STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PROFESSIONAL FIREFIGHTERS OF MERCER ISLAND, LOCAL 1762, IAFF, Complainant, vs. CITY OF MERCER ISLAND, Respondent.	CASE NO. 3730-U-81-567 DECISION NO. 1457 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Lee M. Burkey, Jr., Attorney at Law, appeared on behalf of the complainant at the hearing. Craig Hagstrom, Vice-President of Local 1762, submitted the closing brief.

Ronald Dickinson, Attorney at Law, appeared on behalf of the respondent.

On October 8, 1981, Professional Firefighters of Mercer Island, Local 1762, IAFF (complainant) filed an unfair labor practice complaint charging that the City of Mercer Island (respondent) violated RCW 41.56.140(4) by refusing to negotiate in good faith. A hearing was conducted on March 8, 1982 in Mercer Island, Washington, before Kenneth J. Latsch, Examiner. The parties submitted post-hearing briefs.

BACKGROUND:

The City of Mercer Island negotiates collective bargaining agreements with several bargaining units including public works, police, and firefighters. Police officers and firefighters work within the city's Department of Public Safety. Firefighters are represented for purposes of collective bargaining by Professional Firefighters of Mercer Island, Local 1762, IAFF. There are approximately 19 employees in the bargaining unit. The city and union have a bargaining relationship which is at least five years old.

Events leading to this unfair labor practice complaint began on May 25, 1981, when Alan Provost, president of the union, sent a letter to City Manager Lawrence Rose requesting a date to begin negotiations for a 1982 contract.[1] The letter also indicated that complainant expected to exchange initial proposals at the first negotiation session. Rose contacted James Conner, negotiations consultant, approximately two weeks later. Conner then met with Rose and the City Council to formulate a bargaining position.

Conner testified that he called Provost to inform him about the city meetings and to assure him that a letter would be forthcoming setting dates for negotiations. In addition, Conner testified that he told Provost that respondent would not have a proposal at the initial meeting, following a traditional city bargaining posture. Provost testified that he did not receive any telephone calls about the negotiations. Because of subsequent events, the Examiner does not find it necessary to resolve this particular conflict in testimony.

On July 20, 1981, Conner sent Provost a letter suggesting possible dates for an initial meting. The letter also contained the following statement:

> "As in the past, I will arrange to meet with the City Council to review your demands and arrange timely follow-up meetings as appropriate."

After checking work schedules, the firefighters chose August 6, 1981 as the first available date among those offered by Conner. Respondent never received any complaint from the union about the delay in scheduling the first meeting. On August 6, 1981, a negotiation session was held in Conners office. Provost and Secretary/Treasurer Curtis Johnson attended on behalf of complainant, and Conner and Deputy Chief Phillip Parson represented respondent. The meeting lasted approximately two and one-half hours. At the meeting, complainant presented its proposal and explained certain portions of it to city representatives. Proposal included a wage demand of

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1 The parties traditionally enter into collective bargaining agreements with a duration of one year.

13%. Conner told Provost that he would be in touch with complainant about further negotiations after the initial proposal was reviewed by the City Council.

Several weeks passed without further contact between the parties. On September 16, 1981, Provost attended a "mini-retreat" called by Jan Deveny, Director of the Department of Public Safety. The "mini-retreats" were used to improve labor/management dialogue but were associated with continuing collective bargaining negotiations. Provost was asked to attend in his capacity as president of the firefighters' union. At the meeting, Provost's concerns about the lack of negotiations were expressed to Deveny. Several days later, Parsons contacted Provost to set up a second negotiation session.

The second negotiations meeting was held on September 22, 1981. In attendance for complainant were Provost, Johnson and union Vice President Craig Hagstrom. Parsons and Deputy Chief Ronald Green represented respondent, but Conner was not present. At the meeting, the union negotiation team explained its proposal in more detail. Of particular concern to respondent was the union's proposal concerning increased benefits for employees under the LEOFF II retirement plan. Complainant provided additional information on that subject, and a majority of the meeting was devoted to LEOFF II issues. In addition, Parsons brought up the city's position on wage increases for the first time. Parsons discussed a possible wage settlement of 4.8% and a total cost (including benefits) of less than 10%. Since this was a new position, complainant was not prepared to respond in detail. Several other items were discussed in general terms, but no written proposals were offered by respondent, and complainant did not modify its original bargaining demands. Parsons indicated that the city would have a written proposal ready at the next meeting. The parties met for approximately four hours.

The third and final negotiation meeting was held on October 2, 1981. Complainant did not raise objections to the length of time between the second and third negotiation sessions. Provost, Johnson and Hagstrom attended on behalf of complainant. Green, Parsons and Conner represented respondent. Provost testified that as the union negotiating team entered the meeting, Conner was referring to the interest arbitration provisions of RCW 41.56. Conner testified that he was checking the procedures for interest arbitration because of the difference between the union's position and the city's position. When the meeting began, Conner stated respondent's offer which

consisted of three elements: a 4.8% wage increase, a cap on city-paid insurance premiums, and a revision in step increases to place such increases on a performance evaluation instead of the existing automatic wage adjustments. Conner did not present a written proposal but he explained each item of respondent's position as well as explaining why complainant's proposals were not acceptable. Provost asked if the city's position was an initial or a final point in negotiations. Conner stated the city's position was "where the council wants to wind up". The parties then decided to submit their contract differences to interest arbitration on a "last, best offer" basis. An interest arbitration hearing was subsequently held and an award was issued on February 10, 1982.

POSITIONS OF THE PARTIES:

Complainant argues that respondent failed to bargain in good faith by its conduct during negotiations for the 1982 collective bargaining agreement. Complainant contends that respondent failed to meet at reasonable times. Complainant also maintains that respondent refused to negotiate by failing to provide a written proposal and presenting a "take it or leave it" position prior to submission of the contractual dispute to interest arbitration.

Respondent argues that it did not commit an unfair labor practice. Respondent contends that complainant did not object to the delays in negotiation meetings, and further argues that it negotiated in good faith in the bargaining sessions. Respondent maintains that complainant declared the impasse which ultimately led to interest arbitration, and that respondent never refused to meet with complainant's representatives.

DISCUSSION:

Collective bargaining is defined in RCW 41.56.030(4) as:

> "…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."

Refusal to Meet

An employer commits an unfair labor practice by refusing to meet with the exclusive bargaining representative. See: Ramona's Mexican Food Products, Inc., 83 LRRM 1705 (1972). In like manner, an exclusive bargaining representative was found to have committed an unfair labor practice when its bargaining spokesperson took a vacation during negotiations and the union did not take reasonable steps to appoint a new spokesperson so negotiations could continue. See: Highline School District No. 401, Decision No. 1054-A (EDUC, 1981).

The situation presented in this case differs significantly. While the total negotiation process consisted of three meetings, and the parties were in actual bargaining for less than ten hours, the Examiner cannot find that respondent committed an unfair labor practice in scheduling meetings as it did. Respondent did not receive any complaint about the delay between the May 25, 1981 request for negotiations and the initial meeting held August 6, 1981. Provost did discuss the lack of negotiations with Director of Public Safety Deveny, but did not object to the ensuing delay between the September 22, 1981 and October 2, 1981 meetings. The Examiner is not persuaded that the employer took sole responsibility for scheduling all meetings. While relations between the parties have been strained, complainant could have objected to the lack of negotiation and could have suggested alternate dates. By failing to protest the meeting schedule, complainant effectively waived its objection by inaction.

Lack of Good Faith

The National Labor Relations board (NLRB) found an employer's bargaining practices to be an unfair labor practice in General Electric Co., 57 LRRM 1491 (1964), where the employer made a single offer and required total acceptance of that offer or there would be no further negotiations. The NLRB was careful to point out that the employer was not being compelled to make any specific offer or concession as a result of the unfair labor practice proceeding. The Board pointed

out, however, that the employer's practices made effective bargaining impossible. Such a violation has been found where a public employer stated that it would not modify its initial salary proposal and did not see the necessity of further negotiations. Whitman County, Decision No. 250 (PECB, 1977).

The course of negotiations in this case demonstrates respondent's lack of good faith. Consisting of three meetings, the total negotiation process involved complainant's presentation of a bargaining proposal, clarification of the proposal (in the absence of respondent's chief negotiator), and respondent's offer. Respondent failed to produce any written proposal, and the only oral offer presented was its final position. Such a "take it or leave it" approach frustrates the bargaining process and prohibits the exclusive bargaining representative from fulfilling its obligations to bargaining unit employees. The Examiner concludes that respondent did not attempt to negotiate in good faith when it presented its first offer as a final position. It must be noted that, just as in General Electric, supra, respondent is not required to make any specific offer or concession. Respondent is required, however, to approach negotiations with an open mind in an attempt to reach accord with complainant concerning wages, hours and terms of employment. While the Examiner cannot find an unfair labor practice because of the frequency of negotiation meetings, a violation is found on the basis of respondent's actions at the meetings.

Respondent's contention that complainant requested interest arbitration is not persuasive. Respondent cannot defend itself by the concept of "impasse" when its conduct led to the impasse. See: Federal Way School District No. 210, Decision No. 232-A (EDUC, 1977). Since respondent failed to negotiate in good faith, it does not matter that complainant made the formal request for interest arbitration.

FINDINGS OF FACT

1. The City of Mercer Island is a municipal corporation and a "public employer" within the meaning of RCW 41.56.030(1).

2. Professional Firefighters of Mercer Island, Local 1762, IAFF is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents 19 firefighters employed by the city. The parties bargaining relationship dates back to 1977.

3. The union requested negotiations for a successor collective bargaining agreement by letter dated May 25, 1981. The city, through its representative, James Conner, replied by letter on July 20, 1981, suggesting several dates for an initial meeting.

4. The first meeting was held on August 6, 1981. The union presented and explained its initial proposal to city representatives. Following its traditional practice, respondent did not have a written proposal to submit at the initial meeting.

5. The second meeting was conducted on September 22, 1981. The union clarified several parts of its proposal, and city representatives commented about possible areas of negotiation. The city did not provide any written proposal.

6. At a negotiaiton session held on October 2, 1981, city representatives gave a three part oral offer rejecting the union's proposal except for several minor points. When asked what the city's position meant, Conner replied that offer was "where the Council (City Council) wanted to wind up".

7. Respondent's lack of good faith in the negotiation process led to the impasse and subsequent interest arbitration proceeding.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.

2. By offering a single offer as a final bargaining position after three negotiating sessions, respondent has failed to negotiate in good faith, thus violating RCW 41.56.140(4).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the City of Mercer Island, its officers and agents shall immediately:

1. Cease and desist from:

(a) refusing to negotiate in good faith with Professional Firefighters of Mercer Island, Local 1762, IAFF.

2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the policies of the Act:

(a) 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 A". Such notices shall, after being duly signed by an authorized representative of the City of Mercer Island, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Mercer Island to ensure that said notices are not removed, altered, defaced, or covered by other material.

(b) Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington this 24th day of May, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

KENNETH J. LATSCH, Examiner

"APPENDIX A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL bargain collectively, in good faith, with Professional Firefighters of Mercer Island, Local 1762, IAFF, with respect to wages, hours or conditions of employment.

DATED: _____

CITY OF MERCER ISLAND

By: _____
AUTHORIZED REPRESENTATIVE

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

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.