

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL NO. 1374,)	CASE NO. 3198-U-80-460
)	3313-U-81-474
)	3314-U-81-475
Complainant,)	DECISION NO. 1520 - PECB
vs.)	
ADAMS COUNTY, WASHINGTON,)	CONSOLIDATED FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW AND ORDER

Marsha Saylor, attorney at law, appeared on behalf of
the complainant.

Frank Dennis, attorney at law, appeared on behalf of the
respondent.

On December 4, 1980, Washington State Council of County and City Employees, Local 1374 (complainant) filed an unfair labor practice complaint against Adams County (respondent) alleging that respondent violated RCW 41.56.140(1) and (2). The union alleged that the chairman of the county negotiating committee refused to negotiate wages on November 19, 1980. The complaint was later amended to allege violations of RCW 41.56.140(1) and (4). On February 6, 1981, the complainant filed a second unfair labor practice complaint alleging violation of RCW 41.56.140(1) and (4) by the respondent's refusal to negotiate wages for 1981. On February 11, 1981, the complainant filed an unfair labor practice complaint, alleging that respondent violated RCW 41.56.140(1) and (4) by refusing to negotiate wages and fringe benefits until and unless the complainant drops its unfair labor practice complaint filed on December 4, 1980. The complaints were consolidated for hearing, and a hearing was conducted in Spokane, Washington on June 2, 1981, before George G. Miller, Examiner. The parties submitted post-hearing briefs.

BACKGROUND:

Adams County is a fifth class county, approximately 1900 square miles in area with a population of some 14,000. The county seat is Ritzville. Washington State Council of County and City Employees, Local No. 1374 (WSCCCE) represents a bargaining unit of about 40 public works department employees.

The collective bargaining agreement pertinent to these proceedings was signed by the parties on April 16, 1979 with a term of January 1, 1979 to December 31, 1981. Appendix "A" attached to that agreement specified wages for 1979, 1980 and for 1981.

On September 21, 1979, Paul Sears, area representative for WSCCCE, sent the following letter to the Adams County Board of Commissioners:

RE: Benefit negotiation, 1980

"Dear Gentlemen:

As per our understanding when we negotiated the existing contract, we would set the salaries for three years and negotiate only benefits.

After comparing benefits of other counties, I find that Adams County's total paid benefit package is somewhat slim.

The benefits paid by an employer, do probably more actual good for employees, than anything else we could consider:

- (a) The employee does not pay any withholding on a paid benefit.
- (b) The County does not have to pay a share into retirement, Social Security etc.

A county paid benefit actually puts money back into the employee paycheck and with inflation running well into the double digits, the employees need all the help that you can possibly extend.

The following is a list of some of the paid benefits which most counties recognize as being very beneficial to their employees.

1. Employee Medical Coverage
2. Dependent Medical Coverage
3. Composite Dental Coverage
4. Extended (unlimited) sickleave
5. Business leave
6. Optical Coverage

After you have had a chance to consider the importance of benefits per se, I'll come over to Ritzville so we can talk over the possibility of up dating a benefit program.

Any consideration you would extend to your employees will be greatly appreciated."

The union made this bargaining demand pursuant to Article XII of the collective bargaining agreement, which provided:

"ARTICLE XII - WAGES

Employees shall be compensated in accordance with the Wage Schedule attached to this Agreement and marked Appendix A. The attached wage schedule shall be considered a part of this Agreement.

The Board agrees to meet at least once each year, no later than the second Monday in August, with a Committee from the Union employees to discuss wages and fringe benefits.

As an integral part of budget preparation, recommendations by the Union shall be considered."

The September 21, 1979 demand was untimely and the county rejected it. In a letter dated October 3, 1979, Sears reiterated that the union "would not proposed wage increases ((under Article XII)) unless we would propose an individual classification change that we felt was unfair, due to the Salik study."

On July 25, 1980, the union made a demand to negotiate with the county and presented a list of items on which it wished negotiations to take place. The demands were:

- "1. Cost of living salary increase to all classifications
2. Benefits, i.e.: Dependent medical coverage, dental coverage, optical coverage.
3. Open those portions of the contract dealing specialicaly with
 - (a) comp time
 - (b) grievance procedure
 - (c) working environment"

On August 8, 1980 the county responded agreeing to negotiate on:

- "1. Benefits, i.e.: Dependent medical coverage, dental coverage, optical coverage."

Further, the county indicated that they wished to open portions of the contract specifically dealing with:

- "1. Grievance procedure
2. Sick leave (use thereof)
3. Article I - Recognition"

In a letter dated December 22, 1980, the county advised the union that:

"It is the Board of County Commissioner's position that the Union has forfeited their rights to wage negotiations for a three year period; however, the Board acknowledges the aforementioned Article XII. In return for dropping the previously filed Unfair Labor Practice suit with P.E.R.C., we will agree to meet and discuss wages and fringe benefits."

A letter from the county to the union under date of January 28, 1981 restated the county's willingness to "discuss" but not "negotiate" wages if the pending unfair labor practice allegation were dropped.

During the course of the negotiations for 1981, the county did agree to modify the contract in several areas but made no concessions in the benefit area and steadfastly refused to make counter-offers on the union wage proposals, maintaining that wages were not an item on the table for negotiations.

DISCUSSION:

The documents with the most probative value are those which are the closest in time to the date of signing of the agreement. The document which sheds the most light on the question of whether the parties would have to negotiate wages in mid-contract is the union's letter of September 21, 1979, which states, plainly and simply:

"As per our understanding when we negotiated the existing contract, we would set the salaries for three years and negotiate only benefits."

The reference in Article XII notwithstanding, Appendix A and Sears' letters leave no question that the intent of the union at the time the contract was signed was that no mid-term negotiations occur on wages.

Dean Judd, Chairman of the Board of County Commissioners, testified that the county's letters of December 22, 1980 and January 28, 1981 to the union were intended as offers of settlement. His testimony was uncontroverted. These letters triggered the second and third complaints filed by the union. The courts encourage offers of settlement because they are attempts by the parties to voluntarily resolve their differences and avoid costly litigation. Berlinger v. Greenberg, 37 Wn.2d 308, (1950); Knapp v. Hoerner, 22 Wn. App. 925, (1979). Generally, it is an unfair labor practice for an employer to condition continued negotiations on the dropping of an unfair labor practice charge. See: Burns Brick Co., 80 NLRB 389 (1948). The underlying theory is that there is no statutory duty to bargain collectively

about the withdrawal of unfair labor practice charges. Accordingly, it is unlawful to condition the performance of mandatory bargaining obligations imposed by the statute upon agreement on the non-mandatory topic. Since the county was not obligated to negotiate wages at the point in time involved, that theory does not hold up on the facts of this case. The county did condition wage discussions on withdrawal of the unfair labor practices, but not as a condition for entry into negotiations required by the law.

In determining whether the county bargained in good faith, the examiner must look at the totality of the employer's conduct in respect to all issues presented for bargaining. NLRB v. Reed and Price Mfg. Co., 205 F 2d 131 (1st Cir. 1952), cert. denied 346 U.S. 887 (1953). Good faith bargaining does not require the parties to reach agreement. RCW 41.56.030(4). The county had agreed to negotiate, among other things, fringe benefits. An impasse was reached in the fringe benefit area at the third meeting, on or about November 18, 1980. Tentative agreement was reached by the parties on compensatory time language, grievance procedure language and working environment language. The record does not reflect that the county failed to bargain on those limited issues open under the terms of the three-year agreement and the agreed reopeners. The cost of living demand was not open for negotiations, the county holding that, per the contract and the union's letter of September 21, 1979, no duty existing to bargain wage increases for the term of the contract.

CONSOLIDATED FINDINGS OF FACT

1. Adams County is a "public employer" within the meaning of RCW 41.56.030(1).
2. Washington State Council of County and City Employees, Local No. 1374, is a "bargaining representative" within the meaning of RCW 41.56.030(3). The union represents certain employees of the employer in the Public Works Department.
3. The employer and the union were parties to a collective bargaining agreement in effect from January 1, 1979 through December 31, 1981. Appendix "A" of this agreement sets forth the monthly salary for each employee in the bargaining unit, by name, for 1979, 1980 and 1981.
4. On September 21, 1979, the Area Representative for the union advised the employer, by letter, that the union acknowledged that salaries were set for three years. On October 3, 1979, the union again acknowledged, in writing, an agreed limitation on its right to bargain wages during the term of the collective bargaining agreement.

5. On July 25, 1980, the union made a demand to negotiate with the employer and presented a list of items including a cost of living salary increase for all classifications.
6. On August 8, 1980 the employer responded, agreeing to negotiate on the union's items except the cost of living salary increase for all classifications.
7. Prior to arriving at impasse on or about November 18, 1980 on the fringe benefit issue, tentative agreement had been reached on the three items proposed by the union on July 25, 1980.
8. The employer neither advanced nor responded to wage or salary proposals during the course of bargaining.
9. The employer did, on December 22, 1980 and January 28, 1981, by letter, make offers of settlement to the union, the terms of which constituted a waiver of the limitations on negotiation of wages in exchange for withdrawal of the unfair labor practice charges in Case No. 3198-U-80-460.
10. The union filed additional unfair labor practice complaints as a result of the letters referred to in Findings of Fact Number 9.

CONSOLIDATED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The 1979-81 collective bargaining agreement between the parties constituted a waiver by the union of its right to bargain collectively on the subject of general wage increases during the term of said agreement.
3. By refusing to bargain with Washington State Council of County and City Employees, AFL-CIO, on the subject of general wage increases to be implemented prior to December 31, 1981 in addition to those specified in the 1979-81 collective bargaining agreement, Adams County did not commit any unfair labor practice and has not violated RCW 41.56.140(4) or (1).

On the basis of the foregoing Consolidated Findings of Fact and Conclusions of Law, the Examiner makes the following

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ORDER

The complaints charging unfair labor practices in the above-entitled matters are dismissed.

DATED at Spokane, Washington, this 26th day of October, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner