STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 925,	)	
Complainant,	)	CASE 19822-U-05-5026
vs.	)	DECISION 9336-A - PECB
SHORELINE SCHOOL DISTRICT,	)	DECISION OF COMMISSION
Respondent.	)	

Antonia K. Bohan and Schwerin Campbell Barnard, by *Kathleen Phair Barnard*, Attorney at Law, for the union.

Dionne & Rorick, by *Clifford D. Foster, Jr.*, Attorney at Law, for the employer.

This case comes before the Commission on a timely appeal filed by Shoreline School District (employer) seeking review and reversal of certain Findings of Fact, Conclusions of Law, and Order issued by Examiner Walter M. Stuteville.[1] Service Employees International Union, Local 925 (union) supports the Examiner's decision.

ISSUE PRESENTED

The sole issue presented by the employer's appeal is whether the Examiner committed reversible error by concluding that the employer refused to ratify a recommended tentative agreement which contained an employer-proposed provision that was accepted by the union.

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[1] *Shoreline School District*, Decision 9336 (PECB, 2006).

Based upon the record before us, we find that the Examiner applied the proper standard of law, and substantial evidence supports the Examiner's findings and conclusions. The employer committed an unfair labor practice when Superintendent of Schools James Welsh recommended to the employer's Board of Directors that they not ratify the agreed upon collective bargaining agreement. Although the parties agreed that the Board of Directors, as well as the union membership, would ultimately vote whether to ratify the tentative agreement, the union had a reasonable expectation that the employer would recommend to the Board of Directors that it ratify the employer's proposal. We amend the remedial order.

ANALYSIS

Standard of Review

This Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002). The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001).

Applicable Legal Standard

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW

41.56.030(4). "[P]ersonnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as the mandatory subjects of bargaining under *City of Richland*, Decision 2448-B (PECB, 1987), *remanded*, 113 Wn.2d 197 (1989); *Federal Way School District*, Decision 232-A (EDUC, 1977), citing *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). An employer or union that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(1) and (4); 41.56.150(1) and (4).

In certain circumstances, the failure to ratify a collective bargaining agreement could be an unfair labor practice. In *Naches Valley School District*, Decision 2516 (EDUC, 1987), an examiner explained that under Section 8(d) of the National Labor Relations Act, parties are obligated to execute a written agreement if there is such a request, and a refusal to sign a contract incorporating agreed upon terms is a per se violation of the act. *Naches Valley School District, citing Duro Paper Bag Mfg. (Teamsters Union, Local 100)*, 216 NLRB 1070 (other citations omitted).[2] In *Mason County*, Decision 2307-A (PECB, 1986), this Commission adopted this same principal as it applies to Chapter 41.56 RCW.

Application of Standard

Neither party disputes the law applicable to this case. Rather the employer cites what it believes to be errors in the Examiner's factual determinations, as well as errors in the application of facts to the law. The employer asserts that the Examiner failed to

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[2] It is well established that in construing Chapter 41.56 RCW, cases interpreting provisions of the National Labor Relations Act that are similar to the provisions of the state act, while not controlling, are persuasive. *Nucleonics Alliance, Local Union 1-369 v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984).

analyze key facts, including the ground rules for the negotiations that specifically made ratification of the tentative agreement contingent upon a favorable vote of the Board of Directors, and erred in determining that the employer untimely notified the union of potential problems with the tentative agreement.

The Union Agreed to the Employer's Catering Proposal

The collective bargaining provision at issue in this case concerned whether the employer would have been prohibited from utilizing outside contractors to provide food services and cater meetings held in the employer's rooms and facilities. The parties had several negotiating sessions on this subject, and during the sixth session on June 13, 2005, the employer presented a compromise proposal that incorporated elements of both parties' proposals throughout the session. The union accepted the employer's compromise as is, and offered no changes. Although the parties reached this tentative agreement, the record demonstrates that the union was aware that the employer's negotiating team felt that agreed-upon proposal might have been a "stretch" over what the district would accept, but that the compromise language was something that everybody could live with and the employer's negotiating team was committed to "sell" the provision to the Board of Directors.[3] Nevertheless, we find ample support in this record demonstrating that the employer's proposal regarding food catering for events held at the employer's facilities was adopted as the parties' tentative agreement.

Employer Never Communicated Need for Welsh's Support

Pursuant to the ground rules for the negotiations, the parties sent the tentative agreement to their respective designated ratification

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[3] Testimony of Lester Porter, Transcript pages 131, lines 1 - 11.

bodies. In late June 2005, the union's bargaining team recommended to its membership that it ratify the tentative agreement, which it did. The employer's Board of Directors was scheduled to ratify the contract in late August.

Between June 13, 2005, and August 19, 2005, the employer provided no indication to the union that the provision regarding catering would be unacceptable. However, on August 19, 2005, the employer informed the union that Superintendent James Welsh was going to recommend to the Board of Directors that they not ratify the agreed upon contract. Welsh objected to the catering proviso, specifically questioning whether the catering department could meet the food services needs of clients utilizing the employer's facilities. On August 22, 2005, the Board of Directors declined to ratify the contract, and returned it to the Superintendent for further negotiations.

The Examiner's Decision

The Examiner found that the employer's failure to properly support its own proposal constituted an unfair labor practice. When the parties commenced negotiations, they established the ground rules that the negotiations would be conducted under, and specifically noted that all agreements must be reduced to writing, and that any agreement was subject to ratification. A bargaining team that fails to disclose that it lacks authority to reach tentative agreements does so at is own peril.[4]

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[4] Although best practices suggest that a bargaining team should communicate the breadth of the authority it possesses to enter into tentative agreements at the outset of negotiations, we recognize there are often times when bargaining team needs seek higher counsel regarding unique proposals or, as is more often the case, certain economic proposals.

Here, the employer's negotiating team only communicated to the union that ratification of any tentative agreement was contingent upon a vote of the Board of Directors. The employer's negotiating team also stated that it would "sell" the catering proposal to the board, but never expressed the fact that the Superintendent's support for any agreement was needed.[5] Absent any timely communication demonstrating Welsh's support was needed, the union was safe to assume that the employer's bargaining team had the authority to reach binding tentative agreements, and that the employer would fully support any terms it proffered, contingent on ratification.

The employer argues that the parties were fully aware that any agreement was contingent on ratification, and that the Superintendent's approval would be necessary. We disagree. Specifically, the Examiner found, and the record supports, that the employer never informed the union that Welsh's support would be necessary, only that the Board of Directors' support was necessary. If the employer timely communicated Welsh's objections to the employer's proposal, then bargaining over the subject with the union could have continued. The fact that the employer and union had already taken steps to implement the terms of the collective bargaining agreement before Welsh expressed his concern clearly demonstrated that the parties expected ratification of the agreement.

In effect, when Welsh recommended that the Board of Directors not ratify the contract, he "torpedoed" an agreement made by his own bargaining team, and the effect of that recommendation clearly prejudiced the union. Although Welsh could have expressed his concern to the Board regarding his bargaining team's proposal, he

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[5] The record demonstrates that the Superintendent was away on vacation during part of the parties' negotiations, but that does not alleviate the employer's responsibility to inform the union of a potential delay.

was nevertheless required to support what his bargaining team recommended, and under these particular facts, he was not permitted to recommend rejection of the proposal.

We do agree with the employer that the Examiner erred when he concluded that Welsh was on vacation for three months, when he was actually on vacation in July and August 2005. However, not only do we find this error harmless, the employer's admission actually hurts its own case. If Welsh were on vacation in July and August, he certainly must have been available on June 13, 2005, when the parties reached their tentative agreement. This raises the question why the employer's negotiating team did not present Welsh with a copy of proposal at that time for his approval. Had the employer chosen to secure approval at that time, the parties could have returned to meaningful bargaining.

Conclusion

We agree with the Examiner's findings and conclusions that when Welsh recommended to the Board of Directors that they not ratify the collective bargaining agreement based upon the employer's offer the employer committed an unfair labor practice.

The Examiner's Remedy

The Examiner ordered the employer to implement the agreed upon terms of the tentative agreement and to negotiate in good faith any negative impacts to wages, hours, and working conditions that may have resulted from the employer's refusal to ratify the collective bargaining agreement and, to the extent possible, restore the status quo ante. We disagree with the employer that the Examiner's remedy oversteps the remedial authority granted to this agency, but

based upon the factual situation, we decline to adopt the Examiner's remedy in this case.[6]

This Commission is empowered to prevent and remedy unfair labor practices. RCW 41.56.160. The fashioning of remedies is a discretionary action of the Commission. *City of Seattle*, Decision 8313-B (PECB, 2004). When interpreting the Commission's remedial authority under Chapter 41.56 RCW, the Supreme Court of the State of Washington approved a liberal construction of the statute to accomplish its purpose. *METRO v. Public Employment Relations Commission*, 118 Wn.2d 621 (1992). With that purpose in mind, the Supreme Court interpreted the statutory phrase "appropriate remedial orders" being those remedies necessary to effectuate the purposes of the collective bargaining statute to make the Commission's lawful orders effective. *METRO*, 118 Wn.2d at 633. The

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[6] The employer argues that although RCW 41.56.905 directs this Commission to construe Chapter 41.56 RCW as controlling over other conflicting statutes, state law nevertheless requires a school district's board of directors to ratify collective bargaining agreements. RCW 28A.400.300; *Lake Washington School District v. Lack Education Association*, 109 Wn.2d 427 (1987). Therefore, the employer claims the Examiner's order directing the Board of Directors to ratify the tentative agreement was in error. We disagree. In *Peninsula School District v. Public School Employees of Washington*, 130 Wn.2d 401, 410-411 (1996), the Supreme Court of Washington specifically noted that RCW 28A.400.300 limits its own operation where "otherwise specially provided by law." *See also*, *Rose v. Erickson*, 106 Wn.2d 420 (1986) (recognizing that if conflicts exists between Chapter 41.56 RCW and another statute, Chapter 41.56 RCW prevails). The court went on to note that "[s]ince collective bargaining is mandated by statute, agreements reached pursuant to such statutes fall within the exception language." Thus, while we decline to adopt the Examiner's remedial order based upon the record before us, we do find that the Examiner's remedial order as issued does not distort either law, and both laws can be easily be harmonized.

Commission's expertise in resolving labor-management disputes was also recognized and accorded deference. *METRO*, 118 Wn.2d at 634 (citing *Public Employment Relations Commission v. City of Kennewick*, 99 Wn.2d 832 (1983)).

Although the employer, and specifically Superintendent Welsh, bears the responsibility for the Board rejecting the agreement that it negotiated, based upon the facts of this case, we do not agree that forced implementation of the contractual terms is the appropriate remedy. The employer's chief negotiator testified that while the employer believed that the catering provision was something that the "parties could live with," he did in fact state that he would have to sell the provision to the Board of Directors. Additionally, the employer's chief negotiator testified that he was "shocked and disappointed" by Welsh's position on the provision.[7]

In order to best effectuate the purposes of Chapter 41.56 RCW in this case, we direct the employer to present the June 13, 2005 collective bargaining agreement to the employer's Board of Directors, and we direct the employer to recommend to the Board of Directors that the collective bargaining agreement as a whole be ratified and implemented, including the employer's catering provision. The Board of Directors will disregard any statements made by former Superintendent Welsh during its deliberations on ratification.[8]

NOW, THEREFORE, it is

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[7] Testimony of Lester Porter, Transcript page 126, line 17 through page 127, line 3.

[8] We also instruct the employer's bargaining representatives to unanimously recommend that the Board of Directors adopt their catering proposal.

ORDERED

1. The Findings of Fact and Conclusions of Law issued by Examiner Walter M. Stuteville in the above-captioned case are AFFIRMED and adopted as the Findings of Fact and Conclusions of Law of the Commission.

2. The Order issued by Examiner Walter M. Stuteville in the above-captioned case is AMENDED as follows:

The Shoreline School District shall TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter RCW 41.56:

a. At the next regularly scheduled meeting of the Shoreline School District Board of Directors, recommend ratification of 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. Following any successful ratification vote of the tentative collective bargaining agreement not ratified on August 22, 2005, give notice to and, upon request, negotiate in good faith with Service Employees International Union, Local 925, any negative impacts to the wages, hours, or conditions of employment which might have resulted from the employer's refusal to ratify the 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, the 14th day of November, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner

Case 19822-U-05-5026

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 recommend ratification of the tentative collective bargaining agreement negotiated with Service Employees International Union, Local 925.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL recommend ratification, at the next regularly scheduled meeting of the Shoreline School District Board of Directors, of the tentative collective bargaining agreement which covers the catering employees and which was negotiated in good faith by the employer and 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 Service Employees International Union, Local 925, any negative impacts affecting employee wages, hours, and working conditions, which might have resulted from the employer's refusal to ratify the 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 collective bargaining agreement.

WE WILL bargain in good faith with 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.