Seattle School District, Decision 10037 (PECB, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE/KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, Complainant,	)	CASE 21232-U-07-5416
vs.	)	DECISION 10037 - PECB
SEATTLE SCHOOL DISTRICT, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Roblee, Brennan & Detwiler, by *Daniel Hutzenbiler*, for the union.

John M. Cerqui, Senior Assistant General Counsel, for the employer.

On August 30, 2007, the Seattle/King County Building and Construction Trades Council (union) filed an unfair labor practice complaint with the Public Employment Relations Commission alleging that the Seattle School District (employer) interfered and refused to bargain with the union in violation of RCW 41.56.140(1) and (4). The Commission issued a preliminary ruling finding a cause of action existed and a hearing was held before Examiner Robin A. Romeo on November 13, 2007. The parties submitted post hearing briefs.

ISSUES

1. Did the employer interfere and refuse to bargain with the union on July 13, 2007, during negotiations for a successor

collective bargaining agreement, when the employer's chief negotiator stated that the parties were "chatting?"

2. Did the employer interfere and refuse to bargain with the union on July 20, 2007, during that same negotiations, by proposing to include the entire "Beck" decision in the contract?

3. Did the employer interfere and refuse to bargain with the union on August 22, 2007, during that same negotiations, by refusing to confirm tentative agreements and thus engage in regressive bargaining?

Based upon the record presented, the Examiner finds that the employer did not commit a violation of RCW 41.56.140(1) and (4) during negotiations on July 13, 2007, or on July 20, 2007, but did however, commit a violation on August 22, 2007, when it refused to confirm tentative agreements.

APPLICABLE LEGAL STANDARDS

Applicable provisions of Chapter 41.56 provide:

> RCW 41.56.140 Unfair Labor Practices for public employer enumerated. It shall be an unfair labor practice for an employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . . .
>
> (4) To refuse to engage in collective bargaining.

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 the employees. *Walla Walla County,* Decision 2932-A (PECB, 1988). It is well established that the totality of the employer's conduct during bargaining is considered when deciding whether there was a failure to bargain. The employer's total bargaining conduct must demonstrate a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement. *City of Clarkston,* Decision 3246 (PECB, 1989).

An interference violation will be found when an employee could reasonably perceive the employer's actions as a threat of reprisal or force or benefit or as a promise of benefit associated with the union activity of that employee or other employees. *City of Seattle,* Decision 3066-A (PECB, 1989). A "derivative" or automatic interference violation will be found where an employer has been found guilty of an unfair labor practice by domineering or assisting a union, discriminating against an employee for engaging in union activity, or where an employer fails to bargain. *Washington State Patrol*, Decision 4757-A (PECB, 1995).

ANALYSIS

Here, the parties were engaged in bargaining a successor collective bargaining agreement to the 2005-2007 agreement. A total of five bargaining sessions occurred prior to the time that the complaint was filed. The union argues that the employer failed to bargain during three of those bargaining sessions.

The union first complains that during their July 13, 2007 session, the employer refused to bargain when it's representative stated that they were only "chatting" and not bargaining. The parties differ on the facts. The employer's negotiator testified that she said she needed to "chat" about the union's proposals but that she

did not say they were not bargaining. The official note taker's testimony and her bargaining notes do not contain any statement that the employer said that they were "not bargaining."

A review of the prior session is instructive. The parties first met in a bargaining session on June 26, 2007. At that time, the spokesperson for each side was identified, the parties made opening statements, scheduled future bargaining sessions, discussed ground rules, and identified an official note-taker.

The second session occurred on July 13, 2006, and a new spokesperson for the employer appeared. A written version of the ground rules was distributed and the parties discussed how bargaining proposals would be made. The union then submitted it's complete proposal which consisted of a "marked-up" collective bargaining agreement. The employer did not submit a proposal.

Examining the totality of the employer's conduct, I find that the employer's version of the facts of what occurred on July 13, 2007, is more probable. The union handed out a comprehensive proposal for the first time and it is logical that the employer would ask to review that proposal with the union in order to gain a complete understanding of it. The notes reflect that the parties entered into such a discussion on the issues, and regardless of whether such conversation is characterized as mere "chat," discussions of a wide variety are often important in reaching understandings between parties. I do not find that the employer refused to bargain during that session.

The union also complains that during a bargaining session on July 20, 2007, the employer refused to bargain when it proposed to include an entire Supreme Court decision in the contract. The decision, *Communication Worker's of America v. Beck*, 487 U.S. 735

(1988), concerns the ability of a union to use union dues for political purposes.

Again, the parties differ on the facts. The employer denies that it made any proposal to include the *Beck* decision and offers instead that it did make a proposal to update the language of the union security clause to reflect the current law. The official note taker's testimony and her notes corroborate the employer's testimony that no such proposal was made.

Reviewing the evidence and testimony, I again find that the employer's version of the facts is more probable. The employer's testimony is corroborated and the bargaining notes do not make any reference to the *Beck* decision. The union has not sustained its burden on this charge.

The union finally complains that on August 22, 2007, the employer failed to bargain when it withdrew tentatively agreed-upon proposals. I find that the union has sustained its burden of proof on this charge.

During the bargaining session on July 20, 2007, the parties reached tentative agreements. The parties were meeting for the third bargaining session. Again, they discussed how proposals would be bargained. The employer submitted a proposal for "housekeeping" changes to certain contract provisions and they began to bargain article by article, reviewing each side's proposals. They entered into two tentative agreements; they agreed to incorporate a memorandum of agreement into the contract and they entered into an agreement concerning union representation.

On August 3, 2007, the parties met for a fourth bargaining session and continued to discuss bargaining proposals. The parties entered

into numerous additional tentative agreements. The agreements changed provisions of the contract article on leave time and the contract article containing the grievance procedure.

The final session in question occurred on August 22, 2007. Laurie Taylor, the negotiator for the school district, testified that the union came in and wanted to formalize the tentative agreements. In response Taylor said she could not agree to anything with out seeing exact language and she could not agree to anything with a fiscal impact. Looking at the tentative agreements that the parties had entered into, they contain specific language that had already been agreed upon.

Given the fact that tentative agreements had been entered which contained exact language, there was no reason for Taylor to make such a statement unless she was being obstructive. The employer was nullifying the work that had been done at earlier bargaining sessions. Examining the employer's overall conduct; five bargaining sessions without submitting any real proposal except for housekeeping items, and this statement that no tentative agreements could be agreed to is a regressive position to take on issues and is a failure to bargain.

In *City of Redmond,* Decision 8879-A (PECB, 2006), the Commission affirmed an Examiner's finding that the employer had failed to bargain in good faith by engaging in "regressive bargaining" when its bargaining proposals went "backwards." The employer had replaced a wage proposal with a smaller wage proposal.

The evidence here shows that the employer "backed-out" of all of the tentative agreements. The parties had clearly entered into numerous tentative agreements. The employer's list of "housekeeping" changes had the notation "TA" written next to various demands.

Bargaining notes from prior sessions reflect that the tentative agreements were entered into by the parties. If the tentative agreements had been rejected by the School Board, there would be no refusal to bargain - they are only tentative agreements. But pulling agreements off of the bargaining table after telling the other party that they were agreed upon, that is a violation and a refusal to bargain in good faith. The failure to bargain in good faith automatically results in a derivative interference violation.

CONCLUSION

The employer interfered with and refused to bargain with the union on August 22, 2007, when it refused to confirm tentative agreements entered into during bargaining sessions on July 20, 2007, and August 3, 2007. All other complaints are dismissed.

FINDINGS OF FACT

1. Seattle School District is a public employer within the meaning of RCW 41.56.030(1).

2. Seattle/King County Building and Construction Trades Council is a bargaining representative within the meaning of RCW 41.56.030(3).

3. On June 26, 2007, the parties commenced bargaining a successor collective bargaining agreement to their 2005-2007 agreement.

4. The parties' second bargaining session occurred on July 13, 2006. At that session, the employer's negotiator stated that she need to "chat" with the union about its proposals.

5. The third bargaining session occurred on July 20, 2007. At that session, the employer included a proposal to update the

union security clause in their agreement. The parties then entered into tentative agreements concerning a memorandum of agreement and union representation.

6. The fourth bargaining session occurred on August 3, 2007. The parties entered into numerous tentative agreements concerning leave time and the grievance procedure.

7. The final bargaining session occurred on August 22, 2007, where the employer refused to confirm any of the tentative agreements entered into on July 20, 2007, and August 3, 2007.

CONCLUSIONS OF LAW

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

2. The employer did not interfere with and/or refuse to bargain with the union in violation of RCW 41.56.140(1) and (4) on July 13, 2007, when it's chief negotiator stated she needed to "chat" about the union's proposals.

3. The employer did not interfere with and/or refuse to bargain with the union in violation of RCW 41.56.140(1) and (4) on July 20, 2007, when it submitted a proposal to update the union security clause.

4. The employer interfered with and refused to bargain with the union in violation of RCW 41.56.140(1) and (4) on August 22, 2007, when it refused to confirm tentative agreements entered into during bargaining sessions on July 20, 2007, and August 3, 2007.

ORDER

The Seattle School District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing to confirm tentative agreements entered into with the Seattle/King County Building and Construction Trades Council during bargaining sessions held on July 20, 2007 and August 3, 2007, prior to those agreements being forwarded for ratification.

   b. Interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under 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. Restore the status quo and reinstate the tentative agreements entered into with the Seattle/King County Building and Construction Trades Council on July 20, 2007, and August 3, 2007, and negotiate in good faith on a successor collective bargaining agreement.

   b. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall

remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice attached to this order into the record at a regular public meeting of the Seattle School Board and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the 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 complainant with a signed copy of the notice attached to this order.

e. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 18th day of April, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBIN A. ROMEO, 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

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to bargain with the Seattle/King County Building and Construction Trades Council on August 22, 2007, by failing to confirm tentative agreements entered during bargaining sessions on July 20, 2007, and August 3, 2007.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL cease and desist from failing to confirm tentative agreements entered into with the Seattle/King County Building and Construction Trades Council on July 20, 2007, and August 3, 2007.

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.

DATED: ________________ SEATTLE SCHOOL DISTRICT

BY: ______________________________
Authorized Representative

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

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.