared for the union.

Joseph A. McKamey, General Counsel, appeared for the employer.

On September 30, 2005, the Service Employees International Union, Local 925 (union) filed charges of unfair labor practices with the Public Employment Relations Commission (Commission). The union represents a number of classified employees of the Shoreline School District (employer) in four separate bargaining units. In its complaint the union alleged that the employer failed to ratify one of four collective bargaining agreements negotiated with the union, and therefore had refused to bargain in good faith and had committed an unfair labor practice. The charge was found to state a cause of action on November 1, 2005. A hearing in the matter was held by Examiner Walter M. Stuteville on February 10, 2006, at the Commission's Kirkland office. Both parties filed closing briefs by March 24, 2006.

STATEMENT OF THE ISSUE

Did the employer commit an unfair labor practice when it refused to ratify a recommended, tentative collective bargaining agreement which contained a clause which it had originally proposed and was accepted by the union during their negotiations?

The Examiner finds that the employer committed an unfair labor practice when it refused to ratify a collective bargaining agreement which had been negotiated to finality and in its final form had been brought forward as the employer's proposal.

APPLICABLE STATUTES AND AUTHORITIES

As classified employees of a school district, the members of the union's bargaining unit are covered by 41.56 RCW. That statute authorizes collective bargaining by these employees at 41.56.025, where it states, "[t]his chapter applies to the bargaining units of classified employees of school districts, . . ."

RCW 41.56.030(4) defines collective bargaining and references the obligation to execute a written agreement which is at the core of the facts of this case:

> "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 matter, 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.

(Emphasis added). RCW 41.56.140 enumerates the activities of an employer that would constitute an unfair labor practice:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . .
>
> (4) To refuse to engage in collective bargaining.

Naches Valley School District, Decision 2516 (EDUC, 1987) extensively analyzed the issue of the failure of a party to ratify a collective bargaining agreement:

> Section 8(d) of the National Labor Relations Act (NLRA) similarly obligates the parties to execute a written contract if there is a request that an agreement be reduced to writing, and refusal to sign a contract document incorporating terms agreed upon has been held in numerous cases to be a per se violation of the NLRA. *Duro Paper Bag Mfg. (Teamsters Union, Local 100)*, 216 NLRB 1070, enf. 91 LRRM 2849 (6th Cir., 1976); . . . [and numerous other cited cases.]
>
> The Public Employment Relations Commission has, on a number of occasions, addressed the nature of collective bargaining agreements, and how they are formed and terminated. In its recent opinion in *Mason County*, Decision 2307-A (PECB, 1986), the Commission affirmed that an employer committed a "refusal to bargain" unfair labor practice by asserting a legal excuse for refusing to take steps to consider ratification of a collective bargaining agreement reflecting terms agreed to by representatives of both the union and the county involved. The Commission noted specifically that:
>
> > Under the National Labor Relations Act, Section 8(d), 29 U. S. C. sec. 158 (d), the refusal of a party to sign a contract after agreeing to the same is a <u>per se</u> violation of that Act. Likewise, RCW 41.56.030(4) includes

> the specific obligation to execute a written agreement. [Emphasis added]
>
> Decision 2307-A (PECB, 1986) at pg. 3.
>
> See, also, *Olympic Memorial Hospital*, Decision 1587 (PECB, 1983), where modification of a previously signed contract was ordered based on evidence which established that the document signed by the parties did not reflect the true terms agreed upon in bargaining.

DISCUSSION

The facts of this case are, with a few exceptions, primarily uncontested. The union represents a bargaining unit of catering employees employed by the school district. The catering bargaining unit is one of four represented by the union. The practice of the parties has been to negotiate for all four collective bargaining agreements simultaneously. On August 31, 2005, the most recent set of negotiated agreements terminated by their own language. The parties began negotiating successor agreements and met six times between April and June of 2005. In June they believed that they had completed negotiations on all four agreements and both negotiating teams agreed that they would recommend the proposed settlements.

During their negotiations, the union brought forward a proposal which would have forbidden the employer from allowing outside organizations to cater meetings held in the district's meeting rooms. Both sides worked to reach agreement on this issue. At their May 16, 2005 meeting, the employer presented a counter proposal to the union's initial proposal. At the sixth and last meeting of their negotiations on June 13, 2005, the union countered the employer proposal. The employer then offered a compromise proposal which combined elements of both parties' concerns on the issue. Subsequently, the union agreed to the employer's last

proposal on the outside catering issue. The parties tentatively agreed to that resolution and eventually, at that meeting, to all four contracts. Therefore, the parties left the bargaining table believing that they reached tentative agreements that included the outside catering agreement in section 27.2 of that respective contract. The union's four bargaining units ratified the tentative agreements in late June. In early August, under the belief that the catering agreement would be ratified, the parties met to begin the implementation of section 27.2, even though the school board was not scheduled to ratify the agreements until late August.

In mid-August the employer's Superintendent of Schools, James Welsh, returned from a three month vacation. In reviewing the final drafts of the tentative agreements, he decided to recommend that the school board not ratify the catering contact because of the final language of section 27.2. On August 22, 2005, the board ratified the other three classified collective bargaining agreements, but, based upon Welsh's recommendation, not the catering contract. The school board referred that tentative agreement back to Welsh for further action on that section. Subsequently, the employer asked the union to return to the bargaining table, but the union refused on the grounds that they had negotiated an agreement to finality and that the employer should ratify and sign that agreement.

The distinction raised in this case is that the employer refused to ratify its own proposal on section 27.2. It is certainly not unusual for the ratifying body of either the employer or the union to fail or refuse to ratify the final agreement reached by their representatives. The practice usually then is for the parties to resume negotiations, often with the assistance of a mediator.

Because the employer made, and for all intents and purposes fully supported, its own proposal during negotiations, the union had every reason to believe that negotiations were completed and it voted on and ratified what it believed was an employer-supported final agreement. To put forward a proposal in negotiations, allow it to be ratified by the other party and then disavow that proposal is surely not good faith bargaining. *City of Fife*, Decision 5645 (PECB, 1996).

The union characterized the employer's last proposal on section 27.2 as a "best and final offer." The employer denied that it had characterized the proposal as such in the bargaining discussions and the record supports that position. Nevertheless, it was the employer's proposal on the outside catering issue that eventually became a part of the final agreement. The union had the right to expect that, because it was proposed by the employer's bargaining team, that it would be supported and ratified by the employer. The record contains no testimony that the employer team was uncertain about support for their proposal or that they were concerned that their own solution to the issue would be rejected by the Superintendent. And certainly, given the amount of time between reaching tentative agreement and the scheduled ratification vote, the employer's team had plenty of time to secure Walsh's input and opinion if they were unsure of his support. Having not done so and allowing the union to ratify without such due diligence, the employer committed an unfair labor practice.

Thus, an employer which is dissatisfied with the results of negotiations after its own offer is accepted by the union commits a violation when it seeks to retrench from its offer and bring

another issue to the bargaining table. As was stated some time ago:

> [T]he duty to bargain in good faith requires that when parties at a bargaining table arrive at a tentative agreement, each side is obligated to pursue ratification and finalization of that tentative agreement in good faith.

Island County, Decision 857 (PECB, 1980).

REMEDY

In *Entiat School District*, Decision 1361-A (PECB,1982) the Commission, quoting from *Transmarine Navigation Corp.* 170 NLRB 389 (1968), dealt with the issue of how to determine an appropriate back pay remedy when the order includes a requirement that the parties' bargain the effects of the decision that resulted in an unfair labor practice.

> We shall also order that Respondent bargain with the Union over the effects on its employees of the discontinuance of its operations. It is clear, however, that a bargaining order alone cannot fully remedy the unfair labor practices committed by Respondent because, as a result of Respondent's failure to bargain with the Union about the effects of discontinuing operations, Respondent's employees were denied an opportunity to bargain through their exclusive representative at a time when such bargaining would have been meaningful. Meaningful bargaining cannot now be assured until some measure of economic strength is restored to the Union Accordingly, in order to effectuate the purposes of the Act, we shall accompany our order to bargain with a limited backpay requirement designed both to make whole the seven employees, who were on the payroll on February 11, 1980, for losses suffered as a result of the violation and to recreate in some practical manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for Respondent. We shall do so

> in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in *Transmarine Navigation Corporation, supra*.[1]

However, no evidence was presented in this case even alleging there was any back pay owed to the catering employees. Therefore, the specific back pay remedy of *Transmarine* may not be appropriate. The issue of back pay should be one of the issues raised in the negotiations which result from the Order in this case.

FINDINGS OF FACT

1. The Shoreline School District is a "public employer" within the meaning of RCW 41.56.030(1).

2. Service Employees International Union, Local 925 (SEIU), a "bargaining representative" within the meaning of RCW 41.56.03(3), is the exclusive bargaining representative of four bargaining units of classified employees at Shoreline School District.

3. One of the union's bargaining units covers the employees that provide catering services for the employer for both district meetings and meetings conducted by persons not connected with the district, but using district facilities. Some of those groups provide their own catering and do not use school district catering or catering employees.

---

[1] The decision in *Transmarine Navigation Corp.* involved a violation limited to a refusal to bargain concerning the effects of a layoff decision.

4. Between April and June of 2005 the parties negotiated the four classified employees collective bargaining agreements. As a part of the catering employees agreement, the union proposed that only district employees would do catering on district premisses.

5. At the sixth and final meeting of their negotiations on June 13, 2005, the employer presented a counter proposal on outside catering. After going back and forth on the issue, the employer's last proposal on the issue was accepted by the union and was then tentatively agree to by both parties.

6. On August 22, 2005, the employer's school board met to vote on the tentatively agreed upon collective bargaining agreements. The employer's bargaining team recommended ratification of all four agreements. The board voted to ratify three of the classified collective bargaining agreements, but based upon the negative recommendation of Superintendent James Walsh, it did not ratify the catering employees collective bargaining agreement.

7. Subsequent to that vote the employer requested that the union return to bargain the outside catering issue, but the union refused. The union stated that it believed that it had an agreement and that there was nothing left to bargain.

CONCLUSIONS OF LAW

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

2. By failing to ratify its own final proposal on the issue of outside catering on district premises, the employer failed to bargain in good faith and committed an unfair labor practice in violation of RCW 41.56.140(4).

ORDER

SHORELINE SCHOOL DISTRICT, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from: Refusing to bargain in good faith with SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter RCW 41.56:

   a. Ratify, at the next regularly scheduled meeting of the SHORELINE SCHOOL DISTRICT Board of Directors, the tentative collective bargaining agreement which covers the employer's catering employees and which was negotiated in good faith between the employer and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925, but was not ratified on August 22, 2005.

   b. Give notice to and, upon request, negotiate in good faith with SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925, any negative impacts to the wages, hours of work or conditions of work which might have resulted from the employer's refusal to ratify the catering collective bargaining agreement on August 22, 2005, and restore, to the extent possible, the *status quo ante*.

c. Provide backpay to employees, if any, who were determined by the negotiations ordered in subparagraph b to have lost wages due to the failure of the SHORELINE SCHOOL DISTRICT to ratify the catering collective bargaining agreement.

d. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

e. Read the notice attached to this order into the record at a regular public meeting of the Board of Directors, of the *SHORELINE SCHOOL DISTRICT*, 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.

f. 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.

g. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 31st day of May, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain in good faith when we refused to ratify the tentative collective bargaining agreement negotiated between Service Employees International Union, Local 925 and the Shoreline School District.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL ratify, at the next regularly scheduled meeting of the Shoreline School District Board of Directors, the tentative collective bargaining agreement which covers the catering employees and which was negotiated in good faith by the employer and the Service Employees International Union, Local 925, but was not ratified on August 22, 2005.

WE WILL give notice and, upon request, negotiate in good faith with the Service Employees International Union, Local 925, any negative impacts affecting employees wages, hours of work or conditions of work, which might have resulted from the employer's refusal to ratify the catering collective bargaining agreement on August 22, 2005, and restore, to the extent possible, the *status quo ante*.

WE WILL provide backpay to employees, if any, who were determined by the ordered negotiations to have lost wages due to the failure of the Shoreline School District to ratify the catering collective bargaining agreement.

WE WILL NOT refuse to bargain in good faith with the Service Employees International Union, Local 925.

WE WILL NOT, 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.

DATED: _____ SHORELINE SCHOOL DISTRICT

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 05/31/2006

The attached document identified as: DECISION 9336 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	19822-U-05-05026	FILED:	09/30/2005	FILED BY:	PARTY 2
DISPUTE:	ER GOOD FAITH				
BAR UNIT:	FOOD SERVICE				
DETAILS:	-				
COMMENTS:					

EMPLOYER: SHORELINE S D
ATTN: LINDA JOHNSON
18560 1ST AVE NE
SHORELINE, WA 98155-2148
Ph1: 206-361-4203 Ph2: 206-361-4202

REP BY: LIZ WELLS
SHORELINE S D
18560 1ST AVE NE
SHORELINE, WA 98155-2148
Ph1: 206-361-4203

REP BY: JOSEPH MCKAMEY
NORTHSHORE S D
3330 MONTE VILLA PKWY
BOTHELL, WA 98021-8972
Ph1: 425-489-6433

PARTY 2: SEIU LOCAL 925
ATTN: KIM COOK
2900 EASTLAKE AVE E STE 230
SEATTLE, WA 98102
Ph1: 206-322-3027 Ph2: 206-322-3010

REP BY: IRENE ELDRIDGE
SEIU LOCAL 925
2900 EASTLAKE AVE E STE 230
SEATTLE, WA 98102
Ph1: 206-322-3010

REP BY: KATHLEEN PHAIR BARNARD
SCHWERIN CAMPBELL BARNARD
18 W MERCER ST STE 400
SEATTLE, WA 98119-3971
Ph1: 206-285-2828 Ph2: 800-238-4231

REP BY: ATONIA BOHAN
SEIU LOCAL 925
2812 LOMBARD STE 309
EVERETT, WA 98201
Ph1: 425-258-2555