King County, Decision 5954 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,	)	
Complainant,	)	CASE 12785-U-96-3073
vs.	)	DECISION 5954 - PECB
KING COUNTY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Kim Ramsey, Union Representative, appeared on behalf of the union.

Kerry H. Delaney, Esq., Labor Relations Analyst, appeared on behalf of the employer.

On October 28, 1996, International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that King County had refused to bargain in violation of RCW 41.56.140(4). The complaint was reviewed for the purpose of making a preliminary ruling under WAC 391-45-110, and a deficiency notice issued on December 16, 1996 indicated that the complaint was insufficient to state a cause of action with respect to a "domination" theory under RCW 41.56.140(2) or a "discrimination" theory under RCW 41.56.140(1) or (3), or with respect to a claim that the employer had made improper findings on "market rate". The union filed an amended complaint on January 6, 1997, wherein it withdrew the allegations which appeared to be deficient. A hearing was held before Examiner William A. Lang on April 29 and May 22, 1997.

BACKGROUND

Among other services, King County participates in the operation of the Seattle-King County Department of Public Health. International Federation of Professional and Technical Engineers, Local 17, is the exclusive bargaining representative of certain employees in that department. The parties' last collective bargaining agreement covering these employees expired on December 31, 1995.[1] There are actually three bargaining units involved, as follows:

- An office-clerical support unit;
- A professional-technical unit encompassing nutritionists and environmental health specialists; and
- A senior technical unit composed mostly of environmental health supervisors.

On September 11, 1995, the union informed the employer that it intended to open negotiations for a successor collective bargaining agreement. The union finalized its proposals on December 8, 1995, and negotiations began in late December of 1995. Stephen W. Robinson was chief negotiator for the employer; Wayman N. Alston, Jr. and Kim Ramsey were the chief negotiators for the union.

One of the union's proposals in the contract negotiations for 1996 was to increase the wages of bargaining unit members through both: (1) A cost of living escalator;[2] and (2) addressing classification inequities which the union spokespersons said would be identified at a later date. The union also proposed longevity and educational

---

[1] Under Article 29, Section 2, the terms and conditions of the agreement remained in force until a new agreement is consummated.

[2] The union was proposing escalators of 100%, with a minimum of 3% and a maximum of 6%, for each of the next three years.

salary incentives, and a $100.00 allowance for professional licenses.

The employer submitted counter-proposals to the union on March 7, 1996, at a bargaining session that was mostly devoted to discussion of ground rules for future negotiations.[3] The employer proposed an across-the-board wage increase of 2.25% for 1996, with cost-of-living increases calculated as 90% of the CPI (with a minimum of 2% and a maximum of 6%) for each of the next two years. The employer also agreed to negotiate the salary of any position which had a "dramatic change" in responsibilities and duties.

On March 25, 1996, the union modified its initial proposal to identify the licenses or certifications for which an employee would receive the proposed $100 reimbursement.

The proposed equity adjustments affected 41 employees. The union arranged to have a representative from each classification present justification for their equity adjustment to the employer. That was accomplished in a series of meetings in April, 1996.

On May 13, 1996, the parties established June 20, 1996 as the date for the employer's response to the equity adjustment proposals for the office-clerical classifications, and established June 27, 1996 as the date for employer's response to the equity adjustment proposals for the professional and technical classifications.

---

[3] These facts are set forth for background continuity, but the reasons for any delay of the employer's response from December of 1995 to March of 1996 are not before the Examiner in this case. This complaint filed on October 28, 1996 was untimely, under RCW 41.56.160, as to events that occurred prior to April 28, 1996.

The employer was not ready to respond on June 20, and the meeting scheduled for June 27 was canceled. The union representatives were upset, and felt that the employer was putting them off. The union then requested mediation from the Commission.[4]

The record is uncertain as to the date when the employer actually responded to the equity adjustment requests. The union received the employer's written response in the mail some time before July 15, 1996, when Alston made a written request for copies of the documents underlying the employer's analysis.

The parties discussed the employer's response to the equity adjustment requests at mediation sessions held on July 17 and August 26, 1996. The union and employer had a major disagreement on salary comparisons. The employer opposed the union's use of unrelated positions in making comparative worth assessments, and claimed that the comparisons should be with like positions. The union representatives were angry about the employer's positions that: (1) There was no need to adjust the professional-technical salaries, because the employer had not experienced recruitment or retention problems; and (2) the salaries appeared competitive to surrounding counties, according to a market survey attached to the employer's counter-proposal.

On September 3, 1996, the employer acknowledged that the office-clerical personnel needed equity adjustments, and it proposed that they be given a 2.5% wage increase on the first of the month following ratification of the new contract, with an additional 2.5% increase on the following July 1st. These were described as

---

[4] Notice is taken of the Commission's docket records for Case 12577-M-96-4575. The request for mediation in the Public Health Department was filed on July 1, 1996.

interim adjustments pending the completion of a compensation study, and the employer proposed a re-opener of the wage provisions in 1998 to implement its compensation study.

The union commenced this unfair labor practice proceeding on October 23, 1996.

PROCEDURAL BACKGROUND

The Preliminary Ruling

In making a preliminary ruling under WAC 391-45-110, the Executive Director must act on the basis of what is contained within the four corners of a statement of facts. The Commission does not "investigate" factual claims, in the manner familiar to those who practice before the National Labor Relations Board (NLRB), and the Executive Director does not exercise a prosecutorial discretion as would the agents of the General Counsel of the NLRB before issuing a complaint. From the language used in this case, it is clear that the Executive Director understood the union to be making fairly narrow allegations. The deficiency notice issued on December 16, 1996 included:

> The union first alleges that the employer has preconditioned bargaining on the results of a classification and compensation study which the employer is performing on all positions in the employer's workforce.
>
> ...
> The union alleges that the employer has refused to bargain "wages", in violation of RCW 41.56.140(4), on three dates in October of 1996. Since the definition of "collective bargaining" contained in RCW 41.56.030(4) expressly lists "wages" as a(mandatory) sub-

> ject of bargaining, an unfair labor practice violation could be found on any preconditioning of negotiation of wages based upon a comprehensive classification and compensation [study].

The preliminary ruling letter issued on January 21, 1996 described the cause of action in similar terms:

> The employer's refusal to bargain "wages" and/or its preconditioning of bargaining on "wages" by insistence that all bargaining of "wages" be subject to a classification and compensation study the employer is performing.

The Commission has clearly distinguished "refusal to bargain" from "refusal to agree",[5] and the Executive Director routinely implements that distinction in scrutinizing complaints under WAC 391-45-110. In dismissing a complaint, the Executive Director wrote:

> There is a difference between a "refusal to bargain" and a "refusal to agree". It appears that the statement of facts only specifies that the employer has declined to make a concession. Without more elaboration, the complaint fails to state a cause of action.

Chelan County, Decision 2791 (PECB, 1987)

The hearing on this complaint thus proceeded with a focus on the alleged "preconditioning" of bargaining.

The Motion for Dismissal

At the close of the union's case-in-chief at the hearing in this matter, the Examiner granted the employer's motion for dismissal of

---

[5] See, Walla Walla County, Decision 2932-A (PECB, 1988).

the unfair labor practice complaint. Based upon analysis of the evidence put forth by the union before it rested, the Examiner concluded that the record would not support any finding that the employer had preconditioned wage proposals on a compensation study. This order confirms that ruling.

DISCUSSION

Wages and wage-related benefits are mandatory subjects of bargaining. City of Anacortes, Decision 1493 (PECB, 1982). Imposing preconditions on the bargaining of such matters is a refusal to bargain. Mason County, Decision 3116 (PECB, 1989); Ridgefield School District, Decision 102-A (EDUC, 1977). In this case, the pleadings were extensive and complicated. The allegations which survived to the hearing process concerned the employer withholding negotiations on wages and equity adjustments until a classification compensation study was completed. The evidence actually admitted in evidence produced a very different picture.

The union opened negotiations by letter on September 11, 1995, but did not give its proposals to the employer until December of 1995. Even then, the union alerted the employer that further proposals on classification inequities would be forthcoming. These facts do not support any inference of punctuality or urgency on the part of the union, as the contract bar period protected by RCW 41.56.070 and the previous contract had all expired before the union put all of its proposals on the bargaining table.[6]

---

[6] The Examiner notes that protection of the last 60 days of a contract term under RCW 41.56.070 matches practice under the NLRA, and that active negotiations in the last 60 days of a contract term are the norm rather than an option to be exercised casually or occasionally.

The employer made substantive wage proposals at a March 7, 1996 negotiation session, including general increases for each of three years, with the first year retroactive to January 1, 1996. While the employer did not precisely match the union's numbers, its proposals were conceptually similar to the union's proposals.

In April of 1996, the union proposed equity adjustments for a number of classification covering 41 positions. These proposals came more than six months after the opening of negotiations and four months after the union's initial proposal, further undermining any suggestion of urgency or punctuality on the part of the union.

The employer initially indicated that it would be ready to respond to the proposed equity adjustments in the last two weeks of June, 1996. That would have been only about half of the four month period the union took to identify and submit its proposals on those adjustments, and so does not appear unreasonable. Moreover, there is no evidence that the employer's initial estimate of the time for a response were made in bad faith.

The employer did not meet the June timetable, but it did respond to the equity adjustment proposals by the middle of July, 1996. The union's complaint that the employer was taking too long to respond must be evaluated in the context that the three months it took the employer to respond was still a shorter period of time than the union took from December to April.

When the employer did respond, the union was upset that the employer concluded that the professional and technical classifications did not need a pay increase. The employer's response was not unreasoned, however. The employer advised the union that it had not experienced recruitment or retention problems in those

positions, and that a market study showed the salaries were competitive. Also consistent with an inference of good faith, the employer offered an interim 5% adjustment (pending a compensation study), upon determining that the pay for the office-clerical series was not competitive. Thus, on the basis of the evidentiary record actually produced at the hearing, the pay study was put forth as a follow-up to a substantive proposal, not as a pre-condition upon negotiations.

It is clear from the foregoing that the employer responded to the union's economic proposals in a timely manner with both general wage increases and adjustments for some of the classifications identified by the union. The Examiner concludes that the real dispute was over the methodology of comparison, not on a failure to respond. The record shows that the employer based its comparisons on factors different from those used by the union. As stated in the deficiency notice issued in this case with respect to a claim that the employer had made improper findings on "market rates", the Commission does not referee these kinds of disputes. The union's evidence does not indicate that the employer either failed to respond or deliberately delayed responses to the union's economic proposals. A failure to agree does not equate with a refusal to bargain. The complaint must be dismissed.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(1). At all times material hereto, King County was responsible for conducting labor relations matters involving the Seattle-King County Department of Health.

2. International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the Seattle-King County Department of Health.

3. The employer and union were parties to a collective bargaining agreement which was effective for the period from January 1, 1993 through December 31, 1995, covering three bargaining units at the Seattle-King County Department of Health. Article 29 called for written notice to terminate or modify that contract was to be given at least 90 days prior to December 31, 1995.

4. On September 11, 1995, the union notified the employer that it would open the agreement.

5. Negotiations for a successor contract actually commenced in December of 1995. At all times relevant, Labor Relations Specialist Stephen W. Robinson was the chief spokesperson for the employer, and Union Representative Wayman N. Alston, Jr. and Union Representative Kim Ramsey were spokespersons for the union. The union proposed changes to the agreement at that time, including general wage increases for each year of a three-year successor contract. The union also advised the employer it was preparing proposals on individual classification pay increases, to be presented at a later date.

6. In March of 1996, the employer made substantive proposals on general pay increases for each year of a three-year contract, including retroactivity to January 1, 1996 and use of a "cost-of-living" formula for 1997 and 1998.

7. The union did not present its proposals on pay increases for specific classifications until April of 1996. At that time, the parties agreed to meet in June to discuss the employer's responses. The record does not support a conclusion that the employer thereby acted other than in good faith.

8. The employer was not ready to respond to the classification adjustments by the June dates originally established by the parties. The record does not support a conclusion that the employer thereby acted other than in good faith.

9. The employer did present counter-offers in July 1996. The employer refused to agree to the union's proposed increases for professional and technical positions, claiming they were not justified in terms of recruitment and retention or on the basis of a market study. The employer acknowledged that the office-clerical series required adjustment, and proposed an interim 5% salary increase pending a compensation study. The record does not support a conclusion that the employer thereby acted other than in good faith. The union disagreed with the employer's methodology and conclusions.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

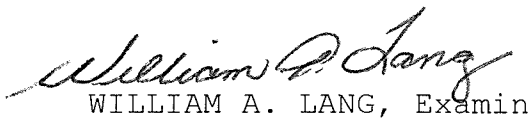
2. The union has failed to sustain its burden of proof as to its allegation that the employer failed or refused to bargain in a timely manner, or as to its allegation that the employer preconditioned the bargaining on a future compensation study, and so has failed to establish any violation of RCW 41.56.140.

ORDER

The complaint charging unfair labor practices filed in this matter shall be, and hereby is, DISMISSED.

Issued at Olympia, Washington, on the 20th day of June, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, 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.