STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF BONNEY LAKE, Employer.	)	
ROBERT W. JOHNSON Complainant,	)	CASE 10450-U-93-2417
vs.	)	DECISION 4916 - PECB
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 120, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

James G. Tessier, Labor Consultant, appeared for the complainant.

Audrey B. Eide, Attorney at Law, appeared on behalf of the union.

On May 4, 1993, Robert W. Johnson filed two unfair labor practice complaints with the Public Employment Relations Commission. One complaint, docketed as Case 10449-U-93-2416, alleged that the City of Bonney Lake (employer) had committed violations of RCW 41.56.140 in connection with the negotiation of a collective bargaining agreement; the complaint in the above-captioned case alleged that Washington State Council of County and City Employees, Local 120 (union), had committed violations of RCW 41.56.150 in the course of negotiating and ratifying the same collective bargaining agreement. The two cases were consolidated for a hearing held at Bonney Lake, Washington, on August 10, 1994, before Examiner Vincent M. Helm. During the course of the hearing, the complainant withdrew the complaint against the employer. The complainant and the union filed post-hearing briefs.

BACKGROUND

At all relevant times, Robert Johnson was employed by the employer and was represented by the union for purposes of collective bargaining. This dispute arises out of negotiations between the employer and the union to replace a collective bargaining agreement expiring on December 31, 1992.

Beginning some time in the summer of 1992 the union began preparations for collective bargaining with the employer. As a part of that effort, Steward William Strand advised employees to give him proposals for contract modifications. During this period of time, various bargaining unit employees were conducting an informal salary survey of other jurisdictions for presentation to the employer in contract negotiations. No meeting was held with members of the bargaining unit prior to the commencement of contract negotiations with the employer. Informal discussions among various bargaining unit employees relative to contract negotiations were held in the shop on the employer's premises where many employees gathered before starting work.

Strand and another employee, David Bauman, met with union representative Robert McCauley in August and September 1992 to review the information obtained from employees relative to bargaining demands. These efforts culminated in a written proposal for presentation to the employer. This particular bargaining unit historically had prepared negotiations in this manner. In accord with McCauley's practice with respect to negotiating contracts for various bargaining units represented by the union, the union's proposals were not reviewed with the membership prior to presentation to the employer.

Contract negotiations with the employer began in November of 1992 and continued intermittently through March of 1993 when a tentative agreement was reached. The negotiations were conducted at a time

when the employer was experiencing a financial crisis in certain areas. Massive layoffs were being contemplated or actually being experienced in the police and fire departments, because of a shortfall in general revenues. At the same time, the water and sewer funds, from which revenue for paying bargaining unit wages and benefits was generated, were in a sound fiscal position which permitted reasonable wage adjustments. Because of the political implications created by this funding dichotomy, the negotiating process with respect to this bargaining unit was clothed in secrecy and the timing of reaching a settlement was dictated in large measure by factors unrelated to the bargaining issues between the parties. The union did not conduct formal meetings with bargaining unit employees to discuss the status of contract negotiations.

Relatively little progress was made during negotiating sessions held in November and December of 1992. The employer initially dismissed the union's wage proposals as being unrealistic and predicated upon faulty wage survey data. In addition, there was little progress on language items which had been a source of friction for a significant period of time.

Beginning in January, however, the negotiating climate changed. Substantial progress was made with respect to revision of long-standing contract language issues. On the wage question, the parties reached agreement on six comparable cities for the purposes of conducting a survey. In the course of gathering wage survey data, it became apparent that there were relatively few common job titles or job descriptions for all of the jurisdictions surveyed. Where commonality was found to exist, those job classifications were used as benchmarks upon which adjustments to the wages of other bargaining unit employees were to be predicated.

Strand, who served on the union negotiating committee, is an electrician. No comparable jobs were found to exist in the cities compared in the salary survey.

The mechanic position held by the complainant was one for which there was significant salary survey data upon which to evaluate wage comparability. It became obvious to the parties, however, that no wage adjustment was warranted for this job, based upon the salary survey.

One position which was found to exist in all of the cities studied was that of public works foreman. As to that classification, the results of the salary survey indicated this classification was being paid approximately 13 percent less by this employer than was being paid by comparable jurisdictions. The parties agreed to use this job rather than the mechanic as a benchmark.

At the time of contract negotiations, Strand and the complainant were the sole employees in their respective job classifications. These two positions required special treatment as to wages, because of their particular fact situations. Historically, the complainant had been paid more than employees classified as maintenance worker II, and Strand was the highest-paid employee in the bargaining unit. Further, the higher wage rate for the electrician in relationship to the bargaining unit foreman was a historic anomaly.

Since no comparability data existed for the electrician, there was no objective basis for establishment of a wage rate. As the result of a management proposal Strand's position was placed in the same salary range as the foreman, at the top step to which he was entitled by his length of service in the classification. This resulted in his being paid the same wage as the foremen in the bargaining unit, and served to correct the historical inequity resulting from being paid more than the foreman. Strand nonetheless received a wage increase of more than 12 percent.[1]

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[1] There is no evidence that the second employee member of the union's bargaining team received any wage increase other than that accorded to other similarly situated employees in his job classification.

Negotiators for both sides testified that there was no ill will toward the complainant, or animus expressed with respect to him in connection with the negotiation of his wage rate. After it became apparent to the parties that strict application of job evaluation criteria and the salary survey would require that the complainant's position be placed in a lower wage range than that of the maintenance worker II, the union persuaded the employer to create a new "mechanic II" classification to which the complainant would be assigned. By this expedient, the complainant would be classified in the same salary range as the maintenance workers II, rather than one salary range lower. Testimony of negotiators indicated that obtaining the agreement of the employer to create a mechanic II job classification to accommodate the complainant was not an easy task, because there was no rational justification for the new position.

Within each salary range there are steps based upon length of service in that salary range. Had the complainant been placed at the range the survey indicated to be appropriate, he would have been placed at the highest step in that range. This placement would have yielded him $23.00 more per month in wages than he actually received as the result of contract negotiations, but he would not have been eligible to receive any step increases during the term of the contract. As the result of creating the new mechanic II classification for the complainant, he became eligible for step increases in each of the following two years. Thus, he was ultimately to receive $134.00 more per month than if he had not received the new classification negotiated on his behalf by the employer and the union.

In addition to wage adjustments, there were some premiums negotiated for obtaining state certifications required by the employer. One resulted in a financial gain for the complainant, while none had any immediate monetary impact upon the employee members of the union's bargaining team.

The contract negotiations were concluded for all practical purposes by March of 1993, but it was agreed to delay the final contract agreement and ratification until the atmosphere cleared from the effects of layoffs in the police and fire departments. A ratification meeting was held on the afternoon of April 8, 1993. The time selected for that meeting was at the request of the employer's negotiator, who believed it would be a strategic advantage for the union to ratify the proposed contract immediately prior to its presentation to the city council.

At the ratification meeting, the employees were handed copies of Appendix A of the proposed labor agreement which contained the wage rates showing job titles and pay ranges. The union's chief negotiator explained language changes in the proposed agreement. The ratification meeting was brief, as employees raised few questions. An employee who was not on the union's bargaining team moved to close debate and vote on the contract. The contract was ratified by a vote of 15 to 3.

There is dispute in the testimony with respect to whether employees were told in the ratification meeting by the union's chief negotiator that they would lose insurance benefits if they did not ratify the contract. There was some confusion among the employees as to exactly what the changes were in the contract, and some believed the vote was taken on ratification without adequate time to consider the matter. All witnesses who were asked whether the negotiation and ratification process varied from the format in the past answered negatively.

POSITION OF THE PARTIES

The complainant contends that the union violated its duty of fair representation, by failing to nominate and/or elect a negotiating committee, by the fact that the employer paid bargaining unit

employee Bauman for time spent attending contract negotiations even though he was not an elected union official, and because the wage increases received by union negotiators Strand and Bauman were far more than received by others in the bargaining unit. The complainant also asserts that certain certification premiums negotiated on Strand's behalf either furnished evidence of an unfair labor practice or independently constituted a violation of the statute. The complainant also takes issue with the union's alleged concealment from the bargaining unit employees of information which they needed to have in order to evaluate the tentative agreement, and with its failure to hold regular meetings with the employees during the course of contract negotiations. These latter actions are also asserted to be violations of the union's obligation to bargain in good faith. Lastly, the complainant appears to contend that the union's failure to process a grievance relative to his wage increase was also an unfair labor practice.

The union contends that the pay increases received by Strand and Bauman were the result of a combination of good faith bargaining and the salary survey jointly conducted by the parties. The union's failure to pursue a grievance on behalf of the complainant relative to the amount of the wage increase he received in the labor contract is explained on the basis of the union's good faith belief that it had no merit, and that its processing of such a grievance after having ratified the collective bargaining agreement would itself have constituted an unfair labor practice. Lastly, the union contends its manner of negotiating and its ratification process did not violate the statute. The union requests that it be reimbursed for attorney's fees and costs.

DISCUSSION

As noted by counsel for the complainant, unions under RCW 41.56.150 do have a duty of fair representation which is owed to bargaining

unit members and, if breached, an unfair labor practice will result. This duty has been recognized in connection with processing grievances where it has been held that a union not only must not have hostile motivation or bad faith but also must avoid arbitrary conduct with respect to a decision with respect to determining whether to process a grievance. City of Redmond, Decision 886 (PECB, 1980). This precedent, however, offers absolutely no support for the complainant's arguments in this case.

The Commission, as well as the Supreme Court of the United States, has ruled on cases involving essentially the same issues as presented herein and invariably found no unfair labor practice to exist. A union's obligation in connection with negotiating a collective bargaining agreement is to exercise good faith. It is well recognized that it is impossible to satisfy all bargaining unit members or to create a collective bargaining agreement which has no differences in the way in which employees are treated. The duty of fair representation clearly does not mandate that all employees benefit equally from contract negotiations. Absent a showing of collusion by the employer and the union in negotiating contract provisions which are discriminatory with respect to an individual, the mere fact that some employees benefit more than others from contract negotiation does not constitute a violation of the union's duty of fair representation or obligation to bargain in good faith. METRO, Decision 2320 (PECB, 1986); City of Pasco, Decision 2327 (PECB, 1986); Ford Motor Company v. Hoffman, 345 US 330 (1953); Othello School District, Decision 3037 (PECB, 1988); Bellevue Community College, Decisions 4067, 4068 and 4069 (PECB, 1993).

In the instant case, the complainant received a total wage increase in excess of six percent as the result of contract negotiations between the union and the employer. He is disgruntled because others received greater increases, including two employees who functioned as the employee members of the union's negotiating team.

When he withdrew his complaint against the employer during the course of the hearing herein, the complainant conceded that the employer did nothing improper in connection with negotiating the collective bargaining agreement in question. That being the case, it appears inconceivable that, by any stretch of the imagination, the union unilaterally could be found guilty of an unfair labor practice with respect to the negotiation of the same collective bargaining agreement. The simple fact is that the complainant did not introduce a scintilla of evidence to support the contentions advanced in the complaint.

The terms of the collective bargaining agreement were clearly the product of good faith negotiations, premised on the stated intent of the parties to the agreement to reject partisanship and to fairly study wage rates in comparable entities in order to develop a more competitive wage scale for a majority of the employees. The objective appears to have been substantially accomplished by virtue of the contract which was negotiated. Comparable wage data indicated the complainant's job classification was adequately compensated. Other classifications including that of union negotiating committee member Bauman were found to trail other cities' wage rates, and adjustments were made accordingly. Of the approximately 20 bargaining unit employees, eight were classified as maintenance workers. Six of the eight, including Bauman, received identical wage rates as the result of collective bargaining. Employee negotiating committee member Strand did receive a substantial increase. However, he had previously been the highest paid bargaining unit employee and now shares the highest wage rate with two other bargaining unit foremen. When it became evident that the complainant's wage scale was above that of similar classifications in comparable cities, a special classification was created for him at the vigorous urging of the union. Although he can claim a short-term loss, the new contract enabled him to secure more future income than would have otherwise been the case.

This is a classic example of the give and take of collective bargaining wherein tradeoffs are made. While results may not be equally beneficial, they represent the best that can be produced given the relative bargaining capabilities and economic realities. The complainant has the burden of proof in establishing a violation of the statute with respect to the conduct of the contract negotiations, which he has utterly failed to do. Pierce County Fire District 9, Decision 4547 (PECB, 1993).

The complainant's remaining contentions are equally devoid of merit. It is clear that the statute does not empower the Commission to impose its views or that of an individual complainant upon a union with respect to internal policies relative to meetings, selection of officers or representatives, formulating bargaining proposals or contract ratification process. Port of Seattle, Decision 2549 (PECB, 1987); Pierce County, Decision 2209 PECB, 1985); Leary v. Western Union Telegraph Co., 117 LRRM 3005 (Dist.Ct, NY, 1985). Applicable precedent thus overwhelmingly compels dismissal of the portions of the complaint predicated upon the union's internal procedures during the pendency of contract negotiations or ratification process.

With respect to the contention that the employer's payment of wages to a bargaining unit employee for time spent as a union negotiator violates the statute, it suffices to note that any unfair labor practice which that might constitute cannot be laid at the door of the union. There is no showing the union in any manner sought to compel such payment. To the extent that such a payment could have constituted an unfair labor practice by the employer, consideration of such a contention was ended by the complainant's withdrawal of his complaint against the employer.

Finally, having agreed in good faith to the collective bargaining agreement, the union was entitled to reject the complainant's grievance as unmeritorious.

FINDINGS OF FACT

1. City of Bonney Lake is a public employer "within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees, Local 120, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a unit of certain public works department employees employed by the City of Bonney Lake.

3. Robert Johnson is a "public employee" of City of Bonney Lake within the meaning of 41.56.030(2), and is represented for collective bargaining purposes by Local 120.

4. Local 120 and City of Bonney Lake negotiated a collective bargaining agreement covering certain public works department employees effective January 1, 1993 through December 31, 1993. During the course of negotiating that agreement, the negotiators agreed to survey cities which they agreed were comparable to establish appropriate wage scales for employees to be covered by the agreement.

5. When the results of the survey referred to in the preceding paragraph were reviewed, the parties negotiated wage scales which reflected a blending of considerations of comparability and historical differentials within the bargaining unit. The wage scales negotiated by the parties caused various employees to receive differing wage increases. The wage rates agreed upon by the employer and union for the complainant and for the two employee members of the union's negotiating committee were reflective of the salary survey and negotiations.

7. Local 120 developed its contract proposals by virtue of an informal polling of employees, selected its employee negotiating committee members in an informal manner, conducted the

contract negotiations in private, and conducted its ratification meeting in an informal manner, all in keeping with past practices of that organization. There is no evidence that any of the union's actions caused it to be improperly aligned in interest against Robert Johnson.

8. The failure or refusal by Local 120 to process a grievance relative to the wage increase negotiated on behalf of Robert Johnson was based on its conclusion that the grievance lacked merit, in the context of the contract negotiations.

CONCLUSIONS OF LAW

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

2. By the acts and conduct set forth in the foregoing findings of fact, Washington State Council of County and City Employees, Local 120, did not violate any provision of RCW 41.56.150.

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED.

Issued at Olympia, Washington, this 15th day of December, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Vincent M. Helm

VINCENT M. HELM, Examiner

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