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STATE OF WASHINGTON

Received PERC 4/19/76

PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE OFFICE
300 West Harrison
Seattle, Washington 98119

Filed 4/16

April 15, 1976

DECISION NO. 45 PECB

225-

Re: Case No. ULN-137

Dec #45 PECB

Mr. Lawrence Schwerin, Attorney
Law Offices of Hafer, Cassidy and Price
2701 First Ave., Suite 400
Seattle, Washington 98121

Dear Mr. Schwerin:

This Commission received a "Charge Against Employer" on April 6, 1976, filed by you on behalf of Teamsters Union Local No. 411 against the City of Oak Harbor, Washington. The charges allege as follows:

> The employer has refused to engage in good faith collective bargaining as required by RCW 41.56.030 and RCW 41.56.140(4) and has interfered with the rights of public employees in violation of RCW 41.56.140 (1) and 41.56.040 by on or about March 31, 1976:
>
> 1. Refusing to grant union represented police officers the same wage increases granted to non-union employees in spite of the union's authorization and request to do so. Cf. RCW 41.56.470;
>
> 2. Reneging on and disavowing previously advanced offers to the union regarding retroactivity.

Regarding the leading paragraph and Charge No. 2, we have reviewed our records and correspondence relating to negotiations between the City of Oak Harbor and Teamsters Union Local No. 411. Bargaining sessions were held on December 17, 1975 and January 28, 1976. A request for Mediation was received on February 2, 1976 and a mediation session was conducted by Mr. Win Key on March 24, 1976. The public employer is required to engage in collective bargaining under RCW 41.56.100 and that term is defined in RCW 41.56.030 as follows:

> (4) "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.

It is clear that the City has not refused to engage in collective bargaining. Further, the City has not reneged on its offer of retroactivity which was presented during Mediation on March 24, 1976 and reaffirmed in writing to the Union on April 7, 1976. (See attached letter).

Charge No. 1 eminates from the City's refusal to grant the same increases to members of the Local 411 bargaining unit as were given to other city employees. Wage rates are perhaps the most important issue which is a mandatory subject of collective bargaining. In the statutory definition of "Collective bargaining" it specifically states "... neither party shall be compelled to agree to a proposal or be required to make a concession..." Thus the public employer, whether it be the City of Oak Harbor or the City of Seattle which has 32 bargaining units, cannot be required to give identical wage increases to all bargaining units because that increase has been given to a certain group of represented or non-represented employees. This type of acquiescence to a union request would most certainly have to be considered a concession. Conversely, a public employer cannot unilaterally impose an increase upon a bargaining unit merely because that same increase has been granted to or accepted by one or more groups of employees. The rates of pay will be those which are arrived at through negotiations and are incorporated in the signed collective bargaining agreement. Further, a collective bargaining agreement must be accepted or rejected in its entirety when it is presented as a package; neither party may accept some items, reject others, and then require that the acceptable items be put into effect.

We are very puzzled by your reference, in Charge No. 1, to RCW 41.56.470 which is as follows:

> 41.56.470 Uniformed personnel - Arbitration panel - Rights of parties. During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this 1973 amendatory act.

The reasons we question this reference are: 1) It pertains only to "Uniformed personnel" which is defined in RCW 41.56.030(6) as law enforcement officers "of cities with a population of fifteen thousand or more. . ." Thus, the unit of police officers in Oak Harbor would not qualify as "Uniformed personnel" under the statute. 2) The above-cited code applies only "During the pendency of the proceedings before the arbitration panel..." Since there is no arbitration panel in this dispute it cannot apply thereto. 3) There is

no indication, or allegation, that "existing wages, hours and other conditions of employment" have been changed.

For the reasons stated herein, and in accordance with WAC391-20-311, the Public Employment Relations Commission has no alternative except to dismiss the Charge Against Employer in Case No. ULW-137 as being without merit.

Sincerely,

Willard G. Olson

Willard G. Olson
Associate Chief Labor Mediator

WGO:je

cc: Mr. Marvin Schurke
Mr. Donald L. Johnsen
Mr. Win Key
Mayor Al Koetje

Attachment