

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	
LOCAL 1191-ACL-S,)	CASE 10644-U-93-2478
)	
Complainant,)	
)	
vs.)	DECISION 4568-C - PECB
)	
ASOTIN COUNTY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Julia Cohan Mallowney, Legal Counsel, appeared on behalf of the complainant.

Roy Wesley, Labor Relations Consultant, appeared on behalf of the employer.

On August 23, 1993, the Washington State Council of County and City Employees, Local 1199-ACL-S (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Asotin County violated RCW 41.56.140(4). A hearing was held in Asotin, Washington, on April 3, 1996, before Examiner Jack T. Cowan.¹

¹ The union filed two complaints on the same day, but then withdrew this case number. Asotin County, Decision 4658 (PECB, 1993). The union later moved to reopen this case, explaining that it intended to withdraw the other case. After the employer asserted it would be prejudiced by reopening, the Executive Director declined to act. The union petitioned for review, asserting that the denial of its motion to reopen was based on incorrect statements made by the employer. On October 13, 1994, the Commission remanded the case for a hearing on the prejudice claim. Asotin County, Decision 4658-A (PECB, 1994). After a hearing limited to that question, the Commission vacated the order closing the case, and remanded the case for further proceedings under Chapter 391-45 WAC. Asotin County, Decision 4568-B (PECB, 1996).

BACKGROUND

The union and employer were parties to a collective bargaining agreement for 1991-1992, in which the union was recognized as the bargaining representative for employees working in the employer's sheriff's department.² This controversy arose during negotiations for a successor contract. The parties held a total of six bargaining sessions during a period of seven months. Telephone conversations and letters were also exchanged within that period.

The union's bargaining team for the sheriff's department unit consisted of four members: Staff Representative Kae Roan, and department employees Laurie Mullins, Bruce Barkhuff, and Mike Reitemeier. The employer team consisted of the employer's labor relations consultants, Roy and Kevin Wesley, who appeared alone or together. On occasion, the employer team was supplemented by the participation of Sheriff Don Steele and/or members of the county council.³

The parties' first meeting in this round of negotiations was held on September 21, 1992, when proposals were exchanged and ground rules for bargaining were discussed. The parties allegedly agreed that all proposals would be in writing, but what actually occurred in subsequent meetings was a more relaxed format in which the employer made oral proposals. The union negotiators would take notes and discuss the proposals among themselves, and then present a written counter-proposal. The union's responses to employer proposals could either be presented at a bargaining session or sent to the employer following the union's discussion.

² The union similarly represents a bargaining unit of courthouse employees and a bargaining unit of public works employees employed by Asotin County.

³ Council members at that time included Chairman Harley Williams and members Don Scheibe and James Fuller. Two of the council members assumed office in January of 1993.

The union and its members considered longevity pay to be one of the most important issues in the contract negotiations, and made repeated proposals for improved longevity pay. The employees in this unit had only limited longevity benefits under the 1991-1992 contract, and were seeking to obtain the same longevity pay which the courthouse employees were receiving at that time. The employer responded in the negative.

At the sixth negotiation session, which occurred on April 21, 1993, the employer is alleged to have made an oral proposal which included an increased longevity benefit equal to 50 percent of the longevity benefit which the courthouse employees were receiving, along with wage increases of 3 percent each for 1993 and 1994. Participants in that bargaining session included Roan, Mullins, and Mike Reitemeier for the union, and Roy Wesley for the employer. When questioned as to how the employer's proposal was presented, Roan testified as follows:

- Q. [By Ms. Mallowney:] Now, when the offer of the 50 percent courthouse longevity was made, was it presented in terms of last, best and final offer?
- A. [By Ms. Roan:] No.
- Q. How would the representatives -- how would Mr. Wesley have indicated to you that this was the last, best and final offer?
- A. He would have said it.
- Q. So, you had no indication that he was considering last, best and final offer?
- A. No, and the union's response basically was, given the employer had made some movement on some of the issues, that's why we were willing to make a counter-proposal, and we indicated, you know, that there was some more movement on this side.
- Q. Okay, did Mr. Wesley -- was there any discussion at the meeting of the offer being a concept -- part of a concept package?

- A. No.
- Q. Was there any discussion of and Initiative Petition 601 or 602?
- A. No.
- Q. What was the union's response to the offer?
- A. That we would prepare a counterproposal. We needed to review it as the negotiating team, and the negotiating team needed to get some input from the members, but we would provide a written counterproposal.

When questioned as to his recall concerning longevity having been offered in negotiation, Mike Reitemeier testified as follows:

- Q. [By Ms. MULLOWNEY:] Were you involved in negotiations for the 1993-1994 contract?
- A. [By Mr. Reitemeier:] Yes, I was.
- Q. Do you recall discussions of longevity pay?
- A. Yes.
- Q. Can you tell us what you remember in terms of any offers that were made?
- A. Longevity was important to us because our current longevity, in fact the one we still have, we don't feel is that good for what we do to be honest with you. So, we proposed the courthouse longevity, which they had in their current contract for quite some time, and we basically hadn't made any headway at all until that one meeting when half the longevity or half of what the current courthouse longevity was offered to us.
- Q. And do you remember who was present at that meeting?
- A. To be honest with you, no. I know Kae was. I know I was.
- Q. Do you know who made the offer?
- A. To be honest with you, no.
- Q. Do you recall any discussion of the offer being a concept, part of a concept package?

- A. No. No. In fact, when we were breaking from the meeting, I remember Mr. Wesley asked us we will be hearing from you and let us know if there are any other changes you want in contract language at that time.
- Q. Was there any discussion of Initiative 601 and 602?
- A. I don't recall if there was.
- Q. Now, how is it that you remember this offer being made at that meeting more than three years later?
- A. Because the longevity -- it's always been important for us and important for our members at the union. It's, as I said, it's significant increase of our current, and at the time was \$3 extra per month per year of service, which, you know -- go ahead.
- Q. Go ahead?
- A. Which really is not that significant compared to what the courthouse got, and it was something big we were trying to get for our members.
- Q. And what was your personal reaction to the offer when it was made?
- A. That was pretty good. They asked for anything else or asked for any changes, and we caucused afterwards and decided that, you know, they had made some ground there. I believe we were going to offer it -- would go for that and maybe 25 percent more longevity for the next year.
- Q. And did the union make any counterproposal at that meeting?
- A. Not at that meeting, no.

Under cross-examination, Reitemeier responded, as follows:

- Q. [By Mr. Wesley:] Mike, when the longevity pay improvement was offered, you folks, you said, caucused. You did not accept that longevity pay offer at that time, did you?

A. [By Mr. Reitemeier:] No. Actually, we couldn't because that would be something we had to bring in front of our members of the union before any contract negotiations -- I think we'd have to bring it in front of our group before we could accept or deny anything.

...
Q. Given the opportunity, and the fact that there was a practice of T.A.-ing [tentative agreement] items between the parties, why couldn't you have T.A.'d the longevity pay if you wished?

A. Because union members at that time wanted 100 percent of longevity, and before we could T.A. something that was not readily agreed upon with the members, I would consider negligent on our part to T.A. something that would substantially affect our members before we discuss it with them.

Q. So, it's your position the county's offer was not suitable or was not enough?

A. Yes. For counter offer, and we were going to talk to them on what a counter offer would be.

Q. But the county didn't go far enough to improve longevity pay for you to accept that, is that correct?

A. When you -- I remember when the offer was made, it was, you know, tell us what you think and then get back to us. And by the time you get back to you or you get back to us, it had been taken off. It had been withdrawn.

Q. But I'm not sure, and maybe I didn't term my question correctly. You never took the occasion then to approve or disapprove the longevity pay that was offered as a single issue, did you?

A. It wasn't put out, from my remembrance of the meeting, it was put out as something we had to make a decision on at that time.

Q. Did you make a decision?

A. We talked at the caucus that we were going to come back with 50 percent lon-

gevity and request 25 percent for the following year.

- Q. Won't that be tantamount to a rejection on our part?
- A. That's something we talked about, and we never had a chance to give you that because it was taken back by the time we had our next meeting. The offer had been taken away or been withdrawn, I guess is the correct term, prior to the next meeting.

When questioned as to her recall concerning longevity having been offered in negotiation, Laurie Mullins testified, in part, as follows:

- Q. [By Ms. Mallowney:] Could you tell us what you remember about discussions on longevity?
- A. [By Ms. Mullins:] From the beginning of the contract, we really had no movement on longevity, and then a meeting that we held in this room with three of us at the meeting to start with, the county moved on the longevity issue. They offered us 50 percent of the courthouse longevity, which we placed into our contract of the 100 percent to start with, and then a fourth person arrived.
- Q. And who was the fourth? Who were the original three?
- A. Roy, myself and Kae.
- Q. And the fourth person?
- A. Mike.
- Q. Mike Reitemeier?
- A. Yes.
- Q. And can you recall whether Mr. Wesley presented the offer as last, best and final?
- A. I -- this was my first time ever of negotiating, and I never heard the phrase "last, best and final" until we were in mediation or right before mediation.

- ...
- Q. Did Mr. Wesley say anything to indicate that the union needed to accept the offer now or it would be withdrawn?
- A. No, there was no discussion of that.
- Q. Was there any discussion of possible impacts of Initiative 601 or 602 at that point?
- A. No.
- Q. And how is it that you are able to remember this approximately three years later?
- A. The longevity, like Mike said, was a real important issue, that and the wages for our employees because we hadn't had any real increases for quite a while. So, it was a real important issue. And when they offered 50 percent at the meeting and I went back to the employees at work, they were a little bit disappointed that only 50 percent was offered, but at least it was better than what we had, so.
- Q. Were you pleased at that offer?
- A. I wasn't as happy as if it was 100 percent, but I was happy that it was at least something.

Under cross-examination, Mullins responded as follows:

- Q. [By Mr. Wesley:] Laurie, you said the final offer was made before mediation? Your testimony I think is at odds with Mike, and I think it's been a while.
- A. [By Ms. Mullins:] It's been awhile. If I remember right, we had a last, best and final offer just right before we asked for mediation because we couldn't go any further.
- Q. Okay.
- A. But the longevity had already been put back to our original -- the previous contract thing because it had already been withdrawn by then. So, last, best and final offer was placed before the group and voted on it and voted it down, and that's when we went to mediation.

- Q. So, it's your testimony and recollection that the longevity improvement was not in the last, best and final you received.
- A. Right. The longevity the county offered us, it had gone back to the current contract language.
- Q. I want to ask you the same question I asked Mike. At the time the offer that was presented by the county, which you testified was something in your direction but not enough, you did not T.A. it at that time, did you? Didn't find it acceptable?
- A. If I remember right, the whole time that we were negotiating, when something new was placed on the table, we never did T.A. it right away. We took it back, wrote it up, re-submitted it, and then that -- then we went through and then we T.A.'d if it was acceptable to both parties. So, it wouldn't have been something we would have T.A.'d at that meeting. It was just myself and Kae at the time, and I didn't feel comfortable T.A.-ing something. When Mike came in, he got the end of it.
- Q. You did T.A individual items, didn't you?
- A. No.
- Q. No. I'm talking about during the course of negotiations.
- A. Right.
- Q. You did T.A. individual items, didn't you?
- A. Individual items that were already prepared in writing.
- Q. But you never T.A.'d that longevity improvement item?
- A. No. There was no reason to.

On May 6, 1993, the union sent a counterproposal to the employer which covered all unresolved issues after the meeting held on April 21, 1993, and requested an additional meeting to cover those issues. One of the issues included in the union's letter was a

counterproposal on longevity, seeking to modify the employer's April 21 proposal upward.

On June 1, 1993, the union sent a follow-up letter to the employer, again requesting a meeting to discuss the unresolved issues. After that letter, the parties' next communication was in a telephone call which Roan described in her testimony, as follows:

Q. [By Ms. Mallowney:] Showing you exhibit no. 17.

A. [By Ms. Roan:] Yes.

Q. Can you explain what this is?

A. This is the unresolved issues.

Q. What are the notes in the margin?

A. Indicates I had a phone call from Kevin Wesley. They were providing a verbal response to this proposal, and I indicate whether he said no, okay, or proposed changes that they were making to our proposal.

Q. What is indicated under Article 14.4 in the margin?

A. No change, and they were withdraw of their last proposal on the longevity.

Q. No change from the current contract?

A. Yeah. No change from current contract and withdrawing their last proposal.

Q. Do you recall the date that you received the telephone call from Mr. Wesley, Kevin Wesley?

A. It would have been sometime between the June letter, and I know I followed up to update the negotiating team after I received a phone call.

Q. I'm showing you exhibit no. 18.

A. It's a memo.

Q. Does that refresh your memory?

A. It's a memo to the negotiating team from myself dated July 8 [1993], and I refer to the fact that they responded on Fri-

day, which would have been the Friday before this was written [July 2, 1993].

- Q. The county responded?
- A. Mr. Wesley responded to our outstanding issues on Friday.
- Q. Is that the -- Mr. Kevin Wesley?
- A. Yes.
- Q. When Mr. Wesley stated the offer was being withdrawn, did he give you any explanation as to why?
- A. The only thing I can remember was that the county didn't feel they could afford it now.
- Q. Did he mention Initiative 601 or 602?
- A. No.
- Q. Did the final contract that was negotiated for this local for '93-'94 include any increase of the longevity of the previous contract?
- A. No.

Thus, it is clear that the employer responded to the items set forth in the union's list of unresolved issues in the July 2, 1993, telephone call between Roan and Kevin Wesley.

The employer's responses during the July 2 telephone conversation were termed a settlement proposal, and were presented as a package offer to be voted by the membership. The union rejected the employer proposal when it was first considered. On July 19, 1993, the union requested mediation.

Kevin Wesley testified, in part, as follows:

- Q. [By Mr. Roy Wesley:] All right. There has been some testimony at the table here concerning the circumstances under which longevity pay and a potential improvement to longevity pay were discussed. What is your recollection of when and how longev-

ity pay was mentioned with you at the table?

- A. [By Mr. Kevin Wesley:] All right. My recollection, going back to '93, was myself and commissioner Don Scheibe worked the negotiations table, and of course, bargaining had been fairly protracted, and again in a courteous session, but the parties were not coming to agreement on a number of issues. And, based on the fact that we seemed to be headed towards mediation, there were a number of outstanding issues. I was discussing with the commissioners and Commissioner Harley Williams, who was a commissioner also at that time, was in and out of the room. We were discussing possible options as to ways we could try and sweeten the county's offer to try and reach settlement. And, in looking at ways in which we could sweeten the offer both economic and language items, I recall that I was able to convince the commissioners, although reluctantly, to a concept package mode to put longevity on the table even though that was beyond their initial perimeters.
- Q. Okay. Was commissioner Scheibe at the table at that time?
- A. That is my recollection, yes.
- Q. All right. Did you present an offer to the union in a concept mode?
- A. My recollection is we presented a best and final concept package to the union, which contained a number of our items. I say "our" items. I should correct myself. Items which the union had proposed on. We proposed our position. A number of items, our position remained unchanged, but that was the longevity was included, which was 50 percent of the courthouse longevity.
- Q. It was included in the concept package you're talking about?
- A. Correct. It was included.
- Q. Did you explain or offer any explanation at all concerning the county's options

and what a concept package offer in final best form entailed?

- A. Yes, I did.
- Q. What did you say?
- A. Well, commissioner Scheibe had not been through concept package bargaining before. So, I certainly had quite a bit of convincing to do to allow him to even offer the longevity in that mode. So, to bring up his comfort level, I was very clear and concise in explaining exactly the method and mode in which the county was making that offer.
- Q. Okay. Did you state that if the offer was rejected or not approved as a package, the county reserved the right to withdraw or restructure portions?
- A. To the best of my recollection, yes, I did.
- Q. What was the union response?
- A. My recollection of the union response was that they would take our offer back to the membership.
- Q. All right. Some of the testimony this morning, if I recall correctly, indicated that this offer that you are now discussing did not contain longevity pay. It's your testimony that it did. Is that correct?
- A. The best and final concept package offer that I presented with Commissioner Scheibe at the table did contain longevity pay. That was the basis of the concept package offer.
- Q. This was prior to mediation?
- A. Correct.
- Q. And the union's response was, as you understood it, they'd take it back to their members?
- A. Correct.
- Q. Did the union, at that meeting, accept any portion of the package or indicate favorable approval?
- A. No.

- ...
- Q. Do you have any direct knowledge as to whether the members were given an opportunity to vote the best and final concept package?
- A. Direct knowledge, no, I could not. I don't have any direct knowledge when they voted.
- Q. How and when did you find out what the unions's response was to this best and final package?
- A. The county received a counter proposal, which contained items beyond what we offered.
- Q. All right. And in your experience as a labor consultant, when a union rejects a package proposal, what does that effectively do, if anything?
- A. Well, when a package proposal is countered, when it's not accepted, it's automatically rejected. That is the basis of which package proposals are made.
- ...
- Q. When the parties went to mediation -- let me back up. When and how was the longevity feature withdrawn? Was it after rejection by the union?
- A. It was after the counterproposal to my recollection, yes.
- Q. And just prior to mediation or at mediation?
- A. Prior to mediation.

Under cross-examination, Kevin Wesley responded, in part, as follows:

- Q. [By Ms. Mallowney:] Did you take notes of these negotiating sessions?
- A. [By Mr. Kevin Wesley:] When I was not acting as chief spokesperson, yes, I did. When I was acting as chief spokesperson, sometimes it was difficult in terms of trying to talk, assess where the parties were and listen to the union and take notes.

- Q. So, you testified that the session where the 50 percent offer was made, it was yourself and Commissioner Scheibe?
- A. Correct.
- Q. Roy Wesley was not present at that time?
- A. No, he was not.
- Q. So, would you have been acting as chief spokesperson?
- A. That is correct.
- Q. So, that means you don't have notes from that date, is that correct?
- A. Yes. My notes are very, very limited.
- Q. And you testified that on that date, Commissioner Harley Williams was coming in and out of the session, is that correct?
- A. To the best of my recollection, he was conducting some other business and was not in and out of the sessions but in and out in terms of when he was caucusing.
- Q. I see. So he was included in the caucuses, but --
- A. Not at the table.
- Q. When you were meeting with the union?
- A. Correct. Yes.
- Q. Now, are you aware of when Commissioner Scheibe was elected?
- A. I believe he was elected in '92, the '92 elections, and became a commissioner in '93.
- Q. Are you aware of when the term starts? Does it start at the beginning of the year or halfway during the year?
- A. I believe it starts on January 1st.
- Q. Was he -- was his spot replacing Commissioner Williams?
- A. I don't believe so, no.
- Q. So, they were both commissioners at the same time?
- A. To my recollection, yes, they were.

- Q. So, Commissioner Williams was not voted out at the end of 1992?
- A. Not to my recollection, but I'm sure Commissioner Scheibe would be better able to answer that question.
- Q. Did you participate in negotiating the public works contract?
- A. I was in some of the sessions, yes.
- Q. And you testified that Commissioner Scheibe was also in those sessions?
- A. He sat in on a couple of sessions only.
- Q. And you couldn't say right now which few sessions he sat in on?
- A. No, I couldn't.
- Q. Now, the public works contract also has longevity term, doesn't it?
- A. Correct.
- Q. And the public works contract was open at the same time as the Sheriff's Department was open?
- A. Correct.
- Q. So, negotiating sessions were going on at the same time?
- A. I believe that is correct, yes.
- Q. Do you recall which of the negotiating members for the union were present at that meeting when the offer was made?
- A. Sheriff's or public works?
- Q. Sheriff's, the 50 percent offer.
- A. To the best of my recollection, I believe Laurie Mullins and Bruce Barkhuff were present, and I don't recall whether Mike Reitemeier was present. I believe he was, but again, I don't recall. And I might add, there were a number of sessions where if a deputy was on duty, they may have walked in late or left. So, scenes somewhat changed.
- Q. Now, could you testify without looking at any notes right now when the offer was made? Was it late 1992? Was it during 1993?
- A. The offer including the longevity?

- Q. The 50 percent.
- A. It was in the summer of '93.
- Q. Did you look at any documents or any notes to prepare for this hearing today?
- A. Aside from looking at the union proposals, no, I have not.

Relative to the question of longevity having been proposed by the employer, Commissioner Don Scheibe testified, in part, as follows:

- Q. [By Mr. Wesley:] Do you recall the bargaining circumstances involving the longevity pay and the best and final concept offer or lack of same? Because the testimony has been conflicting here and maybe one of the problems is the length of time.
- A. [By Mr. Scheibe:] Yes, I remember that.
- Q. Were you at the bargaining table when the offer was made?
- A. Yes, I was.
- Q. Okay. Who was at the table from the county's side?
- A. As I remember, it was just Kevin and I.
- Q. And I believe he testified that his recollection you did touch base with one or --
- A. I'm sure I did with both because this was going beyond the perimeters they allowed me to bargain in, and that's one reason I remember. I had to get some thoughts of what they did before I could do this.
- Q. Was the union given this particular offer in writing or in verbal form?
- A. It was verbal.
- Q. Is that because it was a concept package, in part?
- A. Yes, it was. During the course of the meeting, Kevin convinced me to approach the others and give them as a final and concept offer that we had offer to have.

- Q. And did the county extend its offer in that regard?
- A. Well, I think everyone concerned had been bargaining long enough. While I had only been at it since the first of January, it had gone a long time. We were virtually halfway into the year, but there was concern.
- Q. Do you recall the union making any comment or complaint about the county dragging its feet with regard to bargaining?
- A. Not to me.
- Q. Was there any discussion, explanation, of what the county's final, best concept offer entailed in terms of rights to the county to withdraw if not accepted?
- A. Yes. Kevin explained that we were offering it as a concept, and if not accepted, it could be taken back.
- Q. Some of the testimony this morning, and I think you've heard it, has been to the effect that the final offer made by the county did not contain that. Is that at odds with your recollection?
- A. That is at odds with my recollection, yes.
- Q. And some of the testimony I heard this morning, and I'm not trying to disparage those folks that testified, was to the effect that the county's concept package was made in mediation. Does that square with your recollection?
- A. I think there were concept packages made in mediation, but not the one made with the longevity included.

Regarding the financial condition of the county, Scheibe testified as follows:

- Q. [By Mr. Wesley:] The county's financial condition, did it reach a situation later on that was such that a prediction of flat income and perhaps interest bearing warrants was found to be true?

- A. [By Mr. Scheibe:] Yes, it did. We had to reduce -- I believe there were seven in our positions throughout the county, and we did some other cuts in budgets to balance out so we would be in a better position.
- Q. Now, that was not done in '93, was it?
- A. No, it was not. It was the end of '94.
- Q. But the process that led to that situation unfortunately began to develop in '93?
- A. It was kind of a downward spiral, it appeared, and it got to a point where we had to address it in '94.

Under cross-examination, Commissioner Scheibe testified, in part, as follows:

- Q. [By Ms. Mallowney:] Now, did you participate in the contract negotiations for the public works department also?
- A. [By Mr. Scheibe:] I was present at least one [sic] prior to the time that I was sworn in. As I remember, they were -- they settled ahead of the police area, and my participation was not as great as it was in law enforcement.
- Q. Can you say how many meeting you attended for the sheriff's department negotiations?
- A. I was appointed as a personnel. We have different areas of responsibility that we have, and I was appointed in '93, probably January, sometime in '93, for the personnel area, and attended, I would assume, most of them after that time. In fact, it would be unusual if I didn't.
- Q. Did you take notes of any of these meetings?
- A. I did some notes but I don't have them. I did take.
- Q. Did you review your notes prior to this hearing today?
- A. No.

- Q. Are you aware whether the public works department got an increase in their longevity in the '93-'94 contract?
- A. Yes, they did. I think that was agreed to before I came on board, however.
- Q. Have you seen any written proposals that were made by Asotin County to this union, the sheriff's department?
- A. I'm not sure. I couldn't say I have. No, I don't know whether I have or not. I've seen different statements, I guess, of where we stood, but I'm not sure they were given to the union.
- Q. And you testified that the 50 percent longevity offer was a verbal offer because it was a concept offer, is that correct?
- A. It was, yes. I testified it was brought up during the course of the negotiating period, and we didn't normally stop and write them up when we did. It was given as part of that session.
- Q. But you don't remember ever stopping and writing any county proposals to the Sheriff's Department, do you?
- A. No, I don't. We normally went on, and they were put together and either agreed to or whatever at a later time.
- Q. Do you recall where the meeting took place when the verbal offer was made?
- A. It was in this room, I believe.
- Q. Was Bruce Barkhuff present?
- A. I don't remember who was here on the union side. Kae was here and that's the only one I could tell you.
- Q. And you recall that the offer was made some time in the summer of '93?
- A. Yes. It seemed like it was late spring or summer '93. It's been a few years.

Apart from that somewhat contradictory testimony, there is little evidence on which to decide this dispute. In particular, there is no written record of the "50 percent longevity" proposal.

POSITIONS OF THE PARTIES

The union contends the employer failed to meet its duty to bargain in good faith by its withdrawal of a proposal on the subject of longevity pay without warning, and without offering the union an opportunity for further negotiations on the issue. The union contends the longevity offer was not made as part of a best and final offer or concept package offer, and further contends the employer did not prove changed economic conditions as claimed at the time the offer was withdrawn.

The employer acknowledges that it offered longevity benefits at some point in the parties' negotiations, but it asserts the offer was presented as part of a best and final, concept package. The employer urges that the offer was presented with the clear understanding by all concerned that the offer could be withdrawn or restructured, if rejected.

DISCUSSION

The decision in Columbia County, Decision 2322 (PECB, 1985), acknowledged the legitimacy of using "package" proposals in collective bargaining, but found that the employer in that case violated RCW 41.56.140, by making reductions in its bargaining proposals in retaliation for the union's rejection of a complete package offer. It was noted there:

While bargaining can be difficult, it cannot be allowed to become a forum in which punitive measures are taken because of a perceived reluctance to accept a party's proposal on a mandatory subject of bargaining.

In the case now before the Examiner, the employer argues it should not be bound forever to compromises offered during the negotiation

or mediation of a labor dispute. The Examiner distinguishes conditional offers (e.g., offers made in a "what if" mode in mediation, or as part of a package proposal) from unconditional offers. While a party retains the right to change its position if a conditional offer does not produce agreement, the same is not true for unconditional offers. Absent intervening circumstances that justify the change in position (i.e., to establish that the diminishing of the offer was not done in bad faith), a party which makes an unconditional offer does not have an absolute right to change it thereafter. Spokane County Fire District 1, Decision 3447-A (PECB, 1990).

The negotiations at issue in this case occurred about three years prior to the hearing, at a time when the same parties were also negotiating agreements for two other bargaining units of Asotin County employees. Any lack of clarity affecting the testimony regarding the complained-of actions would necessarily reflect the passage of time, along with an accelerated level of activity during the intervening period. Under these circumstances, total recall would be difficult, at best.

Both parties are represented by experienced negotiators who are thoroughly familiar with the collective bargaining process and the terminology used therein. Their level of knowledge and expertise concerning labor relations is not in question. If there is any problem among the professional negotiators, it may stem from the fact that two different persons were at the bargaining table for the employer at different times.

The record in this case contains conflicting testimony as to what occurred during the bargaining process. Each of the parties has its focus on "an employer proposal" which included an offer of longevity benefits for the sheriff's department bargaining unit, but the evidence is so varied as to provide basis for a conclusion

that there were two separate employer proposals which included an offer of longevity, as follows:⁴

* The union's focus is on a proposal allegedly made on April 21, 1993. At that time, an unaccompanied employer representative is alleged to have made an unwritten offer to a union bargaining team composed of three persons. The offered longevity benefit was equal to 50 percent of the plan in effect for the courthouse unit. In accord with the union's past practice, with which the employer was familiar, the union did not make an immediate response. Rather, the union took the offer back for discussion, before making its next move.

* The employer's focus is on an offer it made later, on a date in the summer of 1993 which is not precisely established by the evidence. That offer is alleged to have been made by a different employer representative, acting in concert with one of the county commissioners. The employer participants both testified that this offer was explained in detail to the union's bargaining team, was characterized by words to the effect of "best and final" and "concept package offer", and was put forth on the basis that the offer would go away if it were not accepted.

Past practice of the parties in negotiations are a consideration in this case. Whereas the union team understood the fragility of the employer's best/final/concept/package offer, and was aware of the implications of non-acceptance, the evidence suggests that the offer of longevity benefits made on April 21, 1993 was advanced and received as a much more normal, and unconditional, offer.

The Offer Made in April of 1993

Acting within the bargaining procedures followed by these parties, the union took the employer's April 21 longevity offer under

⁴ The sworn testimony, as it exists, points to meetings occurring at entirely different times, and with different participants in attendance.

advisement. It seems unlikely that the union would have acted in such a routine manner if this offer had been given any or all of the best/final/concept/package characterizations. Against that background, the union's written counter-proposal of May 6, 1993, requesting longevity benefits equal to those which had been offered to the courthouse employees, was not so much a rejection of the offered longevity benefits as a continuing dialogue on the amount of the proposed benefit.

The employer contends that any offer of longevity was a conditional or concept package proposal, not a firm offer in the negotiations process, and should have been recognized as such. That argument is not persuasive, however. The employer's contention was directly contradicted by the sworn and uncontradicted testimony of the three union witnesses who were present at that April 21 session.⁵

The parties reached agreement on a number of items by following the process used in April of 1993. Firm unwritten offers have existed between the parties in the past, but unwritten employer offers were nevertheless firm, the union responded with written counters, and the parties were able to resolve several issues by this method. Offers intended to be of the "what if" type were so identified by the employer, and the union could react accordingly. The evidence does not disclose any clear indication that the offer of longevity benefits made by the employer on April 21 was anything other than a firm, unconditional offer. There was no "best/final" terminology suggesting that it could not be countered; none of the union's witnesses testified on direct examination or admitted under cross-

⁵ Those witnesses testified that the employer offer was not conditional, that it was not couched in the best/final/concept/package terminology, and that it was not made in the presence of any member of the county council. Roy Wesley, who was the unaccompanied employer representative at the April 21 negotiations session, did not testify in this proceeding.

examination that the April 21 longevity offer was prefaced by any indication of it being a "concept/package" proposal.

Withdrawal of the Unconditional Offer

The critical incident in this case is the telephone conversation which took place about two and one-half months after the disputed offer was made. In the parties' first non-written communication after the April 21 meeting, the employer withdrew the offer of a longevity benefit equal to 50 percent of the benefits provided to employees in the courthouse unit.

By the withdrawal action in itself, the employer acknowledged that an offer of longevity had been made. The context of that withdrawal thus becomes a matter for scrutiny, as the subsequent withdrawal of the offer lends credence to the union's claim that the longevity offer had been extended at the April 21 meeting.

At the time the longevity offer was withdrawn, in July of 1993, the employer representative acting on that occasion indicated the offer was being withdrawn because the employer didn't feel it could afford it. While always a consideration, funding had not been posed earlier as a critical issue in the bargaining.

In testimony in this proceeding, Commissioner Scheibe spoke about economic conditions and the fact that these conditions, which he attributed at least in part to Initiative 601, **prevented the employer from making better financial offers.** That conflicts somewhat with Scheibe's other testimony, quoted above, where he emphasized the employer's **need to reduce spending.** Further, Scheibe put the timing of the process which necessitated staff reductions and other cuts to improve the budget balance at the end of 1994, when the full impact of Initiative 601 was better known. The "financial" justification advanced by the employer did not come until nearly a year and a half after the offer was withdrawn.

The union has sustained its burden of proof. As is well-defined in numerous past decisions, determinations on good faith bargaining are based on the totality of the parties' conduct. By withdrawing its offer of improved longevity benefits after giving the union an unconditional offer on that subject, without warning and without setting forth any good faith basis for its action, the employer failed and refused to bargain in good faith and committed an unfair labor practice under RCW 41.56.140(4) and (1).

The Revival of the Longevity Offer

The longevity offer cited by the employer clearly came after the April 21 offer had been made and improperly withdrawn. Accepting that the employer may have made an offer with all of the best/final/concept/package terminology which it claims to have used, any such offer was necessarily infected by the earlier unfair labor practice. The union was entitled to an opportunity for further negotiations on the basis of an offer which it reasonably believed could be countered and further discussed.

FINDINGS OF FACT

1. Asotin County is a political subdivision of the state of Washington, and is a public employer under RCW 41.56.030(1).
2. The Washington State Council of County and City Employees, Council 2, AFSCME, AFL-CIO, Local 1191-ACL-S, is the exclusive bargaining representative of employees in the Asotin County Sheriff's Department.
3. Asotin County and the union were parties to a 1991-1992 collective bargaining agreement which contained a longevity provision of \$3.00 per month for each year of service, retroactive to January 1, 1990.

4. During the negotiations for a successor agreement to cover the 1993-1994 period, the union sought to improve the longevity benefits for sheriff's department employees to equal the benefits received by Asotin County employees in a "courthouse" bargaining unit represented by the union.
5. During a negotiations session held by the parties on April 21, 1993, Roy Wesley was the only employer representative present. The employer made an offer of longevity equal to 50 percent of the benefits payable to employees in the courthouse unit. The evidence supports a conclusion that this was an unconditional offer which, under the parties' past practice, the union was entitled to take under consideration and bargain further.
6. The union took the employer's April 21 offer under consideration and, on May 6, 1993, made a written counterproposal which requested further improvement of the longevity benefit from the amount offered by the employer.
7. In a telephone conversation which occurred approximately July 2, 1993, and which constituted the first unwritten communication between the parties since the April 21 meeting, employer representative Kevin Wesley withdrew the offer of longevity benefits. Although Kevin Wesley stated at that time that the employer did not feel it could afford the benefits, financial considerations had not been advanced theretofore as a reason for resisting the union's proposal. The financial concerns set forth by the employer in this record relate to the situation which existed at the end of 1994, and were not tied to the withdrawal of the proposal in July of 1993.
8. A request for mediation was filed on July 19, 1993, and this unfair labor practice proceeding was initiated on August 26, 1993, by a complaint alleging that the employer had improperly withdrawn its proposal of April 21, 1993.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. By the events described in paragraph 7 of the foregoing Findings of Fact 7, Asotin County has committed unfair labor practices in violation of RCW 41.56.140(4) and (1).

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is ordered that Asotin County, its officers and agents, shall immediately:

1. Cease and desist from:
 - a. Refusing to bargain in good faith with Washington State Council of County and City Employees, Local 1191, as the exclusive bargaining representative of employees of the Asotin County Sheriff's Department, regarding longevity benefits.
 - b. In any other manner interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:
 - a. Upon request, bargain in good faith with the Washington State Council of County and City Employees, Local 1191, regarding longevity pay.

- b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.
- c. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.
- d. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

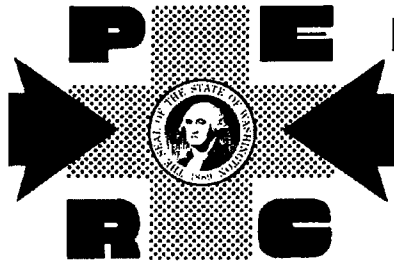
Dated at Olympia, Washington, on the 25th day of September, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. T. COWAN, 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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT fail or refuse to bargain with the Washington State Council of County and City Employees, Local 1191, as the exclusive bargaining representative of employees of the Asotin County Sheriff's Department.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, upon request, bargain in good faith with the Washington State Council of County and City Employees, Local 1191, regarding longevity benefits for employees of the Asotin County Sheriff's Department.

DATED: _____

ASOTIN COUNTY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.