STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, LOCAL 252, Complainant, vs. CITY OF CENTRALIA, Respondent.	CASE NO. 5908-U-85-1099 DECISION NO. 2594 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Griffin and Enslow, P.S., by James F. Imperials/ Attorney at Law, appeared on behalf of the complainant.

Donald F. Pietig, Attorney at Law, appeared on behalf of the respondent.

On July 24, 1985, Teamsters Union Local 252 filed a complaint charging unfair labor practices against the city of Centralia. The complaint alleged that the city refused to engage in good faith collective bargaining in violation of RCW 41.56.020(4) and RCW 41.56.140(4), by changing its bargaining position late in the course of negotiations. A hearing was conducted October 10, 1985 in Centralia, Washington. At the conclusion of the hearing, the respondent moved for dismissal on the basis that the complainant had failed to show that the city had refused to bargain at any point. The motion was granted at the hearing. The parties did not submit post-hearing briefs.

BACKGROUND

Teamsters Local 252 has had a collective bargaining relationship with the city of Centralia since the early 1970's for a bargaining unit of approximately 17 employees in the police department. The present complaint was filed as a result of certain conduct during negotiations for a replacement of the parties' collective bargaining agreement which had been effective from January 1, 1984 through March 31, 1985.

At the time this case arose, the city was governed by a three member elected commission. William Rickard was the Commissioner of Finance and Accounting; Peter Corwin was the Commissioner of Public Works; and John Gelder, in addition to being the Mayor, was the Commissioner of Safety. Gelder had been a commissioner for six years and mayor since January 1, 1984.

Centralia has three bargaining units: police officers; fire fighters; and city light workers. Until approximately 1980, all three commissioners would serve on the employer's bargaining team. Since that time a reorganization of responsibilities occurred. One result has been that the commissioner assigned to an area is responsible for negotiating any collective bargaining agreements for organized employees in his division and presenting the results to the other two commissioners for ratification. The mayor clearly communicated these ratification procedures to the union.

The union sent notification of its intent to open negotiations to the city in November, 1984. The union submitted its proposals January 24, 1985 to Mayor Gelder. The first negotiation session was February 15, 1985.

The union bargaining team consisted of the business agent, Michael Mauermann, and the shop steward, Sergeant Michael Nelson. This was the first time Mauermann had negotiated this collective bargaining agreement with the city. The city's spokesperson was Mayor Gelder. Occasionally, he would be joined by Chief of Police Winter or, after Winter's separation from the city, by Acting Chief Breckel. Although the mayor clearly headed the negotiations for the employer, the mayor used the individuals in the position of police chief as an information resource letting them have direct input in the negotiations in regard to specific working conditions.

The parties met February 15th and 25th reaching a tentative agreement on the intent of the false arrest insurance provision. No agreements were reached during meetings on March 12th or 18th. On March 22nd, the parties tentatively agreed to a modification of the bereavement leave language and the placement of the clerical staff on the uniformed officers' salary schedule. Another session was held ten days later producing one tentative agreement. Five meetings were

held in April. On April 29th, the parties reached a tentative agreement on the shift rotation schedule. One of the April meetings was attended by all three members of the city commission. At this meeting, the union explained the details of its proposed Teamsters Trust Health and Welfare Plan; no agreement was reached on this item. There were three negotiation sessions in May 1985. The union business agent testified that at the May 2nd meeting, it "affirmed the tentative agreement on shift rotation from the April 29th meeting by withdrawing one of our requests."

At the May 7th meeting, with no objections from the union, the employer withdrew its tentative agreement regarding a wage adjustment for the lieutenants and an agreement regarding holidays. The union withdrew the cost related items of its health and welfare proposal.

One week later, May 14th, the parties tentatively agreed to a wage adjustment for the lieutenants. At this time both parties thought they were firmly entrenched in their positions on the five remaining items: wages, longevity, stand-by pay, health and welfare, and holidays. They mutually declared impasse. A written request for mediation was made by the Teamsters.

At the first mediation session, June 27, 1985, the parties reached agreement on wages, longevity pay and holidays. The union withdrew its proposed changes in the stand-by pay and health and welfare sections of the collective bargaining agreement. All previous tentative agreements were to be incorporated into the document presented to the parties' respective ratifying bodies.

After the mediation session, the mayor contacted Mauermann. Mauermann testified:

> … The mayor had notified me that his recommendation for acceptance to the city commission was not acceptable to the other two commissioners and that he requested or advised the need of another mediation session to attempt to narrow it down once again.

* * *

> My understanding was that he had exceeded amount (sic) of money that had been allocated for him to negotiate with and that it was above and beyond what the original offer was at the onset of negotiations.

Therefore, the mayor requested that a second mediation session. The mediation was scheduled for July 15th.

On July 10, 1985, the city received the report of its first six months of revenue collection. The report showed the city was $30,000 short of its projections. Although the police budget had approved a 5% wage increase for the bargaining unit the city commissioners as a group decided to hold at its offer of 3.5% since there seemed to be little money available and the rest of the city employees had received a 3.5% wage increase. The mayor's authority had consistently been limited to a 3.5% total package settlement cost. Thus the commissioners did not change the mayor's guidelines between mediation sessions.

At the July 15th mediation session, the parties once again reached settlement on all five issues at impasse. The agreement involved a 3.5% wage increase plus additional cost item adjustments. The mayor told the union bargaining team that he would recommend the contract as it was tentatively settled to the other commissioners although the total exceeded his authority. Mauermann testified that he asked:

> … two or three times to make it perfectly clear that yes, it was acceptable to him [Gelder] and that he was going to take the proposals back and recommend acceptance of the negotiated provisions.

Even though the mayor knew the settlement offer was beyond the scope established by the commissioners, he told the other commissioners that he "could live with it". The other commissioners rejected the contract.

On July 17, 1985, Mauermann received the following letter from Gelder:

> The City Commission response to the latest proposal arrived at in our meeting on Monday, July 15, 1985, is as follows:

> 3.5% wage increase - union can divide the dollars available as you wish - that is, if you want to give some officers more than others - just as long as the total expenditure does not exceed the 3.5% increase on the base wage. This is consistent with the rest of the City and is what has been stressed throughout our meetings.
>
> After reviewing our first six (6) month reports and projected revenues for the balance of 1985, we feel that we must remain firm on this issue.
>
> This means that the other items that involve dollars, some of which we had some tentative agreement on, cannot be considered this year.
>
> We do not have agreement at this time on any items other than the 3.5% wage increase effective April 1, 1985.
>
> I propose that we extend the present contract one (1) year, with the wage increase mentioned above, as I have done in past meetings.

The union did not contact the mayor after it received the letter.

Mauermann interpreted the July 17th letter from the mayor as withdrawing all tentative agreements. The mayor testified that he meant the letter only to be a withdrawal of the tentatively agreed to money items. The mayor anticipated that the he would get a response from the union regarding the letter.

POSITIONS OF THE PARTIES

The union argues in its opening statement that the parties were basically "back to scratch" after the city withdrew all its agreements made during a significant period of negotiations. The union acknowledges that the mayor was operating within the instruction of the commission, but contends that by its actions the city is moving backwards. Finally, the union contends that the commission has not afforded the mayor sufficient authority to negotiate in good faith as supported by the evidence of the commission's lack of acceptance of the mayor's recommendations as to the agreements.

The city defends that although many tentative agreements may have been reached between the negotiators, the agreements were at all times subject to the approval of the final ratifying body. The city argues that the union knew that whatever was tentatively agreed to at the bargaining table was at all times subject to the approval of the majority of the full Centralia city commission. Finally, the city contends that since the union made no response to the mayor's letter, the union, in fact, was the party that broke off negotiations. The city argues that its position was that items which were not finally ratified by the parties, were consequently subjects once again for the negotiation table.

DISCUSSION

In State Ex. Rel. Bain v. Clallam County Board, 77 Wn.2d 542 (1970) the Supreme Court dealt with the situation of oral tentative agreements saying:

> … an oral tentative agreement is not subject to enforcement by mandamus or similar writ because it never achieved the status of a collective bargaining agreement.
>
> * * *
>
> The statute which authorizes counties of the state to enter into collective bargaining agreements requires that the agreements be in writing:
>
> > "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.
>
> RCW 41.56.030(4)
>
> The foregoing section uses language designed to show a legislative intention that there be no oral collective bargaining agreements. It means that until reduced to writing and executed by the bargaining parties, an agreement does not, under the statute, become a collective bargaining agreement. Any understanding arrived at in collective bargaining negotiations necessarily, therefore, remains preliminary, or, as the court found here, merely tentative until merged into a written agreement.

In Bain the county commissions made clear to the union that performance of the tentative oral agreement by the county would depend on the advice of the county prosecuting attorney as to its legality. Here, too, the mayor always made it clear to the union that the other two commissioners would have to vote on the proposed contract. Thus, the mere fact that the city did not automatically ratify the tentative agreements is not a violation of the law.

In the public sector, employer negotiating teams normally must submit agreements reached in the collective bargaining process for ratification under the procedures of the Open Public Meetings Act before the contract is final. A public employer may discuss the proposed collective bargaining agreement in a closed executive session outside the "sunshine" of the open public meeting, but the final document is to be ratified in such a meeting. However, the requirements of the Open Public Meetings Act, Chapter 42.30 RCW, do not negate the obligation of the public employer under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, to bargain in good faith. In Mason County, Decision 2307-A, (PECB, 1986) the Commission harmonized the open meeting and collective bargaining statutes so as to protect all affected interests. In Mason County, the county repudiated a collective bargaining agreement on the basis that the contract had not been negotiated in conformance with the Washington Open Public Meetings Act. The county offered to renegotiate the entire agreement. The union responded by

requesting the county to ratify the contract at an open public meeting. The county declined to do so. The Commission affirmed an examiner's order requiring the county to present the tentative agreement at an open public meeting for good faith consideration on a question of ratification. In the instant case, at all times pertinent, the mayor gave notice to the union of its ratification requirements.

The public sector does not demand the employer's representative sit at the bargaining table with the authority to be final and binding upon the employer. However, it does require that all parties bargain in good faith. The mayor was not bargaining aimlessly without direction. It is just that the union business agent was able to convince the mayor to stretch his authority each time they met. The mayor consistently told Mauermann that he would recommend acceptance but that the agreement was contingent upon the acceptance of at least one of the other two city commissioners. The lack of fulfillment of the contingency seems to cause the union concern. The union laments the "senselessness" of entering into tentative agreements which the mayor knew were beyond his authority. However, the union did not present any evidence that the mayor did not follow through on the recommendation. The record does not establish that the mayor lacked good faith in bargaining; it does tend to show that the union business agent is very persuasive at the bargaining table.

The rejection of tentative agreements by a party during the ratification process is not a change in position late in the course of bargaining which would sustain an unfair labor practice. In Island County, Decision 857 (PECB, 1980), it was held that good faith bargaining is based on the totality of the parties' conduct and:

> any practice of increasing demands during bargaining or adding new demands assuredly hinders achievement of a complete agreement, and one must be suspect of the good faith of a party which 'moves the target' during bargaining or as the moment of agreement approaches.

In that case, it was found that Island County demonstrated a lack of good faith bargaining when it increased its bargaining demands after giving the union reasonable cause to believe that all negotiations were concluded for the collective bargaining agreement. Often time all three of the

commissioners were present on the employer's bargaining team; if all three were not able to attend, at least two were present to represent the employer. At the conclusion of a meeting where the last of the issues had been resolved, the employer granted the union the opportunity to "vote the people" during the work day rest break. Several days later, when the union brought the revised copy of the collective bargaining agreement reflecting the amendments made during negotiations to the employer, the employer proposed additional changes. When the union protested that bargaining had been concluded, the employer refused to sign the proffered document. There, the employer was found guilty of a refusal to bargain in good faith. The facts of the present case are significantly different.

The letter of July 17th is the other action which the union claims substantiates its charge that the employer unlawfully changed its demands late in bargaining. The union interprets the letter as withdrawing all the tentative agreements. Although perhaps not the most artfully drafted invitation to return to the bargaining table, the letter more accurately can be read as a proposal, not as an edict. The union even acknowledges that this letter submitted a proposal for settling the collective bargaining agreement. It is clear that the employer was not imposing its offer as a fait accompli. The employer left the door open for bargaining. It is odd that the union did not contact the employer after receipt of the letter. The letter, when read in the most generous light to the union's position, can only be seen as internally contradictory. The letter is not of the type previously found to be illegal where legitimate requests to bargain were so buried in the midst of unlawful demands that another party was not held "to have to ferret out veiled proposals." Pierce County, Decision 1845, (PECB, 1984); Cowlitz County, Decision 1895, (PECB, 1984). A reasonable business agent, experienced in labor bargaining, could reasonably have read the mayor's July 17th letter as confusing at least but more likely as an invitation to bargain. A reasonable response would have been to contact the employer for clarification of its position. If, in fact, the employer had wanted to eliminate all the tentative agreements reached, the mayor could have made that point clear to the union upon solicitation and given the union a legitimate cause of action. City of Spokane, Decision 1133 (PECB, 1981). If however, as the mayor testified, he was only referring to keeping the monetary items within his authority, that also could have been clarified. Communication, not polarization, breeds successful collective bargaining.

FINDINGS OF FACT

1. The city of Centralia, Washington is a "public employer" within the meaning of RCW 41.56.030(1). At the time in question, it was governed by a three-member commission.

2. The Teamsters Local 252, is a "bargaining representative" within the meaning of RCW 41.56.030(3), and is the certified exclusive bargaining representative of a bargaining unit of employees in the city of Centralia Police Department.

3. Negotiations for a successor collective bargaining agreement to the contract expiring March 31, 1985 commenced on February 15, 1985. On May 15, 1985, after several negotiation meetings, the parties mutually declared impasse. The union requested mediation.

4. The mayor, John Gelder, was the commissioner charged with the responsibility to negotiate the police collective bargaining agreement for the city. At all times he informed the union that any tentative agreements he reached were subject to ratification by vote of the entire three member city commission.

5. Twice, the bargaining teams reached tentative agreement on all issues at impasse during mediation. The mayor recommended each settlement to the commission. Both times the city commission rejected the tentative agreements as being too expensive.

6. After the second mediated settlement was rejected, the mayor sent the union a letter which told the union of the rejection and contained a proposal for settlement. The letter could reasonably be read as an invitation to return to the bargaining table.

CONCLUSION OF LAW

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

2. The complainant has not met its burden of proof to show that by a course of conduct or the letter of July 17, 1985, the employer refused to bargain in good faith under RCW 41.56.030(4).

3. By its actions described in Findings of Fact 3, 4, 5, and 6 above, the employer has not violated RCW 41.56.140(4).

Based on sworn testimony given at the hearing, the exhibits received into evidence and the record as a whole, it is

ORDERED

The complaint charging unfair labor practices against the city of Centralia is dismissed.

DATED at Olympia, Washington, this 5th day of January, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

KATRINA I. BOEDECKER, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.