City of Mukilteo, Decision 9452 (PECB, 2006)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 763,	)	
Complainant,	)	CASE 19391-U-05-4923
vs.	)	DECISION 9452 - PECB
CITY OF MUKILTEO,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW
Respondent.	)	AND ORDER

Reid, Peterson, McCarthy & Ballew, by *Michael R. McCarthy*, Attorney at Law, for the union.

Ogden Murphy Wallace, by *Greg A. Rubstello*, Attorney at Law, for the employer.

On April 13, 2005, the International Brotherhood of Teamsters, Local 763 (union) filed an unfair labor practice complaint against the City of Mukilteo (employer). On June 24, 2005, the Commission issued a preliminary ruling finding causes of action for an employer refusal to bargain allegation, as well as a derivative interference claim. Examiner J. Martin Smith conducted a hearing on December 8, 2005. The parties filed post-hearing briefs.

The employer did not commit an unfair labor practice, in violation of RCW 41.56.140(4), relative to bargaining over 2005 health insurance premiums for bargaining unit members. Consequently, the employer's actions did not constitute derivative interference, in violation of RCW 41.56.140(1).

ISSUES PRESENTED

1. Did the employer unlawfully refuse to bargain when it maintained its 2005 health insurance contributions at the 2004 rate?

2. Did the employer derivatively interfere with employee collective bargaining rights?

ANALYSIS

Issue 1: Did the employer unlawfully fail to bargain over health insurance benefits?

RCW 41.56.140(4) imposes a duty to bargain. The duty to bargain includes the duty of a party seeking changes to existing wages, hours, and working conditions: (1) to give notice to the opposite party; (2) provide an opportunity for bargaining prior to making a final decision; (3) upon request, bargain in good faith; and (4) bargain to agreement or impasse concerning mandatory subjects of bargaining. *City of Seattle*, Decision 8313-A (PECB, 2003); *Snohomish County*, Decision 9180 (PECB, 2005).

The union represents a bargaining unit of police officers employed by the City of Mukilteo. At the time the dispute arose, the union and employer had a collective bargaining agreement effective from January 1, 2002, through December 31, 2004. Article 11.1 of the agreement pertained to health insurance benefits and provided:

- that the employer pay, on a monthly basis, an amount necessary to provide medical, dental and

vision coverage for regular full-time employees and their dependants;

- that the employer's health insurance contributions be limited to 11% above 2001 insurance rates in 2002, 10% above 2002 rates in 2003, and 10% above 2003 rates in 2004;
- that employees would pay, through payroll deduction, insurance rates exceeding the amounts noted above.

The collective bargaining agreement between the parties for 1999-2001 also applied a 10% insurance rate increase cap to employer health insurance contributions.

On November 18, 2004, the parties began bargaining over a successor agreement, but did not discuss health insurance issues at that meeting. On November 29, 2004, the employer informed the union by letter that in 2005 it intended to pay its health insurance contribution at the 2004 levels. Thus, the employer would not provide a 10% increase in employer contributions over the 2004 rates. Therefore, if health insurance premiums increased in 2005, each employee would pay 100% of the increase, unless the parties negotiated a settlement of the open issues in their collective bargaining agreement.

The parties met again for bargaining sessions on December 1 and 14, 2004. After the December 14 meeting, the parties agreed that they were at impasse.

On December 17, 2004, the union replied by letter to the employer's letter of November 29. The union objected to the employer's intent to freeze its 2005 health insurance contributions at the 2004 rates. The union argued that the employer had a duty to maintain the status quo on health insurance. The union asserted that the status quo was full maintenance of benefits. The union offered to resolve the matter if the employer agreed to continue to pay health insurance benefits at the rate of 10% above the insurance rates of the previous year.

On December 20, 2004, and continuing to the present, the employer began deducting insurance premiums from bargaining unit employees at a higher rate than before that date.[1] This dispute centers on the union's objections to that increase.

After their December 14, 2004, negotiation session the parties did not meet again until they entered into mediation on March 7, 2005. The Commission certified the parties to interest arbitration on May 18, 2005.

This case revolves around the definition of the status quo of employee health benefits existing in December 2004, and continuing into 2005. The union argues that in the absence of a contract, the status quo in 2005 would have been either a 100% employer contribution of health insurance premiums, or adherence to the 10% increase in the rates established by the formula in the previous two contracts (the 10% formula). The union reasons, in the first scenario, that the status quo would revert to the first sentence of

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[1] The employer pays its health insurance premiums in advance. The December 20, 2004, deduction was for the January 2005 installment.

Article 11.1, which states in essence, that the employer shall pay a monthly amount necessary to provide employees and their dependants health insurance coverage. The union asserts that this means the employer should pay 100% of health insurance premiums. The union's alternative argument is that the formula providing for a 10% increase in employer contributions over the previous year's rate should apply to 2005, that is, the employer should pay a 10% increase over the 2004 rates.

The employer's position is that it maintained the status quo when it continued to make its contributions based on the 2004 rates. It asserts that, during bargaining for the successor collective bargaining agreement, there was no agreement between the parties to apply the 10% formula beyond 2004. The employer further contends that application of the 10% formula in 2005 would have been a unilateral change, albeit to the union's benefit. The employer states that it declined to make the change.

Commission precedent supports the employer's position. In *City of Seattle*, Decision 651 (PECB, 1979), the parties were negotiating a successor agreement. During negotiations, the employer's health insurer notified the employer that its rates would increase. The employer paid the employees' increased health insurance premiums without negotiating over the change with the union. The union did not object. A few months later, the employer reversed its position and returned to its previous payment level. This resulted in higher insurance premiums for employees. The union filed an unfair labor practice complaint alleging that the employer had unilaterally changed the health benefits and failed to bargain the change. The Commission ruled in the union's favor.

first unilateral change when it paid the increased premiums without an agreement with the union. The Commission stated that the union waived objection to the initial alteration. The Commission found that the second un-bargained change occurred when the employer unilaterally retracted the increased payment. The union protested the second change. The employer's second change resulted in the Commission finding that the employer committed an unfair labor practice. The conclusions drawn from *Seattle* are: (1) an employer commits an unfair labor practice when it unilaterally *increases* its premium contributions; but (2) once it effects the increase, it may not lawfully renege on its decision.

Under Commission rulings interpreting RCW 41.56.123 and RCW 41.56.470, an employer is obligated to maintain the status quo, that is, the terms of the previous contract, while negotiating a successor agreement. If it changes the status quo, either to its benefit or the union's, it establishes a new status quo. The new status quo may not be reversed absent agreement between the parties. If no agreement exists, an employer who alters the new status quo does so at its peril. *See Snohomish County*, Decision 1868 (PECB, 1984); *Cowlitz County*, Decision 7007 (PECB, 2000). Both the *Snohomish County* and *Cowlitz County* decisions involved similar scenarios to that found in the *City of Seattle* decision. Both decisions echo *Seattle* in their findings.

In the present case, the status quo was the employer's health insurance contribution for 2004. The status quo was neither full maintenance of benefits, nor the employer's supposed contribution in 2005, based upon a hypothetical agreement for the continued use of the 10% formula.

The present case is distinguished from those situations where an employer agrees to pay a specific percentage of health insurance premiums, rather than a percentage of the increase of those premiums. Here, the employer had not agreed to full maintenance of insurance benefits since 1998, in contrast to agreements by other employers in *Val Vu Sewer District*, Decision 8963 (PECB, 2005), and *City of Anacortes*, Decision 9012 (PECB, 2005). In those cases, the employers had agreed to full maintenance of health insurance benefits. The status quo in those situations was continuation of the employer's 100% contributions during contract negotiations.

The employer in the present case only agreed to pay a set percentage of the increase in insurance rates. The parties had no agreement on insurance at the end of 2004. The employer declared its intention to not alter its health insurance contribution for 2005, without a successor agreement.

In its December 17, 2004, letter the union presented the employer with only a two alternatives: either pay full maintenance of benefits, or accept the union's proposed agreement to apply the 10% formula in 2005. The union's position implies that the employer had a duty to ensure that employee premiums would not dramatically increase in 2005. This theory is unfounded under Commission case law, as noted in *Seattle, Snohomish County,* and *Cowlitz County*.

The employer considered negotiations at an impasse, based upon the parties' agreement to that effect on December 14. The union's December 17 letter demanded, in effect, to reopen discussions on health insurance. However, the union only gave the employer the Hobson's choice of either paying a large increase or a smaller increase. The employer obviously declined the offer when it

health insurance. However, the union only gave the employer the Hobson's choice of either paying a large increase or a smaller increase. The employer obviously declined the offer when it continued its 2004 rates. The employer legitimately relied upon Commission precedent in making its decision at the end of 2004.

Past practice is not a valid consideration. The union further argues that the two previous contracts between the parties established a past practice of the employer following the 10% formula. The Commission considers past practice arguments when evaluating unfair labor practice complaints involving working conditions. The Commission has never considered wage and benefit formulas as evidence of past practice. This Examiner declines to do so now.

Article 11.1 does not obligate the employer to full maintenance of health insurance benefits. The union contends, in its December 17, 2004, letter that the status quo was full maintenance of benefits. This stance relies on the first sentence of Article 11.1, which states that the employer shall pay monthly amounts necessary to provide health insurance for employees and their dependants. At the hearing, the union argued this theory as an alternative to the now rejected 10% formula. Article 11.1 does not consist of stand-alone sentences. Its plain meaning is that the employer shall pay monthly health insurance benefits, with caps on the employer's exposure to premium increases.

Conclusion

The employer did not unilaterally alter the status quo when it maintained its contribution to employee health insurance premiums at the rates set in 2004. The parties held negotiation sessions

after the employer's written notice that it intended to maintain its health insurance contributions at the 2004 rates. The employer could reasonably rely on the union's agreement with the employer, reached on December 14, 2004, that the parties had negotiated to impasse. This included impasse on health insurance.

The union attempted to reopen negotiations on health insurance after impasse. However, the union declared that the status quo meant that the employer must increase its health contribution for 2005, by either a larger or smaller amount (100% of benefits, or benefits paid under the 10% formula). The employer opted to maintain its position that the status quo meant health contributions paid at the 2004 rates. The union did not offer a reasonable alternative to end the impasse earlier declared.

Issue 2: Did the employer derivatively interfere with employee rights?

The employer did not commit a derivative interference violation. Under RCW 41.56.140(1), parties may not interfere with employee collective bargaining rights through threat of reprisal, force, or promise of benefit associated with the employees' pursuit of rights under Chapter 41.56 RCW. *City of Omak*, Decision 5579-B (PECB,1997); *City of Tacoma*, Decision 8031-A (PECB, 2004).

Derivative interference results when a party commits a violation of the statute by unlawfully refusing to bargain, or by discriminating against an employee based upon the employee's assertion of collective bargaining rights. If the underlying charge is proven, the Commission will automatically find an interference violation, even if it is not specifically alleged in the complaint. *Yakima*

School District, Decision 8612 (EDUC, 2004); *Community College District 13*, Decision 9171 (PSRA, 2005). However, if the complainant fails to prove the first charge, the derivative interference claim also fails. *Yakima School District*; *Community College District 13*. In the present case, the union's failure to prove its underlying charge extinguishes the derivative interference claim.

FINDINGS OF FACT

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

2. The International Brotherhood of Teamsters, Local 763, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for certain police officers employed by the City of Mukilteo.

3. The employer and union were parties to a collective bargaining agreement that was in effect between January 1, 2002, and December 31, 2004.

4. Under the terms of that agreement, the employer was obligated to contribute certain monthly amounts to pay for health insurance for bargaining unit members and their dependants.

5. The agreement stated that in 2002, the employer would contribute no more than 11% over the health insurance rates set in 2001; that in 2003, it would pay no more than 10% over health insurance rates set in 2002; and that in 2004, it would pay no

more than 10% over health insurance rates set in 2003 (the 10% formula).

6. On November 29, 2004, the employer notified the union that in the absence of a successor agreement, the employer intended to apply the 2004 rates to its health insurance contributions in 2005.

7. The parties had bargaining sessions on December 1 and December 14, 2004. On December 14, the parties mutually agreed that they had reached an impasse in negotiations over a successor agreement, including impasse over health insurance.

8. On December 17, 2004, the union objected in writing to the employer's intention regarding health insurance, stated in the employer's letter of November 29, 2004. The union gave the employer only two options: pay full maintenance of benefits or adopt the 10% formula.

9. Beginning on December 20, 2004, and continuing through 2005, employer paid its health insurance contribution at 2004 levels.

10. After December 14, 2004, the parties did not meet again until a mediation session on March 7, 2005. The Commission certified the parties for interest arbitration on May 18, 2005.

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. Based upon the findings of fact 3-10, the employer maintained the status quo when it continued to pay health insurance benefits at the 2004 rates.

3. Based upon findings of fact 3-10, the employer had no duty to pay full maintenance of health insurance benefits in 2005, nor any duty to pay health insurance benefits in 2005 at a rate 10% above the 2004 levels.

4. Based upon findings of fact 3-10, the employer did not commit an unfair labor practice under RCW 41.56.140(4).

5. Based upon conclusion of law 4, the employer did not derivatively interfere with employee rights under RCW 41.56.140(1).

ORDER

Based upon the foregoing findings of fact and conclusions of law, the unfair labor practice complaint filed in case 19391-U-05-4923 is DISMISSED on the merits.

ISSUED at Olympia, Washington, this 4th day of October, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. MARTIN SMITH, 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.