Meydenbauer Center, Decision 6500 (PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| TEAMSTERS UNION, LOCAL 763, Complainant, | ) | CASE 13552-U-97-3309 |
| vs. | ) | DECISION 6500 - PECB |
| MEYDENBAUER CENTER, Respondent. | ) | FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

Davies, Roberts and Reid, by Michael R. McCarthy, Attorney at Law, appeared for the complainant.

McNaul, Ebel, Nawrot, Helgren and Vance, by Tyler B. Ellrodt, Attorney at Law, appeared for the respondent.

On November 20, 1997, Teamsters Union, Local 763, filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Meydenbauer Center violated RCW 41.56.140, by failing to respond in bargaining to a union proposal regarding employee rates of pay. Examiner Frederick J. Rosenberry was designated to conduct further proceedings under Chapter 391-45 WAC. A hearing was held at Kirkland, Washington, on April 30, 1998, before the Examiner. The parties submitted post-hearing briefs to complete the record.

## BACKGROUND

The Bellevue Convention Center Authority operates a publicly-owned facility known as the Meydenbauer Center (employer), which offers conference facilities and related food services at Bellevue, Washington. The facility opened in 1993.

On March 24, 1995, Teamsters Union, Local 763 (union), filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of cooks and stewards employed in the food and beverage department of the employer's operation. A cross-check was conducted on September 26, 1995, and it was determined that the employees had selected the union as their exclusive bargaining representative. The employer filed objections, but those objections were dismissed on January 31, 1996, and the union was certified as exclusive bargaining representative. Meydenbauer Center, Decision 5272 (PECB, 1996).

On February 3, 1996, the employer filed a petition pursuant to Chapter 34.05 RCW in King County Superior Court, seeking judicial review of the Commission's order. The union filed an unfair labor practice complaint in March of 1996, alleging that the employer was refusing to bargain,[1] and the employer's request for a stay was denied by the superior court in July of 1996. By order dated September 12, 1996, the superior court dismissed the employer's petition for judicial review and affirmed the certification issued by the Commission.

In October of 1996, the employer advanced its appeal of the certification to the Washington State Court of Appeals. The employer again sought a stay, but that request was denied. By a letter dated November 19, 1996, the employer notified the Executive

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[1] That complaint was docketed as Case 12412-U-96-2944. Findings of Fact, Conclusions of Law and Order were issued in Meydenbauer Center, Decision 5913 (PECB, 1997). The union's allegation that the employer was unlawfully declining to bargain with it was dismissed.

Director of the Commission that the Court of Appeals had denied its request for a stay, and that it would commence to bargain with the union.[2]

The parties' first bargaining session was held on January 30, 1997. The employer's chief spokesperson was Lynn Ellsworth. The union's chief spokesperson was Thomas Krett. Among several issues, the employer's practice of paying employees an hourly rate plus a percentage of gratuities (tips) was a subject of bargaining. The employer proposed discontinuing passing through tip money to the employees, and offered to increase hourly rates of pay to offset the reduction. According to Ellsworth, the change was sought because the employer felt that:

- The wages paid to members of the bargaining unit should be competitive;
- The wages that it paid were "out of whack compared to [greater than] our competitors";
- It was not normal for "back of the house" employees [e.g., cooks, stewards] to receive a share of tips;
- Two of the cooks were receiving substantially greater tips than the other employees; and
- It desired to pay a stable, guaranteed hourly rate, rather than a variable rate based on the uncertainty of tips.

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[2] Some background data included in this decision is based on information contained in Meydenbauer Center, Decision 5913 (PECB, 1997).

The union rejected the employer's proposal, because the hourly rate increase offered by the employer would not entirely offset the income generated by the tip money that the employees had become accustomed to receiving, and would thus result in an income reduction.[3]

Additional negotiation sessions took place on February 25, March 18, March 28, and April 17, 1997. Among several matters and with varying degrees of emphasis, rates of pay were discussed at each of these meetings. In about April 1997, Krett prepared a worksheet showing the status of the salary component in the negotiations.[4]

There was a request for mediation, and the parties met on June 17, 1997, under the auspices of a mediator. There was an indication that the employer might enhance its wage offer by an additional $.05 per hour. However, Krett did not consider that amount sufficient to resolve the salary issue.

Another mediation session was held on September 3, 1997. According to Krett, he felt by that time that other components of a collective bargaining agreement were sufficiently developed that a complete agreement could be produced if the parties could reach agreement regarding the wage issue. According to the employer, it requested during the September 3 session that the union submit a new "specific" wage proposal that would move the issue toward resolution and warrant a response.

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[3] The record fairly reflects that the employer has been paying the bargaining unit a portion of gratuities since the convention center opened.

[4] The record fairly reflects that Krett provided a copy to the employer at the April 17, 1997 negotiations session.

Krett met with the bargaining unit members on or about September 16, 1997, and presented a complete collective bargaining agreement proposal. The employer's pending wage offer was unacceptable, because of the reduction of total remuneration that would result from it. Although the members of the bargaining unit were willing to discontinue deriving a portion of their income from tips, they continued to insist on a commensurate increase in their hourly rate so that there would be no reduction of their incomes.

Krett again raised the matter with Ellsworth, by letter dated September 16, 1997. It stated:

> On this date I met with the employees of the above referenced bargaining unit to review with them the status of our negotiations for a labor agreement. This letter is a result of the meeting.
>
> As you are aware, the Employer's previous contract offer was rejected by the employees because it would have resulted in substantial reductions in compensations for the members of the bargaining unit. This was due to the fact that the Employer had proposed to eliminate the tip-point that employees are currently receiving without an equal increase in the base hourly rates of pay. The employees are adamant that they are not willing to agree to a decrease in their level of compensation. We have two ways to resolve the issue; **either the Employer agrees to increase the base hourly rates of pay to offset any reduction in the tip point, or the Employer agrees to maintain the current tip point system with the existing pay ranges.** The former would also increase the Employer's attendant costs such as pension, overtime, social security, etc. The later [*sic*] would maintain the status quo as far as employee compensation and would be acceptable to the bargaining unit. The par-

> ties would still have to address such issues as the specific wage steps (as the Employer has proposed), future increases and term of the Agreement.
>
> I hope we have the basis to conclude these negotiations and await your response.

[Emphasis by **bold** supplied.]

According to Ellsworth, he interpreted Krett's letter as a reiteration of the union's ongoing request for greater compensation than was being offered by the employer, and that it was not acceptable. Ellsworth felt that there was no substantive change of position by the union, and he took no action on the letter. Krett subsequently discussed the matter with the mediator, but nothing substantive resulted from that conversation.

Krett recalled that he contacted Ellsworth in late October of 1997, and that Ellsworth agreed to review the substance of Krett's September 16 letter with the employer's board of directors and then respond to Krett. According to Krett, Ellsworth made no comment at that time regarding the "adequacy" of the letter.

Ellsworth recalled that he was contacted by a mediator in early November of 1997,[5] and that he told the mediator that Krett was to submit a revised wage proposal, and that he was still waiting to hear from Krett.

On November 19, 1997, the union filed the instant complaint charging unfair labor practices. Ellsworth responded with a letter

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[5] There was a change of mediators due to the retirement of the mediator originally assigned.

directed to the Commission's Executive Director under date of December 3, 1997, stating:

> We have reviewed the unfair labor practice charge filed by Teamsters Local 763. The charge doesn't accurately reflect the history of the bargaining that has occurred or where the parties are now. These parties have held numerous bargaining sessions, including two meetings with a mediator. The last mediation session was on September 3, 1997. At that session, Tom Krett advised the employer's bargaining team that the employees had turned down the employer's proposed contract. In a joint session with the mediator, the employer's bargaining team requested that since the employees had rejected the employers offer that it was incumbent upon Mr. Krett to make a written counter-offer if he desired to do so. The employer stated it would give careful consideration to whatever was proposed. At no time did the employer ever intimate that it would not bargain, only that the obligation to make a specific counter-proposal was with the union.
>
> On September 16, Mr. Krett forwarded a single-page letter to the undersigned. A copy of that letter is attached. As you will note, the letter cannot, by any stretch of the imagination, be considered a counter-offer. It simply states that the employees either want the tip credit reinstated or they want more money. The employer's bargaining team repeatedly told Mr. Krett that the tip credit would not be reinstated and that if the employees wanted more money, a specific offer needed to be made. Simply saying the employees want more money does not as a matter of law require further response by the employer.
>
> The employer's representative told [the mediator first assigned and the second mediator] that the Union needed to make a specific wage proposal so that Meydenbauer's Board could

> evaluate the employer's wage proposal and formulate an appropriate response. By failing to make a written proposal on wages, the Union cannot credibly argue that the employer has committed an unfair labor practice. In essence, what the Union would like the employer to do is bargain against itself. Having made a wage proposal which the employees rejected, the employer need not consider modifying that proposal unless and until the Union makes a written counter-offer containing specific wages proposals. If the Union makes a specific wage proposal, then Meydenbauer will evaluate it, and will engage in good faith bargaining. Therefore, under these circumstances, the Union [sic, employer?] requests that the Executive Director dismiss the Union's unfair labor practice charge.

On March 23, 1998, the Washington State Court of Appeals affirmed the certification issued by the Commission in 1996.

## POSITIONS OF THE PARTIES

The union contends the employer has failed to meet its collective bargaining obligation, by engaging in tactics of undue delay designed to frustrate agreement, by insisting on substantial wage cuts without adequate explanation, and by refusing to respond in a timely manner to a substantial wage proposal offered by the union.

The employer denies that it failed to bargain. According to the employer, the union agreed to submit a specific wage proposal that would move the parties toward settlement, and that the union failed to submit such specific proposal while reiterating the same proposal and interest the employer had repeatedly rejected.

DISCUSSION

The Duty to Bargain in Good Faith

These parties bargain under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. Their duty to bargain in good faith bargaining is enforced through RCW 41.56.140(4) and unfair labor practice proceedings under RCW 41.56.160 and Chapter 391-45 WAC. The term "collective bargaining" is defined in RCW 41.56.030(4), as follows:

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, ... with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, ... except that by such obligation **neither party shall be compelled to agree to a proposal or be required to make a concession** unless otherwise provided in this chapter. ...

[Emphasis by **bold** supplied.]

Where an unfair labor practice is alleged, the complainant has the burden of proof. WAC 391-45-270. The burden to establish affirmative defenses lies with the party asserting a defense.

The Standards to be Applied

The statutory obligation to bargain in good faith includes a duty to engage in full and frank discussion of disputed issues, and to

explore possible alternatives, if any, that may be mutually acceptable. South Kitsap School District, Decision 472 (PECB, 1978). While the obligation to bargain in good faith does not require a party to grant a concession or agree to a specific proposal, neither is a party entitled to reduce collective bargaining to an exercise in futility. City of Snohomish, Decision 1661-A (PECB, 1984). The refusal by an employer to modify its original proposal may not be a per se violation of the statute. Thurston County, Decision 5633 (PECB, 1996). Failure of a party to offer a counterproposal is not necessarily an indication of bad faith. McCourt v. California Sports, Inc., 600 F.2d 1193 (6th Cir., 1979).[6] There is risk to approaching collective bargaining with a take-it-or-leave-it attitude on items of importance. Nevertheless, a party may maintain a firm position on a particular issue throughout bargaining, if the resolve is genuinely and sincerely held, and if the totality of its conduct does not reflect a rejection of the principle of collective bargaining. City of Snohomish, supra; Pierce County, Decision 1710 (PECB, 1983). Thus, "hard bargaining" is not inherently illegal or bad faith bargaining, unless there is an intent to not bargain in good faith. Fort Vancouver Regional Library, Decision 2396-A (PECB, 1986).

It may develop that agreement will not be reached on each and every issue raised by the parties in contract negotiations, even after good faith bargaining on both sides of the bargaining table. Mansfield School District, Decision 4552-B (EDUC, 1995). The

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[6] The Public Employees' Collective Bargaining Act is patterned after the National Labor Relations Act (NLRA) as amended by the Labor-Management Relations Act of 1947. Federal precedent is properly used in the interpretation of Chapter 41.56 RCW, where the statutes are similar. Nucleonics Alliance v. PERC, 101 Wn.2d 24 (1984).

totality of the parties' conduct in collective bargaining, including communications sufficient to intelligently evaluate the merits of personnel actions, are integral elements of good faith. Federal Way School District, Decision 232-A (EDUC, 1977). The obligation to bargain can become dormant on issues when and if the parties deadlock. City of Brier, Decision 5089-A (PECB, 1995). Distinguishing between good faith and bad faith in bargaining can be difficult in close cases. City of Snohomish, Decision 1661-A (PECB, 1984).

## The Scope of The Complaint

The complaint that initiated this proceeding was limited to an allegation that the employer refused to bargain by failing to respond to union's September 16, 1997 letter, setting forth a written proposal regarding the salary component of a collective bargaining agreement. The preliminary ruling letter issued by the Executive Director under WAC 391-45-110 similarly characterized the issue narrowly: "The employer's ... refusal to bargain by failing to respond to a written union proposal regarding components of a collective bargaining agreement." The Examiner conducted the hearing on that basis, and the union never moved to amend the complaint.

In its brief, the union argues that the employer has engaged in a pattern of bad faith, and has failed or refused to bargain in good faith, so as to frustrate agreement on a first contract covering the newly-organized food service employees. The union's post-hearing brief thus raises issues and claims that go beyond the scope of this proceeding. Accordingly, this decision is issued within the confines of the complaint and preliminary ruling.

Information regarding the overall collective bargaining relationship and the tone of the negotiations has value as background information on the exchange concerning the September 16, 1997 letter, and has been taken into consideration on that basis, but no findings of fact or conclusions of law are entered as to whether the employer engaged in delay or other tactics to frustrate the bargaining process and avoid reaching an agreement. The broad scope of issues that the union now raises is not before the Examiner in this proceeding. The gravamen of the complaint is the union's claim that the employer was obligated to respond to the union's September 19, 1997 salary proposal.

The Employer's Maintenance of the Status Quo

The onset of a collective bargaining relationship marks a status quo of wages, hours and working conditions, from which the parties' future conduct may diverge. In this case, the status quo included paying employees in this bargaining unit a portion of the tips that were left by customers. To its credit, the employer has honored its obligation to maintain the status quo during bargaining, and has refrained from any unilateral action such as discontinuing the tip payments that were at issue in the negotiations.

Application of the Good Faith Standard

Integral to the good faith collective bargaining process, the parties are expected to explain both their own proposals and their reasons for rejecting the proposals of the opposite party, so that their rationale may be properly understood and new proposals may be formulated. In this case, the union stated its interest in

preserving the overall income of the employees. The employer also offered reasons in support of its wage proposal, including:

- Wages "out of whack" - The employer maintains that it desired that the wages that it paid to members of the bargaining unit be competitive. Although the "out of whack" terminology used by Ellsworth at the hearing was not defined, and it is uncertain as to whether that term was actually used during the negotiations or mediation, the Examiner infers that there was discussion in a comparability context, to mean that the remuneration of members of this bargaining unit was greater than that of like employees in like establishments. Neither party offered substantive evidence to support or rebut this claim by the employer, or even to permit intelligent evaluation of its merits. What is really important for purposes of this analysis, the evidence does not support a conclusion that the union was left in the dark regarding the employer's claim that the wages were, on the whole, too high.

- Abnormal to Share Tips With "Back of House" Employees - The employer maintained that sharing tips with food preparation employees is not a general trade practice, and that it desired to discontinue the abnormal practice. Neither party offered substantive evidence to support or rebut this claim by the employer or intelligently evaluate its merits. Again, this argument was communicated at the bargaining table.[7]

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[7] Krett appears to have assumed, but never asked questions to verify, that the tips would be re-allocated among the food service employees, who are not included in this bargaining unit.

- Disparity in the Amount of Tips Paid - The employer maintained that two members of this bargaining unit were receiving substantially greater tips than the other bargaining unit members, and implied it wanted to discontinue that disparity. Neither party offered evidence which directly supports or rebuts the employer's claim, but analysis of the spreadsheet provided by Krett in April of 1997, supports the employer's claim of a disparity within this bargaining unit.

- Employer's Desire to Pay a Guaranteed Rate - The employer maintained that it desired to pay a stable, guaranteed hourly rate, and to eliminate a situation where it was unable to predict the dollar amount of tips paid by customers. Once again, neither party developed substantive information necessary to evaluate the impact of this employer interest. There is no evidence in the record that forms a basis for a realistic expectation of tip income in the future. Importantly, it is clear that this rationale was stated by the employer at the bargaining table.

The record fairly reflects that the employer maintained, from the onset of the negotiations, that it wanted to discontinue the practice of sharing tips with the employees in this bargaining unit. The employer offered several points as rationale for its proposed change. The forgoing justifications are consistent indicia of compliance with the obligation to bargain in good faith.

## The Income Protection Interest

The record contains no substantive information regarding how tip money had been distributed in the past, and limited information

about the income stream the union was seeking to protect. Working from the spreadsheet provided by Krett in April of 1997, the Examiner understands the situation to have been as follows:

| CLASS & EMPLOYEE | HOURLY RATE | TIPS PAID | TOTAL PAY | UNION PROPOSAL | EMPLOYER PROPOSAL |
|---|---|---|---|---|---|
| Lead Cook | | | | $14.00+tips | $13.02 |
| Incumbent A | $10.35 | $6.74 | $17.09 | | $13.02 |
| Incumbent B | $10.00 | $3.26 | $13.26 | | $11.25 |
| Cook | | | | $11.87+tips | $11.58 |
| Incumbent C | $ 9.60 | $3.25 | $12.85 | | $11.03 |
| Incumbent D | $ 9.01 | $3.28 | $12.29 | | $10.50 |
| Prep Cook | | | | $ 9.37+tips | $ 9.26 |
| Incumbent E | $ 6.95 | $3.02 | $ 9.97 | $ 9.37+tips | $ 8.40 |
| LeadSteward | | | | $ 9.55+tips | $ 9.55 |
| Incumbent F | $ 7.40 | $7.51 | $14.91 | $ 9.55+tips | $ 9.10 |
| Steward | | | | $ 8.39+tips | $ 8.39 |
| Incumbent G | $ 6.00 | $ 3.05 | $ 9.05 | | $ 8.39 |
| Incumbent H | $ 5.00 | $ 3.36 | $ 8.36 | | $ 7.61 |

The "total pay" column on Krett's spreadsheet reflected the employees' present income derived from their hourly rate plus their individual share of the tips. The "employer proposal" column discontinued tip income, while the "union proposal" column reflected a guaranteed top step hourly rate to which tips were to be added. A note at the foot of Krett's spreadsheet stated: "Union's proposal is to maintain tip point to the extent there is no reduction in earnings."

## The September Transaction

From the outset, the key issue in this case has concerned why the employer did not respond to the union's September 16, 1997 letter. The union representative viewed salaries as the remaining substan-

tive impediment to a complete agreement. When all is said and done, however, his September 16, 1997 letter, did not offer any new or different direction. It was merely a reiteration of the union's long-standing (and consistently rejected) position that the wage rates for all employees should be increased by an amount sufficient to offset any decrease in income resulting from reallocation of the tip money.

In the absence of any substantive change of the union's position, the employer cannot be faulted for failing to respond to the union's September 16, 1997 letter. The employer had rejected the union's standing proposal throughout the negotiations, and had offered several explanations which were not addressed by the union's reiteration of its proposal. Although there was a lengthy delay of the onset of bargaining while the employer pursued its statutory appeal rights to challenge the union's certification, that was the subject of the earlier unfair labor practice case. Once bargaining for a first collective bargaining agreement got underway, in November of 1996, the parties took opposed positions on a mandatory subject of bargaining. The employer maintained the status quo and set forth its reasons for its proposal. It was entitled to bargain to impasse, and was not obligated to make the concessions demanded by the union. RCW 41.56.030(4).

The burden was on the union to establish, in this proceeding, that the employer failed or refused to bargain in good faith. A lack of legitimate business need, a lack of explanation for its positions, or evidence of an unlawful motive could be the basis for an inference adverse to the employer, but the union failed to meet its burden. This record lacks sufficient evidence to demonstrate that the employer's bargaining strategy was to avoid reaching

agreement.[8] Collective bargaining is a pliant process. There are no rigid standards to be applied in every situation. These parties were dealing with a difficult subject. The employer desired to discontinue using a variable factor in the wage formula, and it did not desire to absorb the entire cost from its operating revenue. The employer offered some increases of the hourly rate, and the Examiner infers that the employer's wage offer commits it to increasing its hourly labor cost by a range of more than 12% to nearly 40%.[9] The employer clearly has not stonewalled the union, even within the wage issue.

The parties have reached agreement on a substantial number of issues other than wages. After a slow start, the employer met with the union a number of times and progress was made. The employer's overall course of conduct, although certainly subject to being characterized as "hard bargaining" on the tips issue, cannot be classified as bad faith bargaining.

It is apparent that the delay may have taken its toll on the resolve of the employees to have union representation and a

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[8] Notice is taken of Commission docket record for Case 11804-M-95-4367. That record reflects that Commission mediation service was requested by these parties to assist them in their collective bargaining for a successor agreement affecting a bargaining unit of facility workers. The docket record further reflects that an agreement was reached.

[9] The worksheet shows that the employer's proposed hourly rate for one cook increasing from $10.00 to $11.25, which appears to be a 12.5% increase to be absorbed by the employer. The worksheet shows the employer's proposed hourly rate for one steward increasing from $6.00 to $8.39, which appears to be a 39.8% increase to be absorbed by the employer.

collective bargaining agreement,[10] but evidence of an erosion of union support does not compel a conclusion that the employer has acted unlawfully. Employees create unions to improve their terms and conditions of employment, but the law does not categorically prevent reduction of their incomes. Employees and unions are not always successful; a collective bargaining relationship commences with the status quo at the time of certification and evolves from there for better or worse.

## FINDINGS OF FACT

1. The Bellevue Convention Center Authority, doing business as the Meydenbauer Center, operates a publicly-owned convention center located in the city of Bellevue, Washington, and is a public employer within the meaning of RCW 41.56.030(1). During the period of time relevant to this proceeding the employer has been represented by Lewis L. Ellsworth.

2. Teamsters Union, Local 763, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of Meydenbauer Center employees described as:

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[10] The filing of two decertification petitions certainly suggests erosion of the union's support among Meydenbauer Center employees. A petition filed on October 22, 1996, and docketed as Case 12773-E-96-2136, was dismissed as untimely under "certification bar" principles triggered by the employer's willingness to commence bargaining once its request for a stay was denied by the Court of Appeals. A second petition filed on December 29, 1997, and docketed as Case 13620-E-97-2282, has been "blocked" by this case under WAC 391-25-370.

> All full-time and regular part-time cooks and stewards, excluding supervisors, confidential and all other employees.

During the period of time relevant to this proceeding the union has been represented by Thomas Krett in its dealings with the Meydenbauer Center.

3. The parties commenced negotiations for a first collective bargaining agreement on January 30, 1997. The parties had additional bilateral negotiations meetings on February 25, March 18, March 28, and April 17, 1997. Among many issues, the parties discussed the employer's proposal to discontinue a practice of having employees in this bargaining unit receive a share of customer gratuities, commonly referred to as tips.

4. The basis for the historical setting of hourly rates and sharing of tips is not fully explained in this record. Employees in the same classification had historically been paid at different hourly rates, and certain employees had received more in tips than others who were in the same classification but at a higher hourly rate. Two of the employees in the bargaining unit had historically received tips based on an "80% tip point", while other employees in the bargaining unit received tips based on a "20% tip point". Tips represented more than 50% of total compensation for one classification, and more than 50% of the established hourly rate for certain other employees.

5. By April 17, 1997, the employer and union had developed their respective wage proposals. The employer provided substantial reasons for its proposal, including that it was paying higher

wages than its competitors, that sharing of tips with food preparation employees was abnormal in the industry, that there was a wide disparity of the tip payments within the bargaining unit, and that the employer desired to pay a stable and predictable guaranteed hourly rate. The employer's proposal to discontinue the sharing of tips with this bargaining unit was accompanied by substantial pay increases for each employee and classification in the bargaining unit. The union proposal included continuing the practice of bargaining unit employees being paid a portion of the tips received, and a guarantee against any reduction in total remuneration.

6. Negotiations were held on June 17, 1997 and September 3, 1997, under the auspices of a mediator. By September 3, 1997, Krett felt that a complete agreement could be assembled if the wage issue could be resolved. Krett agreed to meet with the members of the bargaining unit, and submit a wage proposal to the employer.

7. By letter dated September 16, 1997, Krett stated that the union would be willing to accept an increase in the hourly rate commensurate with the reduction that would result from discontinuing the sharing of tips, but reiterated the union's demand that there be no reduction of the overall remuneration of the bargaining unit employees.

8. The employer interpreted the union's letter of September 16, 1997 as a restatement of positions previously taken by the union and previously rejected by the employer. The employer did not respond to or take action based on the union's

September 16, 1997 letter, in the absence of any substantive change in the union's position.

## 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. Teamsters Union, Local 763 has failed to sustain its burden of proof to demonstrate, by a preponderance of the evidence, that the employer has failed or refused to engage in collective bargaining under RCW 41.56.030(4) by its actions in regard to the union's September 16, 1997 letter, so that no violation of RCW 41.56.140(1) has been established in this case.

## ORDER

The complaint charging unfair labor practices filed in this matter is DISMISSED on its merits.

Issued at Olympia, Washington, on the 9th day of December, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Frederick J. Rosenberry

FREDERICK J. ROSENBERRY, Examiner

This order will be the final order of the agency unless notice of appeal is filed with the Commission under WAC 391-45-350.