

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 483,

Complainant,

vs.

CITY OF TACOMA, DEPARTMENT
OF PUBLIC UTILITIES,

Respondent.

CASE NO. 627-U-76-73

DECISION NO. 322 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

International Brotherhood of Electrical Workers, Local 483, filed a charge with the Public Employment Relations Commission on November 12, 1976, wherein it alleged that the City of Tacoma, Department of Public Utilities, had refused to bargain collectively in violation of RCW 41.56.140(4) by refusing to execute a written agreement embodying an agreement previously reached by the parties through collective bargaining. The charge was processed by the Executive Director pursuant to WAC 391-20-310 and a complaint of unfair labor practices was issued thereon. A hearing was held on May 10, 1977 and May 11, 1977 before Val D. Spangler, Examiner. The Examiner subsequently withdrew from the case and the matter has been transferred to the Commission for decision.

BACKGROUND

The Employer operates the electric utility in the City of Tacoma known as "Tacoma City Light". The Union has been the exclusive bargaining representative of production and maintenance employees of "Tacoma City Light" since 1946. The employer and the union were parties to a 1973-1975 collective bargaining agreement which contained a grievance and arbitration procedure.

One of the functions performed by bargaining unit personnel is the operation of a "dispatch office". In May, 1974, a grievance arose concerning pay rates in the dispatch office. That grievance was processed to arbitration. At the commencement of the arbitration hearing, the City raised an issue of arbitrability, whereupon the arbitrator declined to proceed until that issue was judicially determined. Civil suit followed.

Shortly before the trial of the matter in the Superior Court, the parties tried to settle the case. Understandably, those settlement discussions focused on the underlying grievance rather than on the technical issue of arbitrability. The parties were represented in those discussions by teams not identical to their collective bargaining teams. Ultimately, the Union made a proposal and the principal spokesman for the City responded that this was something with which the City "could live".

The attorneys for the parties discussed the mechanics of preparation and presentation of the agreement reached as a stipulation for entry in the record of the Superior Court proceedings. A draft was prepared by the Union but the spokesmen for the City fell into disagreement among themselves and the parties never complied with Superior Court Civil Rule (CR) 2A. The arbitrability matter, which had been left pending in the Superior Court to await presentation of the stipulation, was brought on for trial, decided against the Union and appealed to the Court of Appeals. The Union filed an unfair labor practice complaint against the City for refusal to bargain, based on the City's refusal to execute a written agreement incorporating the terms of the settlement.

POSITION OF THE UNION

The Union contends that the meeting concerned a grievance and that the Employer has a duty to bargain in good faith concerning grievances. The Union directs our attention to NLRB cases finding a valid and enforceable agreement where there has been a meeting of the minds of an employer and union representatives and a subsequent rejection of that agreement by one of the parties. The Union urges that the proposal was clear that the City's Labor Relations Director accepted the proposal, and that the draft submitted for signature was developed from the same notes from which the proposal was made and properly reflects the content of the proposal.

POSITION OF THE CITY

The City argues that the meeting was held "to avoid litigation", and that the City's position as to arbitrability was later upheld in the Superior Court. The City contends that its representatives at the meeting did not have authority to reach a final agreement, and that the draft presented by the Union did not reflect what was discussed on September 22, 1976.

DISCUSSION

Negotiations to settle civil litigation are controlled by the rules of the civil courts and are not collective bargaining negotiations, which for

failure to complete, a party may be found guilty of an unfair labor practice under RCW 41.56.140(4). Any other rule would render civil litigation settlement negotiations perilous for both parties and contrary to public policy. The negotiations involved here were covered by CR 2A and cannot give rise to unfair labor practices.

On the other hand, collective bargaining negotiations may, and often do, settle or prevent the filing of civil litigation.

The Commission makes the following

FINDINGS OF FACT

1. The City of Tacoma, Washington, is a municipality of the State of Washington.
2. International Brotherhood of Electrical Workers Local 483 is a labor organization which has, at all times pertinent hereto, been recognized as the exclusive bargaining representative of employees of the Light Division of the City of Tacoma.
3. The City and the Union were parties to a collective bargaining agreement. A grievance arose under that agreement and was processed to arbitration, whereupon the City objected to the arbitrability of the grievance.
4. The City and the Union became parties to proceedings before the Superior Court for Pierce County involving the arbitrability of the grievance.
5. On September 21, 1976 and September 22, 1976, the City and the Union entered into settlement discussions to avoid trial of the matter then pending in the Superior Court for Pierce County. The parties did not comply with CR 2A.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties pursuant to RCW 41.56 and Chapter 391-20 WAC.
2. The negotiations held between the parties on September 21, 1976 and September 22, 1976 were negotiations for the settlement of civil litigation and were not collective bargaining negotiations under RCW 41.56.

ORDER

The Complaint filed in the above-entitled matter is dismissed.

DATED this: 15th day of February, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, CHAIRMAN

Michael H. Beck
MICHAEL H. BECK, COMMISSIONER

Paul A. Roberts
PAUL A. ROBERTS, COMMISSIONER