STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 280, Complainant,	)	CASE 12022-U-95-2822
vs.	)	DECISION 5459 - PECB
CITY OF RICHLAND, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Critchlow, Williams, Schuster and Skalbania, by Alex J. Skalbania, Attorney at Law, appeared for the complainant.

Menke, Jackson and Beyer, by Rocky Jackson, Attorney at Law, appeared for the respondent.

On September 7, 1995, International Union of Operating Engineers, Local 280, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Richland had violated RCW 41.56.140-(4). A hearing was held at Richland, Washington, on January 10, 1996, before Examiner Vincent M. Helm. The parties filed post-hearing briefs.

BACKGROUND

The Parties' Bargaining Relationship

The City of Richland (employer) and International Union of Operating Engineers, Local 280 (union) are parties to a collective bargaining agreement effective January 1, 1995, through December 31, 1997, covering a unit of skilled and unskilled maintenance and operations employees working in various employer departments.

In 1992, the employer and union negotiated and signed a letter of agreement which changed the composition of the bargaining unit in two essential respects:

First, the parties agreed to the creation of six supervisor positions outside of the bargaining unit. Those positions were in the employer's Public Works Department and its Water and Waste Water Utilities Department. The persons placed in those positions had previously been classified as "foremen" or "lead persons", with their positions covered by the parties' collective bargaining agreement. The six bargaining unit positions vacated by those promotions were not filled.

Second, the parties agreed to place temporary summer hires in the bargaining unit.

Negotiations for Current Contract

The genesis of this unfair labor practice case is found in the negotiations which led to the parties' current collective bargaining agreement. Those negotiations began in 1994, and concluded on May 23, 1995. The parties had 18 bargaining sessions.

The December Proposal -

In a proposal dated December 19, 1994, the employer sought various job combinations, changes in job classifications, and changes of wage rates.[1] Included among those were the deletion of all foreman and lead classifications, with the proviso that employees upgraded to lead responsibilities would be "... paid 6 percent of the highest rate in the work group which they 'lead'". Larry Johnston, a union business representative and its chief negotiator, described this as a conceptual proposal. Paul Elsey, the employer's human resources manager and its principal spokesman in the negotiations, testified this was a serious proposal designed to correct situa-

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[1] This document, labeled "City Proposal Appendix A", is in evidence as Exhibit 15.

tions where certain employees received a lead rate of pay, but had no responsibilities justifying such a designation.

The parties agree that the focus of concern in the employer's December 19 proposal was on a "lead building and grounds worker" position held by Ruben Rojas and a "lead craft worker" position held by Terry Bockman. In the employer's judgment, those two individuals were the only employees classified as leads who routinely performed no functions associated with directing the work of other employees. According to Elsey, the proposal with respect to the foreman classification was merely designed to reflect the change already agreed to by the parties in 1992, since all foreman positions had effectively been eliminated. Two lead positions affected by the 1992 letter agreement ("lead truck driver" and "lead landfill operator") were also never filled thereafter, except perhaps on a temporary basis.

The "Red Circle" Proposal -
In February or March of 1995, the employer modified its proposal with respect to the positions held by Rojas and Bockman, to the extent of proposing that their rates would be "red circled" if the union would agree to a deletion of lead classifications from Appendix A of the collective bargaining agreement. The union rejected that offer.

The May 23 Proposals -
At the parties' final negotiating session, held under the auspices of a mediator on May 23, 1995, the parties exchanged a series of counter-offers.

The union made the first proposal. The third item was a proposal to retain the foreman and lead classifications in the contract.[2]

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[2] The proposal is in evidence as Exhibit 2.

The employer countered with a handwritten proposal which made no mention of the foreman classification.[3] With respect to the union's proposal on lead classifications, the employer proposed that employees would receive a seven percent premium over their base rate in defined instances. In particular, the employer proposed that a lead worker would be required (in the absence of a supervisor) where four or more employees were working on any given job or where an employee was required to oversee work at multiple job locations. The employer's proposal further provided that the designation of a lead person would be in accord with Article 11.1 of the contract, which is titled "Temporary Assignments (Upgrade)".

In discussing this proposal, Elsey said again that Bockman and Rojas were not performing lead duties and that, while the employer did not intend to do anything immediately, it would review their situations later. Johnston's handwritten notes made at that time, reflect those comments.[4] Elsey's testimony confirmed the essence of the union's evidence about his comments in explaining the employer's proposal. Elsey's negotiating notes also show that he told union negotiators that the employer's offer would not affect the pay of Rojas and Bockman, but that the employer would study their jobs.[5] Based upon the notes, it appears Elsey was responding to a question by Johnston as to how the employer's proposal would affect current staffing of lead positions.

Johnston next presented a handwritten counter-offer.[6] During either a sidebar conversation or across the bargaining table at some point during the negotiations on May 23, 1995, Johnston told

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[3] The proposal is in evidence as Exhibit 3.

[4] Johnston's notes, which were made on a copy of the proposal, are in evidence as Exhibit 14.

[5] Elsey's notes are in evidence as Exhibit 8.

[6] That document is in evidence as Exhibit 4.

Elsey that the union would never accept a contract which deleted the lead classifications, and this offer was consistent with that position. While the union agreed to delete the foreman classifications from the contract, it proposed to retain all of the then-current lead classifications and staffing levels for the duration of the agreement.

Elsey responded with a handwritten offer in which the employer proposed to delete the foreman classification, but proposed to retain all of the then-current lead classifications.[7] The employer rejected the union's staffing level proposal, however. Both of the principal negotiators agree that, in the discussion of this offer, Elsey stated words to the effect that the employer would submit a proposal regarding Bockman and Rojas after the air (or dust) settled (from the contract negotiations). Further, they agree there were indications that Rojas' position was the major problem, that Bockman's job might be reclassified at the same rate, and that this process would be accomplished through negotiations. Johnston made a handwritten note of these comments on his copy of the employer's second offer and initialed it at the time Elsey provided this information.[8] Elsey's notes indicate he stated that the employer would review the lead positions and make a proposal to the union, if required.[9]

The Mediator thereafter submitted the union's third counter-offer to the employer. This did not vary from the union's prior proposal with respect to the foreman and lead classifications, but it did

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[7] This document is in evidence as Exhibit 5.

[8] The document is in evidence as Exhibit 16.

[9] Elsey testified that, in rejecting the union's staffing proposal, he advised the union negotiators that the level of staffing was a management prerogative and the employer could not agree to maintaining any given number of personnel in a job classification. Elsey's testimony on the staffing issue was not controverted.

include new language stating that: "... any staffing change in the lead classifications shall be subject to negotiations between the parties".[10]

The employer responded with another offer which modified the union's offer by striking out the words "... any staffing changes in the lead classifications shall be subject to negotiations between the parties".[11]

The union then made a new written offer which modified its position on the lead classifications.[12] The union proposed that all then-current positions would be retained subject to negotiations between the parties, but eliminated its demand that changes in staffing levels in lead classifications be negotiated.

After a caucus, the employer offered a new proposal which adopted the union's last proposal on the lead classifications.[13] Elsey wrote at the bottom of the page: "This constitutes City's last, best, and final offer". Elsey testified that, in making this offer, he told Johnston that the employer would negotiate with the union if it wished to reclassify lead positions and that the employer would confront the union on the lead classification issue after the contract negotiations.

Contradictory Understandings of Parties' Agreement -
Johnston testified his understanding of the final offer was that the employer proposed to maintain the status quo, and to take no action affecting the lead classifications or employees without

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[10] The document is in evidence as Exhibit 12.

[11] The document is in evidence as Exhibit 6.

[12] The proposal is in evidence as Exhibit 13.

[13] The document, which was labeled "City 18.4", is in evidence as Exhibit 7.

further negotiations. This was predicated, in part, on Elsey's comments across the bargaining table on May 23, 1995, to the effect that the employer would present proposals regarding Rojas and Bockman after the contract was settled. Johnston took those statements to mean that the employer did not intend to take any immediate action, but would review the situation later, and that any changes with respect to the positions of Bockman and Rojas would occur pursuant to negotiations.

Elsey testified that he understood the employer's commitment was only to negotiate with the union in the event the employer wished to reclassify or change the job description or rate of pay of a lead position. He specifically denied any agreement to negotiate with the union prior to laying off an employee in a lead classification, and pointed to the employer's rejection of the union's staffing proposal as evidence of the employer's position.

Events Subsequent to Contract Negotiations

At one point, Johnston testified that the parties reached tentative agreement. Other evidence suggests the union only agreed to take the employer's offer to the membership without a recommendation. The membership ultimately ratified the employer's offer, however.

After the contract was agreed to, Bockman voluntarily terminated his employment on June 9, 1995. The employer has not assigned an employee on a permanent basis to this classification.

On August 9, 1995, the employer gave Rojas written notice that he was being laid off on the basis of lack of work in the lead classification.[14] This was done without prior negotiations with the union. Rojas was given the option of being reclassified as a

[14] The layoff notice is in evidence as Exhibit 10. Elsey testified the layoff was in accord with layoff provisions of the parties' collective bargaining agreement.

maintenance worker, and he accepted that option. The union's response was to file the instant unfair labor practice complaint.

The employer has assigned various employees, by way of temporary upgrade, to the lead position formerly held by Bockman.[15] The employer admits it has paid employees intermittently, since August 9, 1995, to fill the lead position formerly held by Rojas.[16]

POSITIONS OF THE PARTIES

In its opening argument and its post-hearing brief, the union contended that the employer attempted to obtain the union's agreement to eliminate permanent positions for individuals in lead classifications (i.e., by deleting the lead classifications from the collective bargaining agreement), and to fill those positions on a temporary basis through upgrades. The union asserts the employer failed to achieve its objective during the contract negotiations, and that it eventually agreed to maintain lead classifications in the collective bargaining agreement with the right to raise the issue for negotiations during the term of the contract. The union further contended that the employer's failure to replace Bockman and its layoff of Rojas are tantamount to the employer imposing the proposal it failed to obtain in contract negotiations, without any changed circumstances warranting the employer's unilateral action. In its post-hearing brief, the union further argued that the evidence shows the parties agreed that

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[15] Johnston testified that the work formerly done by Bockman was divided among two to four persons, possibly including a supervisor who is excluded from the bargaining unit.

[16] In response to conflicting offers of proof about who performed various aspects of those jobs, and the extent to which those functions have been performed by others since Bockman and Rojas left the lead classifications, the Examiner ruled that such evidence would be irrelevant to the allegations of this complaint.

existing lead positions would be maintained through the term of the collective bargaining agreement, unless the parties effected a different understanding through mid-term negotiations. The focus of the union's brief was on its four written proposals on May 23, 1995, Johnston's testimony about the parties' agreement being predicated upon the wording of the employer's final offer of May 23, 1995, and the contract ultimately executed by the parties. In essence, the union contends that the various written offers culminating in the final offer constituted an agreement to employ individuals in the lead classifications at issue herein during the term of the contract. Relying upon Lake Washington Technical College, Decision 4721-A (PECB, 1995) and City of Hoquiam, Decision 745 (PECB, 1979), the union argues that an employer's unilateral change in job classifications' duties and/or wage rates during the term of a collective bargaining agreement is an unfair labor practice because it actually or potentially involves unilateral action upon a mandatory subject of bargaining (i.e., wages) and therefore does not involve merely an issue of minimum manning standards, a permissive subject of bargaining.

The employer contends that a reduction in staffing levels is at the core of the union's complaint. Citing City of Centralia, Decision 5282 (PECB, 1995), the employer urges that is a permissive subject of bargaining, so that no violation may be found. Citing Island County, Decision 5388 (PECB, 1995), the employer further maintains that the union is raising a breach of contract issue over which the Commission will not assert jurisdiction. The employer presents a twofold response to the union's contention that it failed to bargain in good faith and violated a verbal commitment by discontinuing two lead positions: First, that there was never a meeting of the minds, because the subjective understanding of each party varied significantly from the other and, in any case, such subjective intentions are irrelevant under Sunday vs Spokane, 83 Wn.2d 698 (1974) and Retail Clerks vs Shopland Supermarket, 96 Wn.2d 939 (1982). Second, whatever the status of any alleged oral under-

standing, the Commission may not enforce such agreements under RCW 41.56.030(4). Kalama School District, Decision 873 (PECB, 1980); City of Port Orchard, Decision 483 (PECB, 1978); State ex rel. Bain v. Clallam County, 77 Wn.2d 542 (1970); and Klauder v. Deputy Sheriff's Guild, 107 Wn.2d 338 (1986).

DISCUSSION

The Issue Before the Examiner

In its complaint, the union alleged that the employer failed to bargain in good faith when it discontinued staffing the lead positions, and failed to provide the union with an opportunity to bargain the effects of this action upon Ruben Rojas. The union predicated its position upon contentions that the employer agreed, in its final offer of May 23, 1995, to retain all lead classifications subject to negotiations between the parties. This offer was accompanied, according to the complaint, by a verbal representation that the employer would submit a proposal concerning the lead positions occupied by Rojas and Bockman after the contract was ratified, and would negotiate with the union concerning the matter.

In making a preliminary ruling under WAC 391-45-110, the Executive Director of the Commission found a cause of action to exist with respect to an alleged failure to honor a verbal commitment which served as an inducement for the union to accept the employer's final offer, so as to constitute a violation by the employer of its statutory obligation to bargain in good faith. There was no reference in the preliminary ruling letter to "skimming of unit work" or "violation of contract" considerations.

At hearing, the union made an offer of proof seeking to show that the employer has reassigned the work of Bockman and Rojas to other employees. Premised upon that offer of proof, the union now

asserts that the employer has violated the statute by unilaterally reassigning the duties of those two individuals to other employees within, and perhaps outside of, the bargaining unit. The Examiner finds the offer of proof would require an inappropriate amendment of the complaint far outside of the scope of the cause of action identified by the Executive Director in the preliminary ruling. The Examiner thus reaffirms his decision to exclude (as irrelevant) evidence concerning who performed various duties after Rojas and Bockman left the lead jobs.[17]

The Early Approach of the Parties on Lead Classifications

From the outset through the last day of the negotiations, the employer consistently maintained that the lead positions occupied by Rojas and Bockman were examples of situations where incumbents were not performing the functions of lead persons. It is almost axiomatic that, absent express contract language to the contrary, an employer is free to decide whether there is no longer work available for employees in a classification. While emphasizing its concerns with respect to Rojas and Bockman in particular, the employer elected to address the problem on a broad scale until May 23, 1995, by proposing elimination of the entire classification and substitution of a premium to be paid for lead functions under defined conditions. It later accompanied this proposal with an offer to freeze (red circle) the pay rates of Rojas and Bockman. Thus, it may be fairly inferred that, short of eliminating all references to lead classifications from the collective bargaining agreement and substituting a premium, the employer was uncertain of its ability to deal with situations wherein an employee did not perform lead functions for extended periods of time.

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[17] While the various proposals of the parties linked inclusion or exclusion of foremen classifications with the leadperson issue, the parties had no real dispute with regard to foreman positions. During the term of their predecessor contract, they had effectively eliminated all foreman positions.

By the same token, the union was faced with a dilemma in finding a way to preserve the incomes of bargaining unit members holding the lead positions. The union not only rejected elimination of the classifications from the contract, but resisted any overtures by the employer to minimize payroll costs through development of a lead premium even with the employer's offer to sweeten its proposal by red circling the rates of Bockman and Rojas.

The May 23 Negotiations on "Leads"

Analysis of the flurry of written offers exchanged by the parties during mediated negotiations on May 23, 1995, sheds light on the evolution of the parties' ultimate settlement. The starting point of that exchange was the standoff which had existed since the previous December, inasmuch as the union's first proposal on May 23 was limited to retaining the lead classifications in the contract.

When presenting the employer's first counter-offer on May 23, 1995, (i.e., providing a premium for a lead classification and defining the circumstances when it was payable), Elsey reiterated that Rojas and Bockman were not performing lead functions, and the employer's intent to study their jobs during the life of the contract.

At some point in the negotiations, the union evidently became uncomfortable with its own initial proposal. For reasons which are not detailed in the record, it presumably came to believe that the mere retention of the lead classifications did not provide adequate protection for the jobs and/or pay rates of Rojas and Bockman. Accordingly, the union modified its position with one seemingly meaningless move (i.e., to delete the already-defunct foreman positions from the collective bargaining agreement) and a new "maintain current staffing" concept for lead positions that produced a strongly negative reaction from the employer. Elsey stated that determination of manpower levels was a management function, and that there could be no guarantee of employment levels

for the life of the contract. Elsey clearly told the union negotiators that the employer would make a proposal on the lead classifications after the contract negotiations were concluded. The position occupied by Rojas was clearly identified as being the major concern for the employer, while the possibility was raised of reclassifying Bockman's position at the same rate of pay.

The employer's negotiators then did an about-face with respect to their approach. In its next written response, the employer expressly proposed retention of all lead classifications in the labor agreement. Although the record is not clear as to the precise timing of Johnston's statement that the union would never accept a contract which did not include lead classifications, it can be inferred that the employer was aware of it, and was seeking to accommodate the union on the "deletion" issue by that time. Perhaps its shift was precipitated in part by the union's proposal to freeze staffing levels. In any case, it is clear that the management never wavered, from that point on, from advising the union, in clear and express terms, that it would not guarantee staffing levels.

The union moved off its proposal to guarantee staffing levels, but only to the extent of proposing that any changes in staffing levels be subject to negotiations. Although that may have been intended to avoid the employer's previously-announced opposition to bargaining of "staffing", it was clearly only a half-step away from the union proposal which was objected to by the employer on scope of bargaining grounds.

Apparently without any specific discussion, the employer responded to the union's "negotiate staffing changes" proposal by modifying the union's prior offer to delete the reference to negotiating changes in staffing levels. The employer's response was consistent with Elsey's previous rejection of the "maintain staffing" concept.

The union thereupon submitted its fourth proposal, abandoning the effort to make changes in staffing levels subject to negotiations and substituting a proposal to maintain the lead classifications, subject to negotiations. There is, however, no evidence in this record as to the union's intent in making that change, or even of any explanation of its intent to the employer.

The employer's so-called final offer to the union embodied the employer's earlier agreement to retain all current lead classifications, and incorporated the union's last proposal to make continued retention subject to negotiations between the parties. In explaining this proposal to the union, Elsey reiterated that the employer would confront the lead situation after the contract was settled. Elsey said the employer would negotiate the subject with the union, if it decided to reclassify the lead positions. Without further ado, the union agreed to take this offer to the membership, where it was ratified.

Conclusions Regarding Parties' Negotiations

The employer's subsequent action of removing Rojas from a lead classification was not, on its face, contrary to the terms of its final offer which eventually was incorporated in the parties' collective bargaining agreement.[18] The net result of the employer's actions did not eliminate a classification from the collective bargaining agreement, only an incumbent from the classification. Even if the layoff of Rojas violated the terms of the contract negotiated by the parties, such would not give rise to a violation of Chapter 41.56 RCW. The Commission has consistently refused to enforce collective bargaining agreements through unfair labor

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[18] The same conclusion results with respect to the failure to place an individual in the lead classification vacated by Bockman, although this was not a subject of the complaint herein.

practice proceedings. Island County, Decision 5388 (PECB, 1995); King County, Decision 3204-A (PECB, 1990).

Still to be decided is the legal effect, if any, of representations or commitments made by the employer's negotiators during the course of the negotiations on May 23, 1995, antecedent to the union's ratification of the employer's final offer. If Elsey's various comments were viewed in isolation, a compelling argument for the following proposition might be advanced: It could be hypothesized that the employer's proposals to "red circle" the rates of Bockman and Rojas coupled with statements made at the bargaining table on May 23 vis-a-vis negotiating with the union on the subject of lead jobs held by Bockman and Rojas, caused the union to believe that, in accepting the employer's final offer, it was assured that the employer would not take action to change the employment status of those individuals without prior negotiations. The Examiner would then be called upon to determine the legal effect of the employer's repudiation of such verbal representations. The Examiner is not persuaded, however, that the evidence supports an inference that warrants consideration of such a theory.

Rather than lulling the union into believing that the jobs of Bockman and Rojas were secure for the duration of the contract, the testimony and exhibits reflect that the various representations by the employer during the course of the negotiations on May 23 appeared to have precisely the opposite effect. The parties ultimately agreed to maintain the lead classifications in the collective bargaining agreement, but there was clearly no agreement to maintain employment levels in lead classifications for the life of the agreement:[19]

* After the employer presented its first proposal on May 23 (which impliedly reversed its position of eliminating lead classi-

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[19] In fact, proposals to that effect by the union were emphatically rejected by the employer.

fications), the union countered with a proposal which escalated its position (by proposing retention of all lead classifications and staffing levels for the duration of the contract). Rather than lessening the union's apprehensions, the employer's verbal representations in connection with presenting its offer (to the effect that it would not take any immediate action with respect to Bockman and Rojas but would study their jobs) precipitated a heightened union response designed to insure continued employment of Bockman and Rojas in lead positions. Union negotiator Johnston stated the union interpreted the employer's proposal as being one to eliminate permanent staffing of lead classifications.

* The employer's second written offer even more directly offered to continue to maintain lead classifications in the collective bargaining agreement, but expressly rejected the union's counter-offer with respect to maintaining staffing levels in lead classifications. This written proposal certainly furnished the union with little solace regarding continued job and pay retention for Bockman and Rojas.

* Elsey's unequivocal rejection of guarantees of staffing levels should have fueled the union's apprehensions. Elsey also advised that the employer would make a proposal to the union and negotiate upon the matter if the employer wished to change job classifications as to content or rate of pay, specifically referencing Rojas and Bockman. Certainly those pronouncements did not imply their employment as leads would be guaranteed for the life of the contract.

* Recognizing the inflexibility of the employer's opposition to guaranteeing staffing levels, the union withdrew its proposal to that effect and substituted a new demand that any changes in staffing levels in lead classifications be subject to negotiations. This union action is susceptible of two possible interpretations: One being that nothing said by the employer to that point furnished any basis for belief on its part that the employer either would not take any action affecting the continued employment of Bockman and Rojas in lead classifications or would do

so only after negotiations with the union; the other being that it appeared to the union that the employer had implicitly offered to not change the status of Bockman and Rojas without negotiations and wished to reduce this verbal offer to a written commitment. The employer countered, however, with an offer in the form of changes notated on the union's latest proposal and designated the proposal as "City 18.3", which rejected the union's offer that staffing changes in lead positions be subject to negotiations. This should certainly have signaled the union that the employer was not guaranteeing negotiations with the union prior to effecting changes in staffing in lead classifications.

* In response, the union made a further written proposal which included a provision that lead classifications be maintained subject to negotiations. When the union abandoned its effort with respect to staffing levels and advanced its last proposal that all lead classifications would be retained in the contract subject to negotiations, it offered no explanation as to the intent of its proposal. This proposal was adopted by the employer in its final offer.

On the surface, the language proposed by the union and accepted by the employer cannot be reasonably construed as placing any restriction upon the employer with respect to laying off employees from lead classification. The classifications were clearly distinguished from the positions by that point in the negotiations. In rejecting union proposals that would have maintained the current positions, the employer spokesman could not have been more emphatic in indicating that staffing levels were a management prerogative and that the employer could not guarantee any level of employment for the duration of the contract. While those representations were general in nature, they clearly should have been understood by the union to have specific applicability to the employment status of Bockman and Rojas. Accordingly, the employer's acceptance of the proposal, without more, does not convey a commitment or agreement on its part to impose any limitation upon whatever right it may

have had under the collective bargaining agreement to lay off an employee in a lead classification.

At most, the adoption of the language regarding lead classifications may be viewed as a written affirmation of the employer's expressed recognition of an obligation to bargain with the union before effecting an elimination of the classification, as opposed to laying off individuals employed in lead classifications. The comments by Elsey in connection with submitting the employer's final offer could be viewed as giving credence to this position.

Effect of Oral Representations

One can appreciate that the union negotiator's anxiety about the continued employment of Bockman and Rojas in lead positions may have resulted in their reading more into Elsey's statements than the Examiner is prepared to credit. Because of the susceptibility of parties to infer a commitment at odds with the actual content of the promise, the "written agreements" requirement of Chapter 41.56 RCW is particularly salutary. Oral understandings, such as those espoused by the union herein, have been rejected as contrary to public policy. State ex rel. Bain v. Clallam County, 77 Wn.2d 542 (1970). Public policy considerations and statutory prescriptions aside, the extremely ambiguous nature of the employer's oral representations offered as evidence in this proceeding preclude any finding in favor of the union. It is well established that an agreement cannot be enforced unless its terms are absolutely clear. 81C. J. S. Specific Performance §1 (1953); Lager v Berggren, 187 Wash. 462 (1936).

Union Has Not Met Its Burden of Proof

As the moving party, the union has the burden of establishing that the actions complained of violate of statute. WAC 391-45-270; City of Mercer Island, Decision 1008-A (PECB 1981); Peninsula School

District, Decision 1477 (EDUC 1982). Clearly, the union has failed to show a violation of an agreement or commitment used to induce the union's acceptance and ratification of the employer's final offer. Therefore, under any conceivable theory, the complaint herein must be dismissed.

FINDINGS OF FACT

1. City of Richland is a public employer within the meaning of RCW 41.56.030(1).

2. International Union of Operating Engineers, Local 280, a bargaining representative within the meaning of RCW 41.56.030-(3), is the exclusive bargaining representative of operations and maintenance employees of the City of Richland.

3. On May 23, 1995, the employer and union concluded negotiations on a successor collective bargaining agreement, and the union agreed to submit the employer's final offer to the union membership without a recommendation. That offer was ratified, and its terms were subsequently incorporated into a collective bargaining agreement executed by the parties.

4. During the negotiations on May 23, 1995, the parties engaged in intense negotiations concerning both: (a) the continued inclusion of lead classifications in their contract; and (b) whether staffing levels in the lead classifications would be guaranteed or subject to negotiations. The focus of concern was on two employees the employer claimed were not performing lead functions. The employer clearly and consistently rejected union proposals which would have preserved the current staffing levels or made changes of staffing a subject of bargaining. The employer's final offer included a proposal to retain lead classifications in the collective bargaining agreement subject to negotiations.

5. The evidence is not sufficient to base a finding that the employer induced the union to enter into the collective bargaining agreement by making representations that the positions held by Bockman and Rojas would be staffed throughout the term of the collective bargaining agreement.

7. On June 9, 1995, Terry Bockman voluntarily terminated his employment. On August 9, 1995, the employer laid off Ruben Rojas from his lead position and placed him in a lower paid classification.

CONCLUSIONS OF LAW

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

2. The employer's actions did not constitute an unfair labor practice under RCW 41.56.140(1) or (4).

NOW, THEREFORE, it is

ORDERED

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

Issued at Olympia, Washington, this 17th day of June, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Vincent M. Helm

VINCENT M. HELM, Examiner

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-45-350.