STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1191-WC,	)	CASE 6869-U-87-1391
Complainant,	)	DECISION 2932-B - PECB
vs.	)	
WALLA WALLA COUNTY,	)	DECISION AND ORDER OF COMMISSION REGARDING MOTION FOR ENFORCEMENT
Respondent.	)	

Pamela G. Bradburn, General Counsel, appeared on behalf of the complainant.

Gabriel E. Acosta, Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On November 16, 1988, the Public Employment Relations Commission issued its Decision 2932-A - PECB, affirming an Examiner's decision holding that Walla Walla County violated RCW 41.56.140(4) and (1), by failing to bargain in good faith concerning the issue of "union security" during contract negotiations with the Washington State Council of County and City Employees, Local 1191-WC.[1] To remedy the violation, the employer was ordered to bargain in good faith with the union.

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[1] The dispute concerns actions of the employer's negotiator at the parties' first negotiations meeting for 1987. The parties 1985-87 contract contained a reopener clause for 1987, allowing each side to select one article for bargaining in addition to the subject of wages. Upon hearing that the union had selected union security as an issue for bargaining under a contract reopener, the employer's negotiator stated that the parties were at impasse, and suggested that the union select another bargaining subject.

The employer has made a tender of compliance. The union has asked the Commission to authorize enforcement proceedings pursuant to RCW 41.56.190, however, claiming that the employer has failed to comply with the order. Factual issues were framed by the parties, and the Commission directed that evidence be taken by a Hearing Officer. A hearing was held on July 26, 1989, in Walla Walla, Washington, before Hearing Officer Mark S. Downing. Both parties filed post-hearing briefs.

THE REMEDIAL ORDER AND TENDER OF COMPLIANCE

The remedial order, in pertinent part, required the employer to take the following actions to remedy the unfair labor practices:

> 1. Cease and desist from refusing to bargain in good faith concerning the issue of union security.
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> 2. Take the following affirmative action to remedy the unfair labor practice and effectuate the policies of the Act:
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> A. Upon request, bargain collectively in good faith with Washington State Council of County and City Employees, Local 1191-WC, concerning the issue of union security.

The employer initially petitioned for judicial review of the Commission's decision by the Walla Walla County Superior Court.

The employer had hired William Greenheck[2] as its negotiator shortly before the May 18, 1988 issuance of the Examiner's decision, and he represented the employer in negotiations held with the union on

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[2] Greenheck is associated with the law firm of Williams, Kastner & Gibbs, as is the employer's previous negotiator, Gerard Gasperini.

May 4, 1988, May 24, 1988,[3] June 28, 1988, July 27, 1988, and October 5, 1988. While negotiations on the union security issue were held in abeyance by the employer's petition for judicial review, negotiations continued between the parties on the wage issue. Additional meetings were held November 22, 1988, December 21, 1988, January 17, 1989, January 18, 1989, and March 7, 1989.

At the start of the meeting held by the parties on March 7, 1989, the employer announced that it was withdrawing its petition for judicial review in this matter, and was ready to bargain in good faith on the issue of union security.[4]

WSCCCE Staff Representative Jerry Gillming acted as spokesperson for the union at the March 7, 1989 meeting.[5] The union made five proposals on the wage and union security issues during the course of that meeting, all of which were rejected by the employer:

1. The union's initial proposal consisted of a 3.5% wage increase effective January 1, 1989, together with an additional step (Step F) on the salary schedule effective July 1, 1989,[6] acceptance of the employer's proposed wage freeze for 1987-88, and a "service fee" arrangement under which all employees who were not

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[3] A mediator from the Commission staff began to assist the parties at the May 24, 1988 meeting.

[4] The employer sent notice to the union on March 28, 1989, enclosing a signed copy of the compliance notice required by the remedial order. The employer filed its tender of compliance with the Commission on March 30, 1989. The petition for judicial review was officially withdrawn in Superior Court on May 30, 1989.

[5] The mediator was also present on that occasion.

[6] The employer had proposed a new Step F (approximately 5% higher than current Step E) at the December, 1988 meeting. The union objected that the proposal only benefited part of the bargaining unit. The employer then withdrew the offer of a Step F in January, 1989, in favor of a 2% across-the-board wage increase.

members of the union were to be required to pay a fee to the union in an amount equal to 1.3% of their salaries.

2. The union's second proposal contained a 3% wage increase effective January 1, 1989, and a "grandfather clause" on union security that permitted current non-members to remain so, but required new hires to join the union.

3. The union's third proposal called for a $1,000 bonus for 1987-88, and a 3% wage increase effective January 1, 1989. This proposal did not address the issue of union security.

4. The union's fourth proposal consisted of wage increases of 2%, effective November 1, 1988, and 3%, effective June 1, 1989, with "grandfather" provisions on the union security issue.

5. A fifth union proposal resulted from a private meeting between negotiators Gillming and Greenheck with the mediator, and called for a 3% wage increase effective January 1, 1989, and union security language requiring all employees to join the union within 30 days of hire.

Greenheck explained each of the union's proposals, and their rationale, to the Board of County Commissioners, but that body rejected such ideas as being inconsistent with a strongly held belief that the initial decision to become a union member or to provide support to the union should be a matter of personal choice by individual employees. The reasons for the employer's opposition to the union's union security proposals were explained to the union. Thus, the wage portion of this union's fifth proposal was acceptable to the employer, but it remained opposed to the union security aspect of that proposal. During the March 7 meeting, the employer consistently proposed that the parties continue the "maintenance of membership" language which had been contained in their expired contract, and which required employees who chose to become members of the union to remain members or pay normal dues through the duration of the agreement. On the subject of wages, the employer proposed a 3% wage increase effective January 1, 1989, contingent upon union acceptance of the maintenance of

membership language. In the alternative, the employer proposed a 3% wage increase effective on the date the union requested such an offer, with the understanding that the union was not waiving its right to engage in further negotiations with the employer.

Greenheck confirmed the employer's March 7 offer in a letter to Gillming dated March 8, 1989. That letter also indicated that the employer's proposal would only remain in effect through the month of March, 1989, and that the employer intended to frame its future offers in terms of wages being retroactive only to the first day of the month in which agreement was reached. Greenheck's letter was returned by postal authorities due to an insufficient address and, on March 15, 1989, Greenheck sent a copy to Gillming by electronic facsimilie machine.

On March 20, 1989, Gillming wrote to Greenheck, asserting that the union security issue was the major stumbling block to an agreement, and objecting to the March 31 cut-off date on the employer's proposal. The letter concluded: "When we meet on April 11, 1989, let us approach the situation with a settlement as our goal."

On March 28, 1989, Gillming again wrote to Greenheck, indicating that the union had accepted the employer's offer of a 3% wage increase effective January 1, 1989, with the understanding that negotiations on the union security issue would continue on the side. Upon receipt of that letter, Greenheck telephoned Gillming to inform him that the employer had not offered the terms that the union was purporting to accept. Specifically, Greenheck noted that the employer offer which included retroactivity to January 1, 1989 had been contingent upon the union's acceptance of the "maintenance of membership" language found in the expired contract.

Gillming wrote to Greenheck again on March 31, 1989, insisting that the union had accepted a proposal made by the employer at the March 7 meeting, as opposed to the offer stated in Greenheck's

March 8 letter. Gillming went on to state that if the employer continued to deny its March 7 position, the union counter-proposal would be a 4.5% wage increase effective January 1, 1989, and the union security language proposed by the union.[7]

The parties next met on April 11, 1989. The mediator was unable to be present. Union representative Randy Withrow attended this meeting. At the start of the session, local union President Bonnie Ward accused Greenheck of lying. The comment was apparently precipitated by the union's belief that the employer had withdrawn an offer it made at the March 7 meeting.

As the April 11 meeting continued, the union stated its demand for a 4.5% wage increase along with its union security language, in return for accepting a 1987-88 wage freeze. The employer rejected the union offer and proposed a 3% wage increase effective January 1, 1989, together with the "maintenance of membership" language of the expired contract. In the alternative, the employer proposed a 3% raise effective February 1, 1989,[8] with continued negotiations concerning the union security issue. The union rejected both of the alternatives offered by the employer, and proposed its own set of alternative packages: First, the union proposed a 3% wage increase effective January 1, 1989, with a new Step F effective July 1, 1989 and union security negotiations on the side. Second, the union proposed a 3% wage increase effective February 1, 1989, with a new Step F effective July 1, 1989, and a grandfather provision on union security that would have expanded the "maintenance of membership" obligation to require employees hired on or after May 1, 1989 to either join or pay a service fee to the union. The employer rejected the union's "grandfather" proposal, as it still

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[7] That language mandated that all employees join or pay a service fee to the union.

[8] Unrepresented county employees had received a 3% wage increase on that date.

contained an element of "forced unionism" for new hires. The union next proposed a 5% wage increase effective February 1, 1989, with continued negotiations concerning union security on the side. After rejection of that proposal by the employer, the union proposed a 4% raise effective February 1, 1989, with a new Step F effective September 1, 1989, and continued negotiations concerning union security. At that point, the employer accused the union of regressing on the wage issue, and renewed the same alternative proposal that it had made at the start of the April 11 meeting.

As the April 11 meeting ended, the parties discussed when to meet again. The union proposed April 24 or 25, 1989. Greenheck indicated he had a conflict on those dates, and suggested the parties meet during the first week of May. Gillming was unable to meet at that time, so no date was established for the next meeting.

There is conflicting evidence as to what was said as the parties were leaving the meeting room. Gillming and Bonnie Ward testified that Greenheck stated: "I do not see any reason to waste my time coming down here to Walla Walla based on your last proposal. I don't see any means of reaching an agreement. Let me know when you're ready to agree to our terms." Union representative Randy Withrow recalled the same conversation with Greenheck as follows: "Call me if you have something workable. I'm not going to waste my time. You have the ballpark figures; when you come up with something, call." Greenheck's version of that conversation is somewhat different. He testified that after the parties were unable to agree on their next meeting date, the union suggested meeting within the next week. Greenheck indicated that he did not see any reason to do so, given the lack of progress, but that he said, "If you give me any reason to believe that there might be some headway made on any issue ... I'll be over here in a minute."

The next communications between the parties occurred in a letter dated May 1, 1989, from Gillming to Greenheck. The union proposed

a 4% wage increase effective April 1, 1989, a cost of living increase in 1990 (with a minimum of 2.5% and a maximum of 4%), and placing the union security issue on the side pending completion of proceedings before the Public Employment Relations Commission. Greenheck telephoned Gillming with a counter-offer of a 3.5% wage increase effective upon ratification, a 3% wage increase on January 1, 1990, and the "maintenance of membership" language of the expired contract.

The matter remain unresolved, and the parties held another negotiations meeting on June 15, 1989.[9] By that time, the union had made its request to the Commission for enforcement of the remedial order in this case, and the Commission had directed that an evidentiary hearing be held on that request.

The employer made no new offers at the June 15 meeting, but confirmed that three of its previous offers were still on the table:

1) A 3.5% wage increase effective upon ratification by the union, together with a 3% raise effective January 1, 1990, and the "maintenance of membership" language of the expired contract; or

2) A 3% wage increase upon ratification by the union, with continued negotiations on both union security and wages; or

3) A 3% wage increase effective February 1, 1989, with union security negotiations continued on the side.

The union position at the June 15 meeting was for a 3.5% wage increase effective April 1, 1989, with a 3% wage increase effective January 1, 1990, and a "grandfather" provision on union security. In the alternative, the union suggested resolution of the union security issue through the enforcement proceedings before the Commission.

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[9] Neither union representative Withrow nor the mediator were in attendance at the June 15 meeting.

Gillming testified that, at the June 15, 1989 meeting, Greenheck accused him and the negotiating team of lying to the union membership. The union was also upset that only one county commissioner was present for that meeting. Greenheck testified that the presence of only one of the three commissioners did not affect the negotiations process, citing that he had reviewed current union offers with the commissioners during the month of May, and that the union made no new proposals at the June 15 meeting.

No further negotiation sessions were held by the parties prior to the evidentiary hearing held in this matter on July 26, 1989.

POSITIONS OF THE PARTIES

The union claims the employer has not bargained in good faith concerning the issue of union security, and that it has failed to comply with the Commission's bargaining order. The union maintains that the employer is trying to reach an agreement only on its own terms, and that it has given no consideration to any union security proposal other than the "maintenance of membership" language of the expired contract. The union alleges that certain conduct engaged in by the employer's negotiator interfered with the bargaining process, citing the delay in its receipt of one letter, the delay in scheduling of one negotiating meeting, a lack of interest by the employer's negotiator as shown by his physical reactions and sketchy note-taking habits, and the accusation that the union's negotiating team was lying to the union membership.

The employer claims that it has kept an open mind and has given consideration to the various proposals made by the union on the issue of union security. It notes that, pursuant to RCW 41.56-.030(4), it is not compelled to make a concession on this issue. The employer denies that any conduct of its negotiator interfered with the collective bargaining process.

DISCUSSION

Good Faith Bargaining Obligations

The duty to bargain in good faith arises from the statutory framework of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW:

> **RCW 41.56.030 DEFINITIONS.** As used in this chapter:
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> . . .
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> (2) "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, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, 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 supplied]

An employer and exclusive bargaining representative are required to participate in the collective bargaining process with the intent to reach an agreement, and must conduct themselves in a fair and forthright manner in their collective bargaining negotiations. This includes an obligation to freely and fully discuss the issues, and to give and explain reasons for and against various proposals made by the parties. Fort Vancouver Regional Library, Decision 2350-C (PECB, 1988); affirmed, Decision 2350-D (PECB, 1989). Parties are also required to enter into these discussions with an open mind. City of Mercer Island, Decision 1457 (PECB, 1982). But, neither side can be compelled to agree to a particular proposal or to make a concession.

The question of whether a party has met its good faith bargaining obligation focuses on a party's motive or state of mind. Federal Way School District, Decision 232-A (EDUC, 1977). Such condition is usually inferred from circumstantial evidence, as parties rarely confess to failing to uphold their good faith obligations. Fort Vancouver Regional Library, supra. The totality of conduct must be examined. Federal Way School District, supra; Island County, Decision 857 (PECB, 1982); Entiat School District, Decision 1361 (PECB, 1982); City of Mukilteo, Decision 1571 (PECB, 1983); City of Snohomish, Decision 1661-A (PECB, 1984).

Employer Consideration of Union Proposals

The union alleges that the employer has violated the Commission's bargaining order, by its failure to make counter-proposals on the issue of union security. Problems in bargaining union security were discussed in Fort Vancouver Regional Library, supra, in the following terms:

> Union security is often a controversial issue in collective bargaining. The statute makes union security a subject for bargaining, rather than a right of the exclusive bargaining representative or a matter to be determined by vote of the employees, and so leaves some room for disagreement.

A party can refuse to make counter-proposals, if it provides an explanation for rejection of the proposal. City of Snohomish, supra.

Although the employer in this matter consistently proposed the "maintenance of membership" language of the expired contract, and did not make other counter-proposals on the union security issue, it also explained to the union its reasons for opposing the union's proposals. The record does not sustain a finding that the employer refused to consider the rationale for various union proposals on

union security. The union was unable or unwilling to come up with a formula that avoided the employer's stated objections to union security language which took away from the employees the initial decision on whether to join the union. This is not to say that the union was required to further reduce its demands, or that the employer would have been required to accept some other alternative that has not been proposed by the union in these negotiations, but merely that the parties were unable to come up with an alternative that was satisfactory to both of them.

The union also alleges that the employer sought to reach agreement only on its own terms, without considering any union proposal other than the expired contract's "maintenance of membership" language. The history of the negotiations does not support the union's allegation, however. Though there were only two issues on the bargaining table,[10] the parties had 12 negotiation sessions devoted to the wage and union security issues between May 4, 1988 and June 15, 1989. Some of those were conducted with the assistance of a mediator, while others were face-to-face meetings of the parties. A party's sincerity of effort can be shown by the length of time involved in negotiations. NLRB v. Lorillard Co., 117 F.2d 921 (6th Circuit, 1941). Although the parties have been unable to conclude negotiations on a new collective bargaining agreement, the employer has certainly devoted a substantial amount of time to attempting to reach an agreement with the union.

Conduct of Employer Negotiator

We are not persuaded that the delivery of Greenheck's March 8 letter to union representative Gillming was deliberately delayed. Gillming learned in a telephone conversation with Greenheck that

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10 The contract's "reopener" language permitted the employer to open one issue in addition to wages, but there is little evidence that the employer was pursuing any other issue at this stage of the negotiations.

Greenheck was sending a letter summarizing the employer's offer made at the parties' March 7 negotiation session. Greenheck sent the March 8 letter as a way of verifying the employer's offer made at the March 7 meeting. After waiting a week for such a letter, Gillming called Greenheck on March 15. The union claims that its negotiator had to "pry the letter" away from Greenheck and that this one week delay had a serious impact on the negotiations process. Greenheck was surprised that the letter had not yet reached Gillming,[11] however, and he immediately sent Gillming a "fax" copy of the letter. Gillming received that copy on the same day. Intentional delay in supplying requested information necessary to bargaining is an unfair labor practice, Fort Vancouver Regional Library, supra, but a copy of the letter at issue was promptly supplied by the employer's negotiator upon notification that the union had not received the original. The letter was time-critical, as the employer's offer was only available to the union until the end of March, but the union presented no evidence that the delay in delivery of the letter hindered its having a timely vote on the employer offer. The letter was, in fact, read at a union meeting held prior to the end of March.[12]

We also remain unpersuaded with respect to the conversation that took place at the conclusion of the April 11 meeting. The union

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[11] Greenheck discovered later that the letter had been returned, due to a wrong address.

[12] Even after receipt of the March 8 letter, the union chose to vote on the different offer it claims was made by the employer at the March 7 meeting. The existence of the "offer" voted by the union was directly contradicted by statements made in the March 8 letter, and the union took no affirmative steps after receipt of the letter to clarify an obvious discrepancy in what the union perceived the employer's offer to be. A simple telephone call could have cleared up this misunderstanding. Conduct of this nature by the union certainly hindered the process of open and forthright communications that is so important to the collective bargaining process.

claims that Greenheck's comments resulted in a delay of the scheduling of additional meetings. Dilatory behavior by a party can indicate lack of good faith. Morton General Hospital, Decision 2217 (PECB, 1985). In Fort Vancouver Regional Library, supra, the Examiner stated:

> It is elementary that good faith bargaining requires contact between the parties. One party cannot continually refuse to meet for in-person negotiations when the other party requests such meetings.

The comments and behavior of the employer's negotiator must be examined in light of these principles. It is clear that the parties had scheduling conflicts, a problem not uncommon in the negotiations arena, when they discussed additional meeting dates at the conclusion of the April 11 meeting. Viewing the evidence as a whole, Greenheck's conduct does not indicate any attempt to frustrate the collective bargaining process. Withrow's version of the events differs enough from that of Gillming and the local union official to cast doubt. Greenheck offered a plausable background to his comments which would give them an entirely different slant. Further, when Gillming offered a new proposal in a May 1 letter, Greenheck responded by telephone within the same week and offered a response and counter-offer to the union position. The union presented no evidence to suggest that it requested any additional meetings between April 11 and June 15, 1989. The union thus failed to establish that the employer attempted to stall or delay the collective bargaining process.

The union alleges that Greenheck's physical reactions and his sketchy note-taking indicated a lack of interest in, and an absence of serious consideration of, the proposals made by the union on the union security issues. The physical reactions described by union witnesses included Greenheck's removing of his glasses and placing them on the table, his covering or shaking of his head, his looking

down at the floor, or his placing of his hands behind his head and staring at the ceiling. The goal of the collective bargaining process is to improve communications between the employer and the exclusive bargaining representative. RCW 41.56.010. Collective bargaining is not a mathematic or scientific process, made up of simply adding or subtracting numbers. It is very much a human process, reflecting the styles and personalties of its participants, and it is acknowledged that the styles of particular negotiators may be as varied as those individuals' personalties. Some negotiators may utilize meticulous note-taking to track the collective bargaining process, while others may rely on their memories, but neither style is unlawful as long as the goal of communications between the parties is not frustrated. The union failed to prove that Greenheck's note-taking habits or his physical reactions adversely affected the collective bargaining process.

Finally, the union complains of a comment by Greenheck at the June 15 meeting, to the effect that the union's negotiators had lied and did not know how to conduct union meetings. Union witnesses could not recall what specific matter Greenheck may have been referring to, but surmised that he felt they were not giving the union membership all of the facts concerning the various employer and union offers. The collective bargaining process encourages parties to freely express their feelings and views on the issues in dispute. Oftentimes, the parties hold differing, if not quite divergent, positions on issues. Where views are strongly held, strongly-worded exchanges between negotiators are not uncommon.[13] So long as such conduct does not interfere with continued open and

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[13] Local union official Ward had engaged in very similar conduct at the April 11 meeting, when she accused Greenheck of lying, apparently in relation to the employer's "withdrawn March 7 offer".

frank discussions on the issues, and is not utilized by one party to stall or frustrate the collective bargaining process, the Commission does not become the censor of every word and phrase used at the bargaining table. In this matter, Greenheck appears to have been frustrated with real or perceived escalations of demands by the union. We conclude that his conduct did not form a pattern of behavior that either party utilized to frustrate the collective bargaining process.

CONCLUSION

The evidence in this matter indicates that the employer has bargained the union security issue with the union, as required by the Commission's remedial order. On the record made, the Commission does not find that enforcement proceedings are warranted in this case at this time.

NOW, THEREFORE, it is

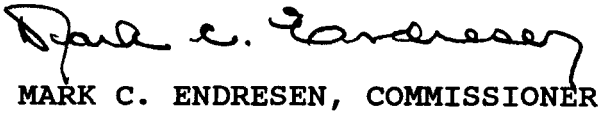
ORDERED

The motion of Washington State Council of County and City Employees, Local 1191-WC for authorization of enforcement proceedings is DENIED.

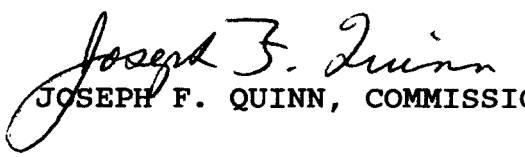
DATED at Olympia, Washington, this 17th day of January, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANET L. GAUNT, CHAIRPERSON



MARK C. ENDRESEN, COMMISSIONER



JOSEPH F. QUINN, COMMISSIONER