STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WHATCOM COUNTY DEPUTY SHERIFF'S GUILD, Complainant, vs. WHATCOM COUNTY, Respondent.	CASE 17041-U-02-4418 DECISION 8512 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline & Associates, by *James M. Cline*, Attorney at Law, and *Christopher J. Casillas*, Attorney at Law, for the union.

Braun Consulting Group, by *Robert R. Braun, Jr.*, for the employer.

On December 11, 2002, the Whatcom County Deputy Sheriff's Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Whatcom County (employer) as respondent. The complaint was reviewed under WAC 391-45-110, and a preliminary ruling issued on July 7, 2003, found a cause of action to exist on allegations summarized as:

> Employer refusal to bargain in violation of RCW 41.56.140(4), [and if so, derivative "interference" in violation of RCW 41.56.140(1)], by its inclusion of "me too" or parity provisions in collective bargaining agreements covering other bargaining units, whereby the medical insurance plans of non-unit employees are linked to conditions of employment negotiated with unit employees.

The employer filed a timely answer to the complaint. A hearing was conducted on October 8, 2003, before Examiner Walter M. Stuteville. The parties filed post-hearing briefs, the last of which was a reply brief filed by the union on January 5, 2004.[1]

On December 17, 2003, the Washington State Nurses Association (WSNA) filed an amicus curiae brief with the Commission. In a letter sent to both parties in the case, the Examiner solicited their positions as to the amicus brief. The employer responded on December 31, 2003, and requested that the amicus brief be given full and careful consideration; the union's final brief responded with a statement in its final brief that it had no objection to the amicus brief.

Based on review of the record and the arguments of the parties, the Examiner rules that the union has not established that the parity clause at issue prevented the employer from bargaining in good faith. The complaint is DISMISSED.

BACKGROUND

The employer is among the larger counties of the state of Washington, and it has collective bargaining relationships with labor organizations representing several bargaining units.

In 2002, the employer negotiated collective bargaining agreements covering four separate bargaining units:

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[1] Prior to the hearing, on October 7, 2003, the union filed a pre-hearing brief. At the commencement of the hearing, the Examiner explained that he had not read the pre-hearing brief, and would not read it until the parties had completed the evidentiary portion of the case.

- A bargaining unit of approximately 432 employees represented by Teamsters Union, Local 231;
- A bargaining unit of approximately 23 health clerical employees represented by Teamsters Union, Local 231;
- A bargaining unit of approximately 24 registered nurses represented by the Washington State Nurses Association; and
- A bargaining unit of approximately 23 sanitarian represented by International Federation of Professional and Technical Engineers, Local 17.

All of those agreements contained very similar language in the sections relating to "parity" of employee health care benefits.[2]

The employer and the union that filed this case opened negotiations for a successor contract in October 2002. Both President Mark Anthony Joseph of the union and Human Resources Associate Manager Wendy Wefer-Clinton of the employer were in attendance for those negotiations. During those talks, the union requested that there be no change to medical benefits offered. The employer proposed

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[2] For example, the language in the WSNA agreement is:

> Section 23.7 Medical Parity. If the County makes available to its unrepresented employees or employees covered by other collective bargaining agreements medical plans which the union determines to be desirable or superior to the plans offered under this agreement, then the County will offer such plans to the employees covered by this Agreement on the same basis to the other employees. Provided, however, this provision shall not be triggered where the total percentage wage adjustment and medical cap for other groups are reasonably comparable to what is provided in this agreement or where a settlement is imposed upon the County by interest arbitration award.

that caps be placed on the employer's payments for health benefits, at $500 per month in 2003 and $550 per month in 2004 and 2005.

Some time into the bargaining process, the union informed the employer that the union was objecting to the agreements the employer had with other bargaining units. Specifically, the union asserted that the "parity" clauses in those agreements encumbered the bargaining between the employer and this union. The union thus requested that the employer repudiate its agreements containing the medical parity clauses. The employer refused. This unfair labor practice complaint followed.

POSITION OF THE PARTIES

The union contends that parity clauses of the type contained in the employer's contracts with the WSNA and unions representing other bargaining units constitute an unfair labor practice. The union asserts that the existence of such clauses interferes with its right to fully bargain with the employer, because the employer has contractual commitments with other unions that preclude it from reaching an agreement with this union. Moreover, the union claims that parity clauses burden it with having to bargain for groups it does not represent. While noting that the Commission has not ruled on this subject, the union contends that a number of states have found parity clauses unlawful. While acknowledging that the National Labor Relations Board (NLRB) does not find parity clauses to be per se unlawful, the union argues that the NLRB has never upheld the type of "me too" clause at issue here. As remedies in addition to the customary remedies when an unfair labor practice violation is found, the union requests attorney fees, that the parity clauses in the other contracts be invalidated, and that the employer be required to post notices in a local newspaper.

The employer contends that the union has not met its burden of proof to establishing that an unfair labor practice was committed. Specifically, the employer asserts that the union has not proven that the disputed clauses created any actual burden on the collective bargaining process between the employer and the complainant union, that no evidence of wrong-doing was offered by the union; and that the union's assertions ignore that every collective bargaining agreement negotiated by the employer will have some impact on all subsequent collective bargaining negotiations, regardless of the existence of a parity clause.

DISCUSSION

Applicable Legal Principles

Jurisdiction -

This case arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, which applies to any county or political subdivision of the state of Washington. RCW 41.56.010 states the purpose of the Act:

> The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

The Commission is authorized to promulgate, revise or rescind rules to administer that chapter in conformity with its intent and purpose, and consistent with the best standards of labor-management relations. RCW 41.56.090. The Commission is empowered to prevent unfair labor practices. RCW 41.56.160.

In collective bargaining, employers and the exclusive bargaining representatives of their employees are obligated by the duty to bargain defined in RCW 41.56.030(4), as follows:

> Collective bargaining means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, 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.

Enforcement of that duty is by RCW 41.56.140(4), which makes it an unfair labor practice for a public employer to:

> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; [or]
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> . . . .
>
> (4) To refuse to engage in collective bargaining.

The burden of proof is, however, on the party that files an unfair labor practice complaint. WAC 391-45-270(1)(a).

Parity Clauses: Conflicting Views -

This is a case of first impression in Washington,[3] but parity clauses have been discussed in decisions by other agencies administering collective bargaining statutes. Traditionally, the Commission has looked to NLRB precedent and the decisions of our

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[3] The legality of parity clauses was at issue in *City of Bremerton*, Decision 7739 (PECB, 2002), but that case was ultimately disposed of on procedural grounds.

counterpart agencies in other states as persuasive authority in cases of first impression. *Kennewick General Hospital*, Decision 4815-B (PECB, 1996).

The NLRB has held that parity clauses do not *per se* unlawfully interfere with bargaining. In *Dolly Madison Industries*, 182 NLRB 147 (1970), the NLRB upheld a parity clause that permitted an employer to automatically receive the benefit of any contract the exclusive bargaining representative signed with a competitor. The NLRB described that type of contractual provision (termed a "most favored nation" clause) as "setting forth an agreed upon procedure by which the respondent could conform benefit levels of the contract established for its employers to those negotiated by the union for employees of its competitors."

State agencies across the nation have reached a variety of conclusions regarding the legality of parity clauses. Examples of state decisions finding parity clauses unlawful include:

- In Connecticut, a parity clause in a contract covering fire fighters was found to unlawfully interfere with the bargaining rights of a union representing the employer's police officers. *In Re City of New London*, Decision 1128 (Connecticut State Board of Labor Relations, 1973). The Connecticut board noted that the clause would cause double-loading: "Not only would it be responsible for bargaining for its own members, but it would also take the responsibility of bargaining for the fire fighter unit."

- A "me too" clause was found to be *per se* unlawful in Maine. The Maine Employment Relations Board ruled that parity clauses are inherently destructive to the collective bargaining

process. *Lewiston Fire Ass'n v. City of Lewiston*, 354 A.2d 154 (1976).

- The New Jersey Public Employment Relations Commission reached the same conclusion. *City of Plainfield*, 4 NJPER 4130 (1978).

- The "double loading" analysis was adopted in *Town of Methuen, Police and International Brotherhood of Police Officers*, 545 BNA Government Employment Relations Report (Mass. Labor Relations Commission, 1974), finding that an employer committed an unfair labor practice by using its negotiations with a union representing its police officers to establish a common settlement for other bargaining units with contracts containing "me too" clauses. The Massachusetts board reasoned that the police union was forced to assume responsibility for a wage increase that would apply far beyond the limits of the bargaining unit it represented.

Other states have embraced parity clauses as part of the normal course of bargaining, however. Examples of decisions finding parity clauses lawful include:

- In Wisconsin, parity clauses were found to be a legitimate bargaining device:

> Such agreements are not rare or limited to the police and fire settlements and do, as the complaint urges affect the calculations of a municipal employer in its subsequent negotiations with other labor organizations. However, even in the absence of such agreements, employers, whether in the public or private sectors, calculate the effects of proposed settlements upon their relations with other groups or employees, both unorganized and represented by other unions. This a "fact of life" in collective bargaining. The complainant realizes

> this, but distinguishes the present case on the basis of a formal agreement. This distinction, in turn, focuses on the legally binding nature of the instant parity agreement, as contrasted to the practical considerations of the more common tacit practices to which we refer.
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> We hold that this distinction is artificial and not to be adopted herein. The parity agreement does not place an absolute ceiling on settlements with the complainant. It adds to the costs of higher settlements. The normal, unformalized considerations of employers, on the other hand, are very compelling, not only because of cost considerations, but because of very significant tactical considerations that an employer dealing with a number of unions must make respecting the relative positions of unions.

City of West Allis, Decision 12706 (Wisconsin Employment Relations Commission, 1974).

- A parity clause was upheld in *Banning Unified School District*, 8 PERC 15202 (California Public Employment Relations Board, 1984), where the language allowed a bargaining unit of school employees to receive additional wage increases matching increases given to any other bargaining unit within the same school district.

In short, there is not a clear, uniform consensus as to the legality of parity clauses.

Washington Practice -

As noted in *City of Bremerton*, Decision 7739 (PECB, 2000), parity clauses can arise in a variety of settings. Some provisions give "most favored nation" status to certain employers while others require parity regarding a specific benefit among several unions. Thus, their effects on the bargaining process may differ. In the absence of a uniform body of precedent nationally as to the

legality of these clauses, *Bremerton* rejected the per se analysis favored by the union here, and concluded that each case must be analyzed in the context of the parties' bargaining process.

Application of Standards

The union asserts that this employer refused to engage in bargaining about medical benefits due to the parity clauses it had negotiated with other unions. The union president testified that the union initially put forth a proposal that called for the medical benefits to remain the same, and that the employer then countered with a proposal that included caps. Under direct examination by counsel for the union, he expounded:

> Q: [by Mr. Cline] What was the county's response each time the Guild approached coming off the cap?
>
> A: [by Mr. Joseph] It was never -- it was never agreed to.
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> Q: While in negotiation was the Guild ever provided an explanation as to why they were insisting on cap language?
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> A: The only explanation I recall was that it was the same offer the other county employees were offered.
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> Q: Outside of negotiation did you have any discussions with any county officials regarding the medical premium section?
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> A: On September 2, Undersheriff Carey James and I met with Wendy in human resources -- not for the purposes of discussing the medical cap issue, but we wanted to get a memorandum of understanding that would serve as an interim contract if the subject of the medical came up and Wendy indicated that she was under mandate from the county that the county could absolutely not offer us anything that did not involve a cap.

Any temptation to attribute the problem to the parity clauses is contracted by other evidence, however:

First, the union president testified under cross-examination that the "me too" language in the other contracts was *NOT* discussed when he was told about the mandate.

Second, the union president acknowledged that the employer offered a number of different "cap" proposals during the course of the negotiations, which provides basis for an inference that the employer was willing to look at multiple alternatives.

Third, the employer amended its proposal to include a $56.00 per month benefit for the deputies, and Wafer-Clinton testified that the employer could look at a proposal that included more money invested in benefits and less in salary.

Thus, the testimony clearly supports a finding that this employer was full engaged in the bargaining process with this union, notwithstanding the parity clauses in other contracts. Rather than providing a basis for a finding that the employer acted in bad faith, or even that it lacked good faith, this record indicates that this employer actively sought ways to reach agreement with this union concerning medical benefits.

The union's assertion that the parity clauses were an impediment to the bargaining process involved here is also undermined by the absence of evidence that the employer performed any cost analysis as a result of the union's proposal. There is no evidence that the employer even considered or investigated the costs it would incur under the parity clauses of other contracts if it accepted the proposal of this union.

The union advances a "double loading" claim here, contending that the parity clauses burden it with bargaining for people it does not represent, and that parity clauses inevitably require the employer to consider the effects on other unions. Apart from overlooking or

ignoring that employers always bring budgetary concerns to the bargaining table, there is no evidence of an actual effect in the negotiations at issue in this case. Thus, the theoretical distinction between parity constraints and budgetary constraints remains negligible in the present case.

Good faith bargaining does not require the employer to agree with the union's proposals. RCW 41.56.030(4). With or without the parity clauses in the other contracts, the employer was free to advance "cap" demands in pursuit of economic policy, and was free to offer the same medical benefits to all unions representing its employees. Based on the evidence it has presented in this case, the union has not sustained its burden of proving that the existence of the parity clauses in the other contracts was ever actually an impediment to the employer's acceptance of the union's proposals. The union would attribute the employer's economic policy concerning "caps" to the existence of the parity clauses, but a fiscally responsible entity must consider both short-term and long-term effects of proposals beyond the immediate collective bargaining negotiations in which they are made.[4] The Examiner finds neither evidentiary support nor precedent support for leaping to the conclusion the union urges here. Accordingly, the complaint charging unfair labor practices must be dismissed.

FINDINGS OF FACT

1. Whatcom County is a political subdivision of the state of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

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[4] If one were to follow the union's theory to its logical conclusion, all collective bargaining would have to occur in a vacuum.

2. The Whatcom County Deputy Sheriff's Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory law enforcement officers employed by Whatcom County.

3. The employer has collective bargaining relationships with organizations representing various bargaining units organized within its workforce, so that the employer has collective bargaining agreements with organizations other than the complainant in this case. At least some of the collective bargaining agreements signed by the employer with other organizations provide for the employees covered by those contracts to receive the same medical benefits as are offered to other unions.

4. The employer and union commenced negotiations for a successor agreement in 2002. The union proposed to retain the language of the parties' previous agreement concerning medical benefits. Consistent with a policy goal adopted by the employer for all of its bargaining, the employer proposed changes from the parties' previous agreement to impose a "cap" on the employer's costs for medical benefits. The parties did not reach an agreement concerning medical benefits.

5. Upon discovering the parity language in one or more of the other collective bargaining agreements signed by the employer, the union demanded that the employer repudiate those agreements. The employer refused.

6. The union has failed to establish in this proceeding that the existence of the parity clauses described in paragraphs 3 and 5 of these findings of fact had any detrimental effect on the collective bargaining between these parties.

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. Under the circumstances described in paragraphs 4, 5 and 6 of the foregoing findings of fact, the Whatcom County Deputy Sheriff's Guild has failed to prove, by a preponderance of the evidence, that the existence of the parity language found in other collective bargaining agreements signed by Whatcom County had any actual effect on the collective bargaining between the employer and union, and so has failed to establish that the employer has committed, or is committing, any unfair labor practice in violation of RCW 41.56.140.

ORDER

Based on the foregoing and the record as a whole, the complaint charging unfair labor practices filed by the Whatcom County Deputy Sheriff's Guild in the above-captioned matter is DISMISSED.

DATED AT Olympia, Washington, this 19th day of April, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, 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.