

**Teamsters Local Union No. 763
And
City of Lynnwood
Fact Findings
Arbitrator: Phillip Kienast
Date Issued: 03/13/1978**

**Arbitrator: Kienast; Philip
Case #: 01291-F-77-00066
Employer: City of Lynnwood
Union: Teamsters; Local 763
Date Issued: 03/13/1978**

IN THE MATTER OF FACT FINDING

City of Lynnwood)	
)	
- and -)	Report and Recommendation
)	Pursuant to RCW 41.56
Teamsters Local Union No. 763)	(PERC Case No: 1291-F-77-66)
)	5 April 1978
_____)	

APPEARANCES

**For the Union:
Russ Christensen, Director, Law Enforcement Division of Local 763**

**For the City:
Cabot Dow Labor Relations Consultant to the City of Lynnwood**

REPORT AND RECOMMENDATION

Background

A hearing in the matter was held on March 15, 1978 at which time the Parties stipulated the issues to be resolved, the cities to be used for comparison purposes and several joint exhibits (see Appendix A) . At the hearing the parties also waived the use of a Panel for the proceeding and empowered the chairman to serve as the sole Fact Finder in the case.

With their two year labor contract due to expire on December 31, 1977, the parties began negotiations on a successor agreement in April of 1977. Out of seven formal negotiating sessions during the summer emerged a firm proposal by the City for a two year agreement. At the request of the City the Union negotiating committee took this proposal--without recommendation--to their members for a ratification vote in September. Upon rejection of that proposal by the members negotiations resumed with the assistance of a mediator from the Public Employment Relations Commission (PERC).

At a negotiating session on November 29 chaired by the mediator the Union and City negotiating committees agreed that an improved City two year proposal would be recommended by the Union negotiating committee to their members for acceptance in return for an assurance by the City that should it be rejected that the issue of retroactivity would not be contested by the City (J4, Appendix A) . However, the proposal was rejected and shortly thereafter the parties jointly requested PERC to initiate this fact finding proceeding.

City Position

The City contends the agreement arrived between the negotiating committees represents a fair resolution of the dispute. It argues that the parties before them essentially the same facts presented in this proceeding , that these facts were carefully examined and weighed in the course of negotiations, and that the resulting November two year proposal as recommended by the Union negotiating committee reflected good faith concession and compromise by both parties. It argues that no extenuating circumstances exist to justify a deviation from that proposed agreement in the recommendation of the fact finder.

Union Position

The Union does not contest that it did in fact come to agreement with the Cities in November and that the proposed two year agreement was recommended to the membership by the negotiating committee. However, it contends that the compromises embodied in the agreement were obviously unacceptable to the membership and, therefore, the fact finder should exercise independent judgement in making recommendations that would overcome the major objections leading to rejection of the proposed agreement.

Discussion

The crux of the instant case is how much deference is to be shown by the Fact Finder in his recommendations to the November agreement between the negotiating committees. Several reasons exist for showing it great deference and giving it controlling weight in the fact finder's deter-

mination.

First, it is axiomatic that the role of a neutral third party in proceedings like this is to attempt in his determinations to arrive at a conclusion that might well have been arrived at had the parties been able to conclude their negotiations. In this case the duly authorized representative of the parties in the November agreement give a clear indication of what they felt was a reasonable compromise on the range of issues being contended here. The record indicates the parties diligently negotiated from essentially the same extensive factual that is revealed in the record of this proceeding. Both negotiating committees were lead by experienced advocates who where well aware of what parties similarly situated have found reasonable to agree to on the disputed issues. On the basis of this information it was their best judgement that the November agreement was a reasonable one, albeit not a totally satisfying one for either side. Nothing in the record suggests either side was unaware of any relevant factor normally and traditionally weighed in negotiations before concluding the November pact, including. the sentiments and desires of the Union membership.

Second , future bargaining between the parties to this dispute--as well as other parties similarly situated under RCW 41.56--would be seriously handicapped if the fact finder were to alter the provisions of the November agreement in his recommendations . For , absent fraud , collusion or similar extenuating circumstances , if bargained agreements are altered in proceedings such as this simply because one side or the others constituency-be it the Union membership or the City Council-refuses to concur with the recommendation of its negotiating committee then the motivation of both parties in future negotiations to put forth their best offers in an effort to reach agreement during negotiations would be seriously undercut. Now the public policy of the state of Washington as embodied in RCW 41.56 is to promote, not retard, collective bargaining. As an agent of the State this fact finder is obligated to effectuate this policy.

Third, in cases similar to this one impasse panels have typically given controlling weight to negotiated settlements in their final determinations . For example, one such panel concluded:

An examination of the wealth of evidence submitted in this matter in conjunction with the provisions of settlement worked out by the parties indicates that the most satisfactory award which the Board could render would be one in general agreement with those on which the parties were able at one time to substantially agree . Obviously, these terms are not what either party wanted. They represent compromise by both parties. However, since the general terms indicate a meeting of the minds, the Board con-

siders that they hold the basis of a just award."¹

In the instant case the fact finder would ask the Lynnwood police officers represented by Local 763 to ask themselves how they would react if the sides were reversed. What would you feel if after your negotiating committee concluded an agreement that was acceptable to you the City Council rejected the settlement and a later decision of a fact finder or arbitrator "took away" some of the provisions granted in that agreement. This fact finder would venture to guess that your reaction would be one of righteous indignation.

During the pendency of this proceeding the fact finder has met with the parties and suggested alternatives that both might pursue in an attempt to settle this dispute short of the issuance of a formal recommendation. These alternatives would have preserved the spirit but altered the letter of the November agreement. The fact finder would once again commend these suggested alternatives to the parties . However, as a matter of formal recommendation he is constrained for the aforementioned reasons to find that the November agreement constitutes a fair one in light of all the factors set out for his consideration in PCW 41.56. Therefore, he recommends that the parties resolve their dispute on the basis of that agreement.

Philip Kienast
5 April 1978

Appendix A
IN
FACT-FINDING

CITY OF LYNNWOOD (Employer))	
)	
and)	
)	
TEAMSTERS LOCAL # 763 (Union))	STIPULATIONS OF THE
Representing Police Uniformed)	PARTIES
Personnel)	
_____)	

I. INTRODUCTION

The undersigned representatives of the Employer and Union met on March 6, 1978, and agreed to the following stipulations and

joint exhibits in preparation for the fact-finding hearing before Dr. Philip Kienast, Chairman of the Fact-finding panel, scheduled for 9:30 a.m., Wednesday, March 15, at the Lynnwood City Hall Council Chambers. The following has been addressed in accordance with the pre-hearing requests of the Chairman.

II. ISSUES

It is agreed that the issues before the fact-finding panel are as follows:

- A. Union membership**
- B. Training Under the Callback Article**
- C. Health and Welfare**
- D. Wages (including coordination of educational incentive pay and longevity pay)**
- E. Duration of the Agreement**
- F. Performance of Duty Article**

III. JOINT EXHIBITS

It is agreed that the following exhibits will be joint exhibits:

- | | |
|--------------------------|--|
| Joint Exhibit # 1 | 1976-77 Labor Agreement |
| # 2 | Agreement to Extend Time dated June 24, 1977 |
| Joint Exhibit # 3 | History of Negotiations and Chronology |
| # 4 | Guarantee of Retroactivity and Joint Agreement between Negotiating Committees of Employer and Union, dated November 29, 1977. |
| # 5 | Fact-finding request dated December 22, 1977. |
| # 6 | P.E.R.C. appointment of Chairman |

**Kienast to Fact-finding Panel,
dated January 23, 1978.**

- # 7 Joint Stipulation of Issues that
are unresolved
used for comparative purposes.**
- # 8 Joint Stipulation of Cities to be
used for comparative purposes.**
- # 9 Joint Stipulation of Issues between
the parties which have been resolved
short of fact-finding.**
- #10 Letter from Cabot Dow to Russ Chris-
tiansen confirming time and place
for hearing.**

IV. HISTORY OF NEGOTIATIONS

The history of negotiations is set forth and included in the parties' joint exhibit #3.

V. COMPARISON CITIES

The Union and Employer are willing to jointly stipulate that the cities of Auburn, Edmonds, Kent, Kirkland, Mercer Island, Mountlake Terrace, Redmond are the appropriate cities to be used for comparative purposes. Notwithstanding that both parties reserve the right to present evidence pertaining to Bellevue, Renton, Bothell, Puyallup and Olympia since agreement could not be reached on these cities.

VI. AGREEMENTS TO DATE

The parties have reached agreement on the following issues which shall be incorporated into the labor agreement as follows:

- A. Renumbering sections and calling them "Articles if in accordance with Employer's August 29th proposal to the Union.**
- B. Working out of class as agreed 7/26/77**

- C. Grievance procedure as agreed 7/26/77**
- D. Overtime as agreed**
- E. Holidays (10 designated holidays + the Employee's Birthday in lieu of the statutory floating holiday)**
- F. Sick Leave**
- G. Maintenance of Standards**
- H. Entire Agreement with mutual re-opener clause added**
- I. Drop War clause**
- J. Definitions**
- K. All other articles will remain (with the exception of numerical order) the same as in the 1976-77 labor agreement. The other articles are as follows:**

Bargaining' Unit

Payroll Deductions

Work week

Off Duty Time

Lunch Breaks

Vacations

Emergency Leave

Uniform Allowance

Management's Rights

Police Officers' Bill of Rights

Discrimination

Savings Clause

VII. SUMMARY OF PARTIES POSITION

In order to outline the positions of the parties before the Chairman of the Fact-finding Panel, a joint summary is provided and attached hereto as Appendix "A".

VIII. Single Fact Finder

Respectfully submitted,

Cabot Dow Russ Christensen
For the Employer For the Union

Dated this 13th day of March, 1978.