STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1052,	)	
Complainant,	)	CASE 10584-U-93-2456
vs.	)	DECISION 5184 - PECB
CITY OF RICHLAND,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Critchlow, Williams, Schuster, Malone & Skalbania, by Alex J. Skalbania, Attorney at Law, appeared on behalf of the union.

Menke, Jackson & Beyer, by Rocky L. Jackson, Attorney at Law, appeared on behalf of the employer.

On July 13, 1993, International Association of Fire Fighters, Local 1052 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Richland (employer) had committed an unfair labor practice under RCW 41.56.140(1) and RCW 41.56.140(4), by refusing to bargain in good faith over the impacts and effects of the employer's decision to enter into an automatic aid agreement with Benton County Fire District 4. A hearing on the matter was held in Richland, Washington, on July 13, 1994, before Examiner Kathleen O. Erskine. The parties submitted post-hearing briefs.

BACKGROUND

The City of Richland provides fire suppression and related services to its residents. IAFF Local 1052 is the exclusive bargaining representative for Richland Fire Department employees who are

"uniformed personnel" under RCW 41.56.030(7). The parties have had a contentious bargaining relationship for many years.

The unfair labor practice charges filed by the union in this matter involve an agreement for first alarm mutual aid (aid agreement) between the employer and Benton County Fire District 4 (District 4). That aid agreement was signed on September 11, 1991.

Prior to the signing of the aid agreement, Secretary/Treasurer Tim Sharp of the union sent a letter dated June 6, 1991, to City Manager Joe King, claiming that the aid agreement with District 4 would have a significant impact on the working conditions of fire fighters represented by Local 1052. Sharp requested a meeting and bargaining with the employer.

On August 1, 1991, during the course of negotiations for a 1992 collective bargaining agreement, the union presented a proposal to the employer regarding the impacts it foresaw regarding the aid agreement. On August 20, 1991, the employer responded to the union's proposal, denying a wage increase and asserting that the aid agreement with District 4 was not different than an aid agreement in place since 1988 with another fire district.[1]

On December 30, 1991, the union filed an unfair labor practice complaint against the employer,[2] charging that the aid agreement had been signed without bargaining to impasse about either the decision to enter into the aid agreement or its effects on the members of Local 1052. The parties' settlement of a one-year contract for 1992, reached on January 22, 1992, did not resolve the unfair labor practice complaint filed in Case 9558-U-92-2136.

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[1] The employer entered into an aid agreement with Benton County Fire District 1 in 1988, without objections from or negotiations with the union.

[2] Case 9558-U-92-2136.

The aid agreement signed in September of 1991 was implemented in March of 1992. By letter dated March 28, 1992, the union again requested bargaining regarding the aid agreement.

The parties entered into negotiations for a new collective bargaining agreement in the summer of 1992. They agreed to set aside the issue of any impacts resulting from the aid agreement between the employer and District 4.[3]

In late August or early September of 1992, the employer and union reached a voluntary settlement regarding Case 9558-U-92-2136. The union withdrew the charges and the matter was dismissed by the Commission's Executive Director on September 14, 1992. The terms of that settlement agreement relevant to the unfair labor practice charge in this case are as follows:

> 4. Terms of Agreement ...
> (1) The City recognizes as a mandatory subject of bargaining the effect the Interlocal Agreement - First Alarm Mutual Aid with Benton County Fire District #4, dated September 11, 1991, has on potential call-back opportunities for bargaining unit employees and potential additional responses. The parties agree to negotiate these issues as part of the current negotiations for a successor agreement. Without either party waiving any position it may have in interest arbitration, the parties recognize if these issues are not resolved through negotiations, **the issues may be presented to mediation and/or interest arbitration.**
>
> ...
> 5. The parties understand and agree this agreement does not in any way limit the ability of either party to make proposals concerning other impacts and effects of the Interlocal Agreement - First Alarm Mutual Aid with

[3] Those negotiations eventually resulted in a two-year contract reached and executed in April of 1993.

> Benton County Fire District #4 during their negotiation, mediation and/or interest arbitration on mandatory subjects of bargaining relative to the implementation of the Interlocal Agreement - First Alarm Mutal [sic] Aid with Benton County Fire District #4.
>
> 6. By the signature of its representatives below, each party promises to perform the commitments set out in this agreement.

[Emphasis by **bold** supplied.]

Portions of that settlement agreement referring to the battalion chief and replacement personnel were implemented in December of 1992. The settlement agreement which was reached in principle between the parties in August or September of 1992 was not formally signed, however, until February 25, 1993 (by the employer) and March 15, 1993 (by the union).

In a March 15, 1993 letter addressed to the employer's human resources director, Paul Elsey, union president Rick Walsh made a request for:

> [F]ormal negotiations with the city to negotiate impacts on wages, hours, and working conditions that have arisen from the agreement with BCFD #4 already in place.

On March 17, 1993, Elsey responded with a request that the union:

> [S]ubmit an agenda of alleged impacts on wages, hours and working conditions prior to setting a date for negotiation concerning this issue.

The parties met on June 3, 1993, to formally negotiate about the aid agreement between the employer and District 4.

On June 7, 1993, Elsey sent a memo to Walsh detailing the employer's understanding of the agreements reached at the June 3 meeting.

On June 10, 1993, Elsey sent a "followup" memo to Walsh, in which he discussed the course of the negotiations from the employer's perspective, indicated the employer had no further counter-proposals, and suggested "mediation and/or interest arbitration". The union submitted no further proposals at that time.

By letter to the Executive Director of the Commission dated July 7, 1993, the union requested mediation regarding the negotiations on the impacts and effects of the employer's decision to enter into the aid agreement with District 4. At the same time, the union filed the instant unfair labor practice complaint against the employer, alleging the employer had refused to bargain in good faith under RCW 41.56.140.

The parties met with a mediator from the Commission staff on August 23, 1993. They were unable to reach an agreement. During the course of the mediation session, the employer announced its intention to terminate its aid agreement with District 4.

By letter dated September 9, 1993, the employer confirmed the termination of its aid agreement with District 4, by reporting that the city council had approved rescission of the agreement. The September 9 letter also indicated that the employer expected the union would withdraw the complaint in this case. The employer received no response from the union. Neither party made any further proposals or formal requests for interest arbitration.

POSITIONS OF THE PARTIES

It is the union's position that the employer did not make any counterproposals concerning the impacts and effects of the aid agreement with District 4 in response to the issues and proposals presented by the union after the union requested bargaining in April and June of 1993. The union contends that the employer

unequivocally rejected all of the proposals made by the union, and did not provide meaningful input during negotiations regarding how the union could make proposals that would be more likely to result in an agreement. It further submits that the employer agreed to meet with the union on "only one or two occasions" to negotiate the impacts and effects of the aid agreement on the bargaining unit before declaring that an "impasse" had been reached.

The employer urges that the refusal to bargain allegations in this case must be viewed in light of the totality of the circumstances surrounding the dispute. The employer claims the impacts of its aid agreement with District 4 on the fire fighters were thoroughly proposed, bargained, and debated through the negotiations for the parties' 1992 agreement, through the settlement agreement on the earlier unfair labor practice case, and in the negotiations subsequent to the settlement agreement. The employer asserts that, despite its concern that the proposals submitted by the union in April of 1993 were brought forward to amend the parties' contract in ways the union failed to achieve in contract negotiations, the employer continued to negotiate in good faith under the settlement agreement reached in September of 1992. It argues that it made appropriate responses to the union's request to arrange meeting dates, met with the union to negotiate, responded to the issues presented by the union at the bargaining table, and presented counterproposals in the mediation session of August 23, 1993. The employer maintains that nothing in the law requires a party to agree to the proposals of the other party, and that rejection of proposals is not tantamount to bad faith. Finally, the employer asserts that it took action which it believed resolved the entire issue, by rescinding its aid agreement with District 4, that the union did not protest that action in any way, while the union neither withdrew this unfair labor practice case nor requested interest arbitration. The employer maintains the union's unfair labor practice claim is without merit, and is contrary to the parties' settlement agreement of September 1992.

DISCUSSION

The Obligation to Bargain in Good Faith

Chapter 41.56 RCW grants public employees the right to bargain collectively. RCW 41.56.030(4) requires both the employer and the exclusive bargaining representative of its employees to bargain in good faith. A similar provision is found in Section 8(d) of the National Labor Relations Act (NLRA). Parties must negotiate with the view of reaching an agreement, if possible. NLRB v. Highland Part Mfg., 110 F.2d 632 (4th Cir., 1940). Whether a party has breached the requirement to bargain in good faith depends on the totality of conduct evidenced by the parties, and must be viewed as to the totality of the circumstances. Federal Way School District, Decision 232-A (EDUC, 1977); City of Milton, Decision 4512 (PECB, 1993); City of Pasco, Decision 4695 (PECB, 1994). Isolated instances of less-than-commendable conduct do not dictate a conclusion that a breach of the good faith obligation has occurred,[4] but an unfair labor practice violation can be found if a party engages in tactics which evidence an intent to frustrate or stall agreement. NLRB v. Mar-Len Cabinets, Inc., 659 F.2d 995 (9th Cir., 1981); NLRB v. Wright Motors, Inc., 603 F.2d 604 (7th Cir., 1979).

RCW 41.56.030(4) states that "neither party shall be compelled to agree to a proposal or be required to make a concession." That clause also parallels the definition of collective bargaining in the NLRA. Both the Commission and federal tribunals have found that, although there is no requirement that a party make concessions, no party is entitled to reduce collective bargaining to an exercise in futility. City of Snohomish, Decision 1661-A (PECB, 1984); City of Bellevue v. IAFF Local 1604, 119 Wn.2d 373 (1992), affirming City of Bellevue, Decision 3085-A (PECB, 1989).

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[4] See, generally, The Developing Labor Law, Chapter 13 - III (Hardin, ed. 1992).

The employer has **NOT** argued here that issues and proposals brought to it by the union were not mandatory subjects of bargaining under Chapter 41.56 RCW. The settlement agreement of September 1992 is very specific in identifying that the issues of potential call-back opportunities for bargaining unit employees and potential additional responses related to the aid agreement are mandatory subjects of bargaining. The settlement agreement stated that the parties:

> [U]nderstand and agree that this agreement does not in any way limit the ability of either party to make proposals concerning other impacts and effects of the Interlocal Agreement - First Alarm Mutual Aid with Benton County Fire District #4 during their negotiation, mediation and/or interest arbitration on mandatory subjects of bargaining relative to the implementation of the ... Agreement...

The settlement agreement specified that the parties were to negotiate those issues and, if agreement was not reached, were entitled to present those issues to mediation and/or interest arbitration.

Except where the subject is specifically controlled by an existing collective bargaining agreement, an employer which contemplates some change of the wages, hours or working conditions of its union-represented employees must give notice to the exclusive bargaining representative of the employees and must provide an opportunity for collective bargaining prior to making the decision.[5] If a union asks for bargaining in such a situation, the statutory duty to bargain in good faith is applicable. One of the possible outcomes in such situations is that the employer is persuaded to drop the proposed change. Abandonment of the proposed change would then terminate the occasion for bargaining.

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[5] Employers have been found guilty in numerous cases for failing to give notice, so that changes are presented to the union as a *fait accompli*. That appears to have been the general nature of the unfair labor practice case the parties settled in September of 1992.

Evidence of Good Faith Bargaining

Refusal to Meet -
There is no evidence in the record that the employer refused to meet and negotiate with the union. Rather, the record reflects the contrary.

In December of 1992, the employer proceeded to implement some of the agreed-upon resolutions of certain impacts and effects of the aid agreement, as set forth in the settlement agreement reached in principle in September of 1992. That was done even before the settlement agreement was signed by the parties.

The employer's letter dated March 17, 1993, requested an "agenda" of the "alleged impacts on wages, hours and working conditions prior to setting a date for negotiation concerning this issue." Rather than being an unlawful precondition on bargaining, that appears to have been a reasonable request for details about subjects that had been negotiated by the same parties on at least two prior occasions.

Even if Walsh had mistakenly understood Elsey's request for an agenda as some sort of a precondition on bargaining, Elsey did not follow through on such a position. According to Walsh's testimony, his first meeting ("or discussion") with Elsey was held on approximately April 21, 1993, without advance exchange of a written agenda or list of issues to discuss.

The parties agreed to negotiate on June 3, 1993, and the union offered no testimony that the employer unnecessarily delayed setting or participating in negotiation meetings. In fact, Walsh's testimony was just the opposite. A written memorandum specifying the impacts the union wished to negotiate was presented to Elsey at that time.

Refusal to Make Proposals -
The union contends in its brief that, "The City did not submit any proposals to Local 1052 in this regard whatsoever ..." [emphasis in original] during the meetings held in April and June. The record contradicts that assertion, however. For example, Elsey stated in direct testimony that he considered training to be an important issue for the union,[6] and Elsey's June 7 memo confirming "agreements ... reached" by the parties at the June 3 meeting includes:

> 1. Battalion Chiefs
>
> ...
>
> b. Training will be provided and is scheduled for 6/10/93.
>
> ...
>
> 3. Training (District #4)
>
> The Department has committed to provide additional training dedicated to operation in this district.

The followup memo issued three days later indicates that other union's proposals had been considered, but were rejected. As noted above, the mere fact of refusing to make proposals or concessions is not evidence of a breach of the good faith obligation.

The Request for Mediation -
After the parties were unable to reach a complete agreement at the June 3 meeting and the employer's June 10 letter indicated that its further analysis of the union's proposals resulted in their rejection, the employer invoked the mediation process. That dispute resolution procedure was also specifically mentioned in the settlement agreement of September 1992.

[6] The first item in the memorandum presented by Walsh at the June 3 meeting refers to additional training with District 4 as "a must".

The employer correctly contends that its request for mediation was not in violation of the statute. Rather, it was an appropriate use of a well-established part of the collective bargaining process and was specifically delineated in the settlement agreement resolving the previous unfair labor practice. Mediation is the preferred method to resolve issues the parties recognized as "not resolved through negotiations", and is required under RCW 41.56.440 for bargaining impasses involving "uniformed personnel". The collective bargaining process includes not only bilateral negotiations, but also mediation and interest arbitration. City of Spokane, Decision 1133 (PECB, 1981); City of Bellevue, supra.

The Subsequent Actions of the Parties -
Between June 3 and July 7, the union made no further requests to meet with the employer, and offered no further proposals for the employer to consider. In fact, the union's only responses to the employer's June 10 memorandum were to file this unfair labor practice charge and to file its own request for mediation.

When the parties met in a mediation session on August 23, 1993, the union presented the following proposal:

> The City and Union agree that there are impacts that come about with the automatic aid agreement with District #4 and that those impacts should be compensated.
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> Compensation for those impacts will be the following:
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> 1. Eliminated auto [sic] aid with District #1 and sign automatic aid with City of Kennewick.
>
> 2. One additional Kelly Day.
>
> 3. Open vacation book year round allowing three personnel off.
>
> 4. Each Step will have a two-hour increase per month of vacation.
>
> 5. The 18 hours of additional activity time will be on a comp. time basis.
>
> 6. IAFF helmet sticker allowed.

There is minimal evidence before the Examiner as to how any of those proposals directly relate to effects of the aid agreement with District 4.[7] In light of the broad language of the settlement agreement and the limited record before the Examiner, it is difficult to say that the union tied up the negotiations on improper issues.[8] At the same time, it is difficult from this record to find fault with the employer's rejection of union proposals that are seemingly remote from the aid agreement.

Witnesses for both parties testified that the employer **did** make counterproposals to the union during the course of the mediation session. Walsh characterized an employer proposal to agree to items 2, 3, and 4 of the union's proposal if the union would agree to expansion of Sundays to an eight-hour work day as having been made "in jest", but Elsey credibly testified that the employer's proposal was "serious". Elsey testified further that he regarded the entire session as "[O]ne of business with the appropriate amount of seriousness and gravity applied to the issues".

Finally, Elsey testified that the offer to end the aid agreement with District 4 was put forth by the employer as a counterproposal to the union. The union indicated it was not satisfied with that as a remedy. Elsey's understanding at the conclusion of the August 23 mediation was that documentation from City of Richland authorities ending the aid agreement would be necessary before proceeding to interest arbitration. He testified that the employer's

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[7] Explaining the union's favorable reference to the City of Kennewick in the first of its proposals at the same time it was seeking termination of the arrangement between the employer and Benton County Fire District 1, the record indicates that the Kennewick Fire Department has paid fire fighters while the two fire districts have all-volunteer firefighting forces.

[8] While the employer defends that the union attempted to bargain issues which were not a result of the impacts or effects of the aid agreement with District 4, it did not file an unfair labor practice charge against the union.

bargaining team felt that terminating the aid agreement would end the bargaining over the impacts of that aid agreement, "since the issue itself was closed". At a minimum, the employer's action cut off any ongoing effects of the aid agreement.

Burden of Proof

Good faith bargaining is at the heart of productive and effective labor relations, and an allegation that a party has failed to negotiate in good faith is a serious matter. Spurious allegations undermine the ability of parties to achieve and maintain a sound bargaining relationship. This is particularly true in the public sector, as critical public services and funds are at issue. In order to find for the complainant in this matter, it would be necessary that a preponderance of the evidence demonstrates that the employer did not negotiate with a view of reaching an agreement, or betrayed an intent to "reduce collective bargaining to an exercise in futility". City of Snohomish, supra. The testimony and evidence in this matter do not sustain such a finding.

The case before the Examiner is limited to the negotiations between the parties pursuant to the settlement agreement they signed just prior to the union's March 15, 1993 request for negotiations. The subject of that settlement agreement, and presumably the subject of the ensuing negotiations, was limited to the effects of the aid agreement between the employer and District 4. That subject had been on the bargaining table in previous negotiations. The employer came to the bargaining table and considered the union's proposals. While it did not agree with all of the union's proposals, the union's allegation that the employer did not make any counterproposals is credibly contradicted by the evidence. The union's efforts appear to have persuaded the employer to abandon a mutual aid arrangement which the union opposed. The union has failed to sustain its burden of proof in this case.

FINDINGS OF FACT

1. The City of Richland is a municipality of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. International Association of Fire Fighters, Local 1052, a "bargaining representative" within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of all uniformed personnel of the Fire and Emergency Services Department of the City of Richland, excluding the positions of operations chief and above, and non-uniformed employees.

3. During the time pertinent hereto, the employer and union were engaged in collective bargaining negotiations concerning the effects of a mutual aid agreement signed by the City of Richland with Benton County Fire District 4. Those negotiations were conducted pursuant to a settlement agreement made by the parties in September of 1992 to resolve a previous unfair labor practice case. The same subject matter had been a topic of collective bargaining between the parties in 1992.

4. By letter dated March 15, 1993, the union requested "[F]ormal negotiations with the city to negotiate impacts on wages, hours, and working conditions that have arisen from the agreement with BCFD # 4 already in place."

5. On March 17, 1993, the employer requested that the union "[S]ubmit an agenda of alleged impacts on wages, hours and working conditions prior to setting a date for negotiation concerning this issue."

6. The parties had a discussion of the aid agreement during a meeting held on April 21, 1993, and they met to negotiate the matter on June 3, 1993. At that meeting, proposals presented

by the union were discussed, and the parties reached agreements on several issues.

7. In a letter dated June 10, 1993, the employer notified the union that it had considered the union's proposals on the remaining issues, but had no further counterproposals. The employer suggested mediation and/or interest arbitration to resolve the matter.

8. On August 23, 1993, the parties met in the presence of a mediator from the Commission staff. Discussion of proposals and counterproposals occurred. The parties were unable to reach an agreement.

9. During the course of the mediation session on August 23, 1993, the employer announced its intention to terminate its aid agreement with District 4.

10. In a letter dated September 9, 1993, the employer confirmed to the union the termination of its aid agreement with District 4. No further attempts were made by either party to proceed to interest arbitration.

CONCLUSIONS OF LAW

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

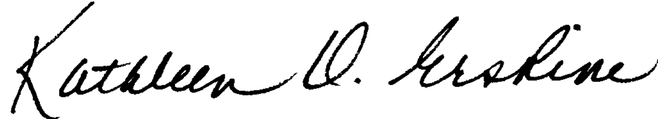
2. Based on the evidence presented and the foregoing finding of facts, the union has not sustained its burden of proof to establish that the employer violated the duty to bargain in good faith under RCW 41.56.030(4), so that the employer has not committed and is not committing any unfair labor practice under RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, the 30th day of June, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATHLEEN O. ERSKINE, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.