City of Mukilteo, Decision 11589 (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3482, Complainant, vs. CITY OF MUKILTEO, Respondent.	CASE 24545-U-12-06283 DECISION 11589 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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Summit Law Group, by *Bruce Schroeder*, Attorney at Law, for the employer.

On February 9, 2012, the International Association of Fire Fighters, Local 3482 (union) filed an unfair labor practice complaint against the City of Mukilteo (employer). The union alleged the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by breach of its good faith bargaining obligations in negotiations over the effects of an Interlocal Agreement and in failing or refusing to implement a four platoon system before the start of the 2012 calendar year. A preliminary ruling was issued on February 14, 2012, stating a cause of action existed. Examiner Emily Whitney held a hearing on July 26, 2012. The parties submitted post-hearing briefs to complete the record.

ISSUES

1. Did the employer bargain in good faith with the union over the impacts of an Interlocal Agreement?

2. Did the employer bargain in good faith when it failed to implement a four platoon system before the start of the 2012 calendar year?

The employer bargained in good faith with the union over the impacts of an Interlocal Agreement. The union and employer did not reach an agreement on the impacts of the Interlocal Agreement; therefore the employer did not breach its good faith bargaining obligation when it did not implement a four platoon system prior to the 2012 calendar year.

BACKGROUND

The employer and the union were parties to a collective bargaining agreement that was effective January 1, 2009, through December 31, 2010. The parties began bargaining for a successor agreement in September 2010.

On September 10, 2010, the employer entered negotiations with Snohomish County Fire District 1 (Fire District 1) for an Interlocal Agreement (ILA) to regionalize a ladder truck. On February 15, 2011, the employer sent a letter to the union informing the union about its negotiations for an ILA with Fire District 1 and offered to bargain the impacts of the ILA.

On February 16, 2011, the employer and union met to bargain the impacts of the ILA. To address the impacts, the union proposed a Memorandum of Understanding to move from a three platoon system to a four platoon system (four platoon MOU). The parties did not reach an agreement and the financial implications of the ILA were not contemplated. The employer explained to the union it could only look into the operational aspects of the ILA. Once there was a possible resolution, the employer would need someone from City Hall to approve the financial portion before an agreement could be reached. At the meeting, the employer stated it was willing to take the union's proposal to City Hall for discussion, which took place prior to the next meeting. The parties scheduled the next meeting for February 24, 2011.

On February 24, 2011, the union and employer met a second time to continue bargaining the impacts of the ILA. The parties discussed more details surrounding the union's proposed four platoon MOU. The parties, again, did not discuss the financial implications of making this move, and there was not an agreement. The union understood the employer did not have the authority from City Hall to agree to the four platoon MOU. The parties did not schedule any additional meetings and determined the rest would be completed via e-mail.

After the February bargaining session, the employer e-mailed the union a proposal changing collective bargaining agreement language that would be affected by the union's proposed four platoon MOU. The employer made the union aware that it was collecting information to determine if it was financially feasible to move to a four platoon system.

In March 2011, the parties met to bargain over their successor collective bargaining agreement. During this bargaining session, the union inquired as to the status of the four platoon MOU. The employer replied that is was completing a cost analysis of moving to a four platoon system and was not prepared to discuss the four platoon MOU. To explain its financial concerns, the employer provided the union with a document showing a discrepancy of $300,000 between the City's revenues and expenditures. The parties agreed to combine bargaining over the impacts of the ILA, the four platoon MOU, with the bargaining of the collective bargaining agreement because the issues overlapped.

On March 28, 2011, the union e-mailed the employer asking for an official response on the union's four platoon MOU proposal.

On April 15, 2011, the parties jointly requested mediation services from the Public Employment Relations Commission. The parties agreed to include the four platoon MOU in the mediation session so they would be mediating the impacts of the ILA together with the collective bargaining agreement.

In June 2011, the parties met in mediation to bargain the impacts of the ILA and the collective bargaining agreement. During this mediation session, the employer explained it was analyzing the full cost of the union's proposed MOU to move to a four platoon system and was not prepared to discuss the MOU during that session.

On August 10, 2011, the Mayor announced that the employer was prepared to sign the ILA between the City of Mukilteo and Fire District 1. The final ILA moved the ladder truck from the employer's station to a Fire District 1 station where Fire District 1's Battalion Chief would provide standard fire service emergency command services to the City of Mukilteo.

On August 10, 2011, the union e-mailed the employer inquiring as to the status of the union's proposed four platoon MOU. In response, on August 18, 2011, the employer scheduled a meeting between the parties. On August 29, 2011, the parties met to discuss the union's proposed four platoon MOU. During this meeting, the employer discussed its research on the cost of the four platoon system and re-emphasized the city's monetary situation. The employer stated that to make a four platoon system work, there could be no financial impact on the city.

On September 16, 2011, the ILA between the employer and Fire District 1 became effective, and the ladder truck was regionalized.

In September 2011, the parties met again in mediation. During this meeting, the employer provided the union a counterproposal addressing the four platoon system. The union believed the employer's counterproposal made substantial changes and wanted to seek legal advice on the current situation. The union testified that it cut off discussions about the four platoon MOU in September.

October 10, 2011, the union e-mailed the employer stating that the union believed the end of October was the cut-off date for the parties to initiate the four platoon system, according to the contract. The union requested the employer meet and discuss the four platoon MOU with the union that week, if it had time, since the union president would be out of town for a few weeks. The e-mail further stated that if there was not time, "we can just wait until the next mediation meeting." On November 1, 2011, the union e-mailed the employer stating that "today is our deadline for setting our schedule for 2012 . . . If I do not hear back from you prior to the end of the workday, I will assume that we have reverted back to the contractual schedule and we begin to plan accordingly."

In December 2011, the parties met again in mediation to discuss the four platoon MOU and successor collective bargaining agreement. After failing to reach agreement, the parties worked with the mediator to prepare a list of issues to be certified for interest arbitration. At first, the list included the four platoon MOU. The union later withdrew the four platoon MOU from the list of issues before it was certified for arbitration.

After withdrawing the four platoon MOU from the list of issues, the union requested to bargain over the four platoon MOU in January 2012. The union then filed this complaint on February 10, 2012.

ISSUE 1: Good Faith Bargaining – Impacts of ILA

Applicable Legal Standard

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, governs the relationship between the union and the employer. The Commission has fully addressed the issue of good versus bad faith bargaining on multiple occasions. In *Northshore Utility District*, Decision 10534-A (PECB, 2010), it stated that "RCW 41.56.030(4) defines collective bargaining as "the performance of the mutual obligation of the representatives of the 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 particular to an appropriate bargaining unit of such employer. . . ." RCW 41.56.030(4) also provides that "neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided for by [Chapter 41.56 RCW]."

A finding that a party has refused to bargain is predicated on a finding of bad faith bargaining in regard to mandatory subjects of bargaining. *See Spokane School District*, Decision 310-B (EDUC, 1978). The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues, and to explore possible alternatives, if any, that may achieve a mutually satisfactory accommodation of the interests of both the employer and employees. While the parties' collective bargaining obligation under Chapter 41.56 RCW does not compel them to agree to proposals or make concessions, a party is not entitled to reduce collective bargaining to an exercise in futility. *Mason County*, Decision 3706-A (PECB, 1991) (totality of the evidence demonstrated that the employer entered negotiations with a predetermined outcome).

Differentiating between lawful "hard bargaining" and unlawful "surface bargaining" can be difficult in close cases. This fine line in differentiating the two reflects a natural tension between the obligation to bargain in good faith and the statutory mandate that there be no requirement that concessions be made or an agreement be reached. *Walla Walla County*, Decision 2932-A (PECB, 1988). An adamant insistence on a bargaining position is not, by itself, a refusal to bargain. *Mansfield School District*, Decision 4552-B (EDUC, 1995), *citing Atlanta Hilton and Tower*, 271 NLRB 1600 (1984). However, good faith is inconsistent with a predetermined resolve not to budge from an initial position. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

The Commission has adopted a totality of circumstances approach when analyzing conduct during negotiations. *Shelton School District*, Decision 579-B (EDUC, 1984). The Commission elaborated on this approach in *City of Snohomish*, Decision 1661-A (PECB, 1984) stating that the "conduct of the party being charged with a refusal to bargain must be evaluated in the totality of circumstances, and evidence of good faith bargaining will be considered along with the evidence of bad faith." *City of Snohomish* citing *NLRB v. Virginia Elec. & Power Co.*, 314 U.S. 469 (1941) and *Island County*, Decision 857 (PECB, 1980).

Analysis

In the present case, the union argues the employer did not bargain in good faith because it did not intend to reach an agreement before the ILA was implemented. However, the evidence presented reflects the employer communicated and bargained with the union concerning the impacts of the ILA. As early as February 15, 2011, the employer informed the union about the ILA and offered to bargain the impacts of the ILA.

Although the union argues in its brief that the parties had a tentative agreement in February, on the record the union president testified that he understood there was no agreement in February but merely a proposal offered to the employer. During both February bargaining meetings the employer notified the union that the employer would have to approve the financial portion of the four platoon MOU before an agreement could be reached. Additionally, after the February bargaining sessions, the employer provided the union with a proposal changing language in the collective bargaining agreement that would be affected by the four platoon MOU.

On five occasions between March and November 2011, the union president testified that he e-mailed the employer requesting an update on the status of signing the four platoon MOU. The evidence shows that the employer did not respond through e-mail to four of the e-mails. Although there were few e-mail responses, the evidence shows that the parties met at least five more times between April and December in response to the union's request to bargain the four platoon MOU. During each of those sessions the parties discussed their interests and concerns with moving to a four platoon system.

In April, the employer requested mediation services from the Public Employment Relations Commission. The parties agreed to combine both the bargaining of the collective bargaining agreement and the impacts of the ILA, the four platoon MOU, within the mediation sessions. The mediation sessions began in June. According to the evidence, the parties regularly met in mediation and bargained the collective bargaining agreement and impacts of the ILA, the four platoon MOU, between April and December. During these mediation sessions, the employer kept the union informed of its progress on determining the financial impacts of the four platoon MOU.

In August, the employer met with the union outside of mediation to discuss its concerns with the union's four platoon MOU proposal. Again, the employer informed the union of where it was in its progress on the union's four platoon MOU proposal.

During the September 2011 mediation, after completing research on the financial implications, the employer provided the union with a counterproposal on the union's four platoon MOU. The union did not respond to the employer's counterproposal and the issue remained in mediation.

The parties continued to discuss the four platoon MOU in the December mediation session and the four platoon MOU was originally placed on the list of issues for interest arbitration.

The Commission has been very clear that there must be an examination of the totality of the circumstances and evidence of good faith will be considered along with the evidence of bad faith. Here it is clear that the employer provided the union with a counterproposal on the

language and communicated with the union why it could not enter into an agreement or provide a counterproposal until it analyzed the financial impact of the union's proposal. Thus, the evidence shows the parties bargained in good faith between at least February 2011 and December 2011. Because there was no violation found, timeliness does not need to be addressed.

ISSUE 2: Good Faith Bargaining – Implementation of Four Platoon

Applicable Legal Standard

An employer contemplating a change affecting a mandatory subject of bargaining must first bargain in good faith over the change with the exclusive bargaining representative of its employees. *Wapato School District,* Decision 10743-A (PECB, 2011).

An agreement is reached in bargaining when there is a meeting of the minds on the subject matter being discussed. *City of Yakima,* Decision 3564-A (PECB, 1991). A meeting of the minds is deemed to occur when a party understood or could reasonably have been presumed to know what was intended when it accepted language relied upon by the other party. *City of Yakima.*

In determining whether an agreement exists, the Commission adopted an "objective manifestation" theory which is used to impute to a person an intention corresponding to the reasonable meaning of their words and acts. *City of Mukilteo,* Decision 9452-A (PECB, 2008) citing *City of Wenatchee,* Decision 8802-A (PECB, 2006). In other words, the subjective intent of the parties is irrelevant. *City of Wenatchee.*

When there is no written contract language to be interpreted, it becomes a question of fact whether the parties have reached agreement on a subject. *Skagit County,* Decision 9133-B (PECB, 2006) citing *Ben Franklin National Bank,* 278 NLRB 986 (1986).

Analysis

The union argues that the employer failed to bargain in good faith when it did not implement the four platoon MOU prior to the start of the 2012 calendar year. As explained above, the parties

bargained in good faith over the four platoon MOU. The four platoon system was a change from the parties' current three platoon system. As evidenced by the union's own testimony, there was not a meeting of the minds and both parties understood that an agreement on the four platoon MOU had not been reached in February or at any other time during the bargaining process. Therefore, there was no agreement for the employer to implement.

CONCLUSION

Based on the totality of the circumstances, including the evidence of the good faith bargaining by the employer, the employer did not refuse to bargain in violation of RCW 41.56.140(4). The employer did not fail to bargain in good faith because the parties did not reach an agreement on the four platoon MOU.

FINDINGS OF FACT

1. The City of Mukilteo (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The International Association of Fire Fighters, Local 3482 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. On September 10, 2010, the employer entered into negotiations with Snohomish County Fire District 1 (Fire District 1) for an Interlocal Agreement (ILA) to regionalize the ladder truck.

4. On February 15, 2011, the employer sent a letter to the union informing the union about the ILA and offering to bargain over the impacts of the ILA.

5. On February 16, 2011, the employer and union met and bargained the impacts of the ILA. The union proposed to the employer a Memorandum of Understanding to move from a three platoon system to a four platoon system (four platoon MOU).

6. On February 24, 2011, the union and employer met and bargained the impacts of the ILA, the four platoon MOU.

7. In response to the union's proposal in Finding of Fact 5, the employer proposed language changes to the collective bargaining agreement that would be affected by the union's proposal to move to a four platoon system.

8. In March 2011, the parties met and bargained over a successor collective bargaining agreement. During the bargaining session, the union requested the status of the four platoon MOU and asked to bargain the impacts of the ILA, the four platoon MOU, with the collective bargaining agreement.

9. During the meeting in Finding of Fact 8 above, the employer agreed to combine bargaining over the collective bargaining agreement and the impacts of the ILA, the four platoon MOU. The employer informed the union it was completing a cost analysis of moving to a four platoon system and was not prepared to discuss the MOU at the meeting.

10. On March 28, 2011, the union requested an official response on the union's four platoon MOU proposal.

11. On April 15, 2011, the parties jointly requested mediation services from the Public Employment Relations Commission for negotiations over the collective bargaining agreement and the impacts of the ILA, the four platoon MOU.

12. In June 2011, the parties met in mediation and bargained over the collective bargaining agreement and the impacts of the ILA, the four platoon MOU. The employer notified the union that it was analyzing the full cost of the union's four platoon system and was not prepared to discuss the four platoon MOU during that session.

13. On August 10, 2011, the union e-mailed the employer inquiring as to the status of the four platoon MOU.

14. In response to the union's inquiry in Finding of Fact 13, on August 18, 2011, the employer scheduled a meeting between the parties for August 29, 2011.

15. On August 29, 2011, the parties met to discuss the proposed four platoon MOU. The employer explained its research to the union on the cost of the four platoon system and re-emphasized the city's monetary situation. The employer stated that to make a four platoon system work, there could be no financial impact on the city.

16. On September 16, 2011, the ILA became effective and the ladder truck was regionalized.

17. In September 2011, the parties met in mediation. During this meeting the employer provided the union a counterproposal to address the four platoon system.

18. On October 10, 2011, the union e-mailed the employer requesting to meet and discuss the four platoon MOU that week if the employer had time. If there was not time to meet, the union explained that "we could just wait until the next mediation meeting."

19. On November 1, 2011, the union sent an e-mail to Hannan stating that "today is our deadline for setting our schedule for 2012. . . If I do not hear back from you prior to the end of the workday, I will assume that we have reverted back to the contractual schedule and we begin to plan accordingly."

20. In December 2011, the parties met again in mediation to bargain the four platoon MOU and successor collective bargaining agreement. The parties did not reach agreement and the parties prepared a list of issues to be certified for interest arbitration. At first the list included the four platoon MOU. The union later withdrew the four platoon MOU from the list of issues before being certified for interest arbitration.

CONCLUSIONS OF LAW

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

2. Based upon Findings of Fact 4-9, 11-15, 17, and 20, the employer did not refuse to bargain by breach of its good faith bargaining obligation in negotiations over the impacts of the Interlocal Agreement.

3. Based upon Findings of Fact 4-9, 11-15, 17, and 20, the employer did not refuse to bargain by breach of its good faith bargaining obligation in failing or refusing to implement the four platoon system before the start of the 2012 calendar year.

ORDER

The union's complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 30th day of November, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ BOBBIE DUFFIELD

CASE NUMBER:	24545-U-12-06283	FILED:	02/09/2012	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	FIREFIGHTERS				
DETAILS:	-				
COMMENTS:					

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