STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1604, Complainant, vs. CITY OF BELLEVUE, Respondent.	CASE NO. 6980-U-87-1418 DECISION 3084 - PECB
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1604, Complainant, vs. CITY OF BELLEVUE, Respondent.	CASE NO. 7082-U-87-1445 DECISION 3085 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Webster, Mrak and Blumberg, by James H. Webster, Attorney at Law, appeared on behalf of the complainant.

Richard L. Andrews, City Attorney, by Richard L. Kirkby, Assistant City Attorney, appeared on behalf of the respondent.

On August 17, 1987, the International Association of Fire Fighters, Local 1604, (IAFF), filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) against the City of Bellevue.[1] The complaint alleged that the city refused to provide information that the union needed to police the wage provisions of the collective bargaining agreement.

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[1] Case No. 6980-U-87-1418.

On October 16, 1987, the IAFF filed another complaint charging unfair labor practices against the City of Bellevue. This complaint alleged that the city violated RCW 41.56.140(1) and (4) by refusing to provide information requested by the complainant for the preparation and presentation of its case in an interest arbitration hearing.[2]

The cases were consolidated for processing. The parties waived an evidentiary hearing. On February 17, 1988, the parties submitted separate Stipulation of Facts for each complaint. Thereafter, the parties submitted written legal argument.

BACKGROUND

The IAFF, Local 1604, represents a bargaining unit of approximately 120 fire fighters employed by the city of Bellevue in the ranks of fire fighter, fire lieutenant and fire captain. The parties had a collective bargaining agreement covering the period of January 1, 1984, through December 31, 1986. The parties were unable to reach a negotiated agreement to replace the expiring contract. After mediation provided by PERC proved unsuccessful, the issues at impasse were certified for interest arbitration.[3]

Since at least 1982, Fire Chief Daniel L. Sterling has held "All Officers" staff meetings for the department's officers. The record is silent as to what ranks of officers were to be at the

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2 Case no. 7082-U-87-1445.

3 Notice is taken of Commission docket records which indicate the a request for mediation was filed with the Commission September 3, 1986, Case No. 6542-M-88-2639; and that an interest arbitration case was initiated March 26, 1987, Case No. 6811-I-87-162.

meeting; apparently, approximately 30 people were to attend. Attendance at the meetings was mandatory unless the officer was on vacation or disability. Each off-shift fire officer reporting for such meeting was paid for his or her attendance at the overtime rate of pay.

On or about April 13, 1987, Chief Sterling notified bargaining unit personnel that there would be a change in the All Officers meetings. The chief asserted that the department was in the midst of a severe staffing shortage due to a high number of disabilities. In the notice, the chief wrote:

> We have recently reduced staffing by one person per platoon to ease the impacts of overtime costs but it has not begun to affect the loss of so many personnel. In fact, it has had virtually no affect (sic) on what has turned into an epidemic of injuries. We have now decided to bite the bullet, so to speak, and return to normal duty strength with the following exceptions:
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> > 1) Firefighter Forum and Emergency Medical Roundtables will meet quarterly rather than bi-monthly and
> >
> > 2) All Officers meetings will be conducted on a voluntary basis instead of mandatory meetings.
>
> Hopefully we can save a few dollars in overtime costs by doing so.
>
> With the fire occurrence we are presently experiencing, I would prefer to have the maximum number of personnel on the line and sacrifice our communication opportunities to insure that is the case.

The union opposed the implementation of the voluntary attendance approach to the All Officers meetings and encouraged its unit members not to participate.

An All Officers staff meeting was subsequently scheduled for May 5, 1987. The notice of the meeting reminded officers that the meetings were not mandatory and that officers on duty would not be relieved. The notice also stated, "We hope that this is a temporary condition and we can return to paying overtime for meetings later in the year."

On May 11, 1987, Stan Pallo, the president of IAFF Local 1604, wrote Chief Sterling requesting information about the first volunteer All Officers meeting. Among the items Pallo sought was information regarding the length of the meeting, the names of unit members in attendance and written confirmation that unit members who were not on duty but attended the meeting would be paid for their participation "... in accordance with our labor contract." The city responded that a voluntary officers' meeting had been held; that officers were in attendance; and that the city would not pay overtime to any officer who had attended the meeting. The city refused to provide the specific information which Pallo had requested. Consequently, IAFF Local 1604 filed the complaint of unfair labor practice in Case No. 6980-U-87-1418.

An interest arbitration hearing pursuant to RCW 41.56.450 was scheduled to begin October 26, 1987. Prior to that date, the union requested that the city disclose the identity of fire departments it intended to assert should be used for the comparisons specified in RCW 41.56.460(c)(ii). The city refused to provide the requested information.

During the first day of the interest arbitration hearing, the neutral chairman ordered the city to produce for the union, the information requested regarding similar employers which the city was claiming were comparable. At the interest arbitration hearing the city urged that fire departments of "similar size" as

used in RCW 41.56.460(c)(ii) meant fire departments in California, Oregon, Washington and Alaska with service populations between 70% and 130% of the approximately 105,000 service population of the Bellevue Fire Department. At the time there were at least 48 fire departments in California that met this criterion. Prior to the arbitration hearing, the city did not disclose these criteria for selection of comparable fire departments. During the second day of the interest arbitration hearing, October 29, 1987, the city provided the union with a list of five California departments, closest in size to the City of Bellevue, which were the comparable employers that the city chose to use.

POSITIONS OF THE PARTIES

The union argues that the city has a fundamental obligation to provide, upon request, any information relevant to the union's collective bargaining functions. The complainant advances that those functions include negotiation, administration and evaluation of the collective bargaining agreement and pursuit of claims under the agreement or in other forums. The union contends that the city committed unfair labor practices when it refused to comply with the two requests for information at issue in these cases.

The city does not dispute the general legal authority that each party has a fundamental obligation pursuant to collective bargaining to furnish information to the other party on request where such information is pertinent to negotiating, policing or administrating the labor agreement. The city also admits that a presumption of relevance is required in determining whether disclosure is appropriate. However, the city argues that it validly denied the union's request for disclosure of the names of

the officers attending the non-mandatory meeting because 1) the information was not relevant since under the collective bargaining agreement only employees, not the union as an entity, can file grievances; 2) even if the union had the right to grieve, it had all the information necessary to file such a grievance; and 3) the language of the collective bargaining agreement regarding payment for overtime does not require payment for voluntary meetings.

Regarding the union's request for the comparables which the city planned on using in the interest arbitration proceeding, the city argues that the information is exempted from disclosure because it is the legal argument (attorney work product) of the city. Additionally, the city asserts that any attempt by PERC to interject itself into a request for discovery of information pertinent to an interest arbitration hearing is an impermissible interference with the statutory function of the arbitration panel. The city maintains that the comparison provision exists only for the purpose of providing the interest arbitration panel with standards or guidelines to aid it in reaching a decision and does not even require an employer to prepare or present comparables. The city contends that since interest arbitration is a legislatively enacted alternative to strike, the process is in contradistinction to the National Labor Relations Act's (NLRA) provisions, and impliedly its precedents, because the NLRA leaves the final resolution of labor negotiations totally to the parties.

DISCUSSION

Collective bargaining is a process of communication; it is not a game of hide and seek. While the Public Employees' Collective Bargaining Act (PECBA), Chapter 41.56 RCW, does not compel public

employers and bargaining representatives to reach an agreement, it does require that collective bargaining be done in good faith. RCW 41.56.030(4). The freest, most open flow of communication must be encouraged to insure that the process of collective bargaining is allowed to work.

Long ago, the Supreme Court of the United States held that language similar to RCW 41.56.030(4) in the NLRA creates a broad duty to furnish relevant information which has been requested. NLRB v. Truitt Manufacturing Co., 351 US 149 (1956). The duty to supply information, derived from the duty to bargain in good faith, extends beyond the period of contract negotiations and applies to labor-management relations during the term of the agreement. In NLRB v. Acme Industrial Co., 385 US 432 (1967), the Court strongly endorsed requiring the employer to supply information to the union which would aid the union in "sifting out unmeritorious claims" in the grievance process.

Commission standards require that information requested must be relevant to the labor-management relationship. Once requested, the employer must promptly furnish data relevant to the situation at hand. Toutle Lake School District, Decision 2474 (PECB, 1986). The courts have adopted a liberal standard of relevancy, J.I. Case Co. v. NLRB, 253 F.2d 149 (7th Cir., 1958); requiring only that the information appear reasonably necessary for the performance of the union's function as a bargaining representative, NLRB v. Item Co., 220 F.2d 956 (5th Cir., 1955). As the Supreme Court pointed out in Acme, this is basically a "discovery-type standard".

Request for Information Regarding All Officers Meeting

Under RCW 41.56.080, the union certified for a bargaining unit is the exclusive bargaining representative of the employees in the

bargaining unit. This exclusivity creates the duty of fair representation under which the bargaining representative must operate. An employer's refusal to promptly furnish information relevant to the processing of grievances upon the union's specific request was found to be an unfair labor practice in violation of RCW 41.56.140(4) in Pullman School District, Decision 2632 (PECB, 1987). An employer should not and cannot make decisions for the union regarding whether or not a meritorious grievance exits.

The information about the All Officers meeting supplied by the city at the request of the IAFF Local 1604, was not sufficient to allow the union to adequately evaluate the situation. Because the union cannot bring a grievance on its own, the names of the employees in attendance becomes critical. The union might have, in a timely manner, contacted each employee who attended the meeting to verify if he or she desired to initiate a grievance.[4]

The fact that the collective bargaining agreement had expired and was being renegotiated is not fatal to the union's claim for information to police the contract. The PECBA requires that there be no changes in wages, hours, or other conditions of employment during contract hiatus for uniformed personnel.[5] That statutory requirement alone might have caused the union to bring

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[4] Tangential to the potential for a grievance, the information regarding the duration of the meeting was relevant to the union's evaluation of bargaining unit employees' right under the Fair Labor Standards Act. The union could have verified whether the employer had allowed, permitted of suffered any employee to attend a meeting for the purpose of imparting information relevant to the job, which would be compensable.

[5] RCW 41.56.470 provides:

> During the pendency of the proceedings before the [interest] 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.

a complaint of unfair labor practices charging that the employer had unilaterally changed working conditions without bargaining when the All Officers meetings became voluntary. The union was entitled to the appropriate information so that it could determine whether any bargaining unit members lost an overtime opportunity. In NLRB v. Whitin Machine Works, 217 F.2d 593 (4th Cir., 1954) cert. denied, 349 US 905 (1955), the employer furnished the union a list of the hourly wage rates paid at the plant, but not the requested list of individual wage rates of individual employees. The court wrote:

> ... we agree with the Board that the union as bargaining agent of the employees, was entitled to information which would enable it to properly and understandingly perform its duties as such in the general course of bargaining and that such information should not necessarily be limited to that which would be pertinent to a particular existing controversy. ...

The information which the IAFF Local 1604 requested about the All Officers meeting is relevant in that it would enable the union to properly and understandingly perform its duties.

Request for Comparables

Bargaining in good faith requires the parties to the collective bargaining process to explain and to provide reasons for their proposals, or for their rejection of the other party's proposals. Fort Vancouver Regional Library, Decision 2350-C and 2396-B (PECB, 1988), at page 53, and citations contained therein. RCW 41.56.460 directs:

> In making its determination, the [interest arbitration] panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision,

> it shall take into consideration the following factors:
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> (a) The constitutional and statutory authority of the employer;
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> (b) Stipulations of the parties;
>
> (c)(i) For [certain police officers] comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
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> (ii) For [fire fighters] comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers shall not be considered;
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> (d) The average consumer prices for goods and services, commonly known as the cost of living;
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> (e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and
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> (f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.
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> (Emphasis added.)

Given the dictates of the statute, the list of comparable employers which the city chose to use in bargaining is relevant information to the union. By the same token, comparable employers which the union was using would be relevant information to the employer.

Furnishing such information, upon request, at the bargaining table would greatly aid each parties' evaluation of the proposals on the table. Good faith bargaining requires that the reasons and rationale for a proposal be fully explained. The party receiving the proposal must itself fulfill the obligation to make a sincere effort to understand the position of the other, to breach differences and, if possible, to reach an agreement. Fort Vancouver, supra. As the Court wrote in Truitt:

> Good faith bargaining under the Act necessarily requires that claims made by either bargainer should be honest claims. ... If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. ...

The list of comparable employers which the city was using as justification of its proposals is presumptively relevant to the bargaining process.

If the list does not exist, then the employer would not have to create one for the union. City of Seattle, Decision 534, (PECB, 1978). If that were the case, however, the employer would be estopped from urging the interest arbitration panel to consider any "like employer" as a comparable. In the case at hand, the city obviously had such a list, since it furnished a copy to the union upon order of the neutral chairman of the interest arbitration panel.

The list of comparable employers which a party in negotiations is using, is not an attorney work product, as the city argues. The interpretation of the information received from the comparable employers might arguably be an attorney work product; but that was not what the union requested. As long as the union knows what "like employers" the city is using, the union can do its own

research and make its own interpretation of the information it gathered.

The request for the list of comparables was made inside the collective bargaining process regulated by Chapter 41.56 RCW. It does not fall under the exception of Highland School District, Decision 2684 (PECB, 1987), where the Examiner did not order information be produced that concerned discovery matter in civil proceedings pending before the courts.

The Commission maintains control over the collective bargaining process. Even after issues have been certified by the Executive Director for determination by the arbitration panel under RCW 41.56.450, the Commission will still provide mediation services upon request. Mediation is available to the parties until the selection of the neutral chairman of the interest arbitration panel is chosen. Even after the selection of the neutral chairman, the Commission continues to maintain jurisdiction over complaints of unfair labor practices occurring during the bargaining process. The Commission has processed such complaints which have arisen out of conduct at the interest arbitration hearing. City of Spokane, Decision 1133 (PECB, 1981).

The parties stipulated that the union requested the list of comparables prior to October 16, 1987. Failure to provide that requested, relevant information is an unfair labor practice. Such a finding does not interfere with the authority of the interest arbitration panel.

As was written in City of Centralia, Decision 2594, (PECB, 1987): "Communication, not polarization, breeds successful collective bargaining."

FINDINGS OF FACT

1. The City of Bellevue, Washington, is a "public employer" within the meaning of RCW 41.56.030(1). At all times pertinent to this decision, the fire chief was Daniel L. Sterling.

2. The International Association of Fire Fighters, Local 1604, 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 fire fighters, fire lieutenant and fire captains in the City of Bellevue Fire Department. At all times pertinent to this decision, the president of the local was Stan Pallo.

3. The parties had a collective bargaining agreement with a duration of January 1, 1984, through December 31, 1986. The parties were unable to reach a negotiated agreement to replace the expiring contract. On March 26, 1987, the issues at impasse were certified for interest arbitration. The interest arbitration hearing began October 26, 1987.

4. On or about April 13, 1987, Chief Sterling notified bargaining unit members that the previously mandatory staff meetings for officers would be changed to voluntary meetings and no overtime would be paid for officers who attended. Such a voluntary staff meeting was held May 5, 1987.

5. On or about May 11, 1987, Pallo requested in writing from Chief Sterling, information regarding the length of the meeting, the names of the unit members in attendance and written confirmation that union members who were not on duty but attended the meeting would be paid for their participation in accordance with the labor agreement.

6. The city responded that a voluntary officers' meeting had been held; that officers were in attendance; and that the city would not pay overtime to any officer who had attended the meeting. The city refused to provide the specific information which Pallo had requested.

7. Prior to the commencement of the interest arbitration hearing, the union requested that the city disclose the identity of the fire departments it intended to assert should be used for the comparisons specified in RCW 41.56.460(c)(ii). The city refused to provide the requested information.

CONCLUSIONS OF LAW

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

2. By the actions described in Finding of Fact 6 above, the city refused to bargain collectively in good faith, and so violated RCW 41.56.140 (4) and (1).

3. By the actions described in Finding of Fact 7 above, the city refused to bargain collectively in good faith in violation of RCW 41.56.140 (4) and (1).

Based on stipulated facts and evidence submitted by the parties, legal argument of the parties and the record as a whole, it is

ORDERED

The complaints charging unfair labor practices against City of Bellevue, Case Nos. 6980-U-87-1418 and 7082-U-87-1445 are sustained. Pursuant to RCW 41.56.160 of the Public Employees'

Collective Bargaining Act, it is ordered the City of Bellevue, Washington, its officers, elected officials, and agents, shall immediately:

A. Cease and desist from:

1. Refusing to bargain collectively with the International Association of Fire Fighters, Local 1604, by refusing to supply information requested regarding a voluntary staff meeting where the information is necessary to enable the union to properly and understandingly perform its duties as exclusive bargaining representative;

2. Refusing to bargain collectively with the International Association of Fire Fighters, Local 1604, by refusing to supply information requested regarding the list of comparable employers that the city was using as substantiation of its wage offer, where the information is necessary to enable the union to properly and understandingly perform its duties as exclusive bargaining representative;

3. Interfering with, restraining or coercing its employees in any other manner in the free exercise of their rights guaranteed them by the Act.

B. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes and policies of Chapter 41.56 RCW:

1. Supply the union with information regarding the duration of, and the names of the attendees at, the May 5, 1987, voluntary staff meeting;

2. Post, in conspicuous places on the employer's premises where notices to all employees are customarily posted, copies of the notice attached hereto and marked "Appendix". Such notice shall, after being duly signed by an authorized representative of City of Bellevue, Washington, be and remain posted for sixty (60) days. Reasonable steps shall be taken by City of Bellevue to ensure that said notices are not removed, altered, defaced, or covered by other material.

3. Notify the International Association of Fire Fighters, Local 1604, 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 union with a signed copy of the notice required by the proceeding.

4. 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 proceeding.

DATED at Olympia, Washington, this 23rd day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

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

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT refuse to bargain in good faith with the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, Local 1604, by refusing to supply relevant information the union requested about the voluntary All Officers meeting.

WE WILL bargain in good faith with the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, Local 1604, by supplying the union with relevant information it has requested regarding the duration of, and the names of the attendees at, the May 5, 1987, voluntary All Officers staff meeting.

WE WILL bargain in good faith with the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, Local 1604, in that WE WILL, upon request from the union, supply it with the list of comparable employers we are using during contract negotiations.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Public Employees' Collective Bargaining Act.

CITY OF BELLEVUE

By:_____
Authorized Representative

DATED_____

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) 754-3444.