

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TEAMSTERS LOCAL 763,)	
)	No. 63108-0-1
Respondent,)	
v.)	DIVISION ONE
)	
PUBLIC EMPLOYMENT RELATIONS)	UNPUBLISHED OPINION
COMMISSION,)	
)	
Defendant,)	
)	
CITY OF MUKILTEO,)	
)	FILED: November 8, 2010
Appellant.)	

Grosse, J. — Once a collective bargaining agreement expires, an employer is required to maintain the terms and conditions of employment that existed while negotiating a subsequent agreement. Health insurance benefits are mandatory subjects included in collective bargaining. Here, the employer continued to pay the same amount it paid for health benefits that it had paid under the expired collective bargaining agreement, thus maintaining the status quo of the parties. The fact that the health insurance premiums subsequently increased did not require the employer to pay an additional percentage amount of the increase when it had not bargained to do so. We find there was no unfair labor practice and reverse the superior court.

FACTS

Teamsters Local 763 (Union) represents a bargaining unit comprised of 22 law enforcement officers employed by the city of Mukilteo (City).¹ A dispute arose while the parties were still subject to a collective bargaining agreement (CBA) in effect from January 1, 2002 through December 31, 2004. Article 11.1 of that agreement provided:

Health Insurance – The Employer shall pay each month on behalf of each regular full-time employee those amounts necessary to provide medical, dental and vision coverage for such employee and his/her eligible dependents. The City's Health Insurance contribution increases shall be limited to a maximum increase of 11.0% above 2001 rates in 2002, 10% above 2002 rates in 2003 and 10% above 2003 rates in 2004. Any increases that exceed these amounts in 2002, 2003 and 2004 shall be paid by the employee via payroll deduction.

On November 29, 2004, the City's manager, Richard Leahy, notified the Union that it intended to apply the 2004 rates to its health insurance contributions in 2005 if an agreement was not reached. The Union and City bargained on December 1 and 14, 2004. On December 14, the parties agreed that they were at an impasse in their negotiations for a new collective bargaining agreement.

On December 17, the Union objected in writing to the City's plan to maintain the 2004 rate for its health insurance contributions. The Union demanded that the City either pay all future health costs in full or adopt the 10

¹ The Union also represents two other City bargaining units: Public Works and Office-Technical.

percent formula used in 2004 to the 2005 rates. The Union filed a grievance and demanded bargaining on the issue. When the City began to deduct additional money from its employees' paychecks on December 20 to cover the increased 2005 costs, the Union filed a complaint with the Public Employment Relations Commission (PERC).

A hearing was held before a PERC examiner on December 8, 2005. On October 4, 2006, the examiner issued a decision finding that the City did not commit an unfair labor practice because it maintained the status quo when it continued to contribute to the health insurance premiums at the 2004 rate. The hearing examiner concluded that the City had neither a duty to pay the full amount of health insurance costs in 2005, nor a duty to pay health insurance premiums at a rate 10 percent above the 2004 levels.

The Union filed an appeal to the commission, which upheld the hearing examiner's findings and conclusions that there was no unfair labor practice.

The Union appealed to the King County Superior Court, which reversed the PERC holding in February 2009. The City appeals the superior court's ruling.

ANALYSIS

Subsequent information provided by the parties revealed that in January 2007, at the same time the Union negotiated its first CBA since the impasse, the Union and City signed a letter of understanding that provided for a lump sum payment to reimburse the police officers for the increased medical insurance

premiums paid from December 2004 through November 2006. This occurred despite previous adverse rulings against the Union in which the hearing examiner and PERC found that the City was only required to make the same contribution toward its employees' medical premiums as it did in 2004, when the contract expired. Thus, any meaningful relief has already been bargained for by the employees. Ordinarily this would render the matter moot, but because the issue involves an unfair labor practice we are constrained to find that the matter is not moot. See Green River Comm'ty College, Dist. No. 10 v. Higher Educ. Personnel Bd., 107 Wn.2d 427, 730 P.2d 653 (1986). Green River involved an appeal from the Higher Education Personnel Board's finding that an unfair labor practice was committed when a community college refused to bargain in good faith over release time. Our Supreme Court held that "an unfair labor practice appeal is not rendered moot by the passage of time or the subsequent compliance of the employer."²

This court reviews the decision of the administrative agency, not that of the hearing examiner or the superior court.³ Appellate review in an unfair labor practice claim is governed by the Administrative Procedure Act, chapter 34.05 RCW.⁴ Relief may be granted when the PERC order is based on an erroneous interpretation of the law, is unsupported by substantial evidence, or is arbitrary and capricious. RCW 34.05.570(3). The party challenging the agency action

² Green River, 107 Wn.2d at 432.

³ International Ass'n of Firefighters, Local No. 469 v. Public Emp't Comm'n of State of Wash., 38 Wn. App. 572, 575, 686 P.2d 1122 (1984).

⁴ Pasco Police Officers' Ass'n v. City of Pasco, 132 Wn.2d 450, 458, 938 P.2d 827 (1997).

has the burden of demonstrating the invalidity of that action. RCW 34.05.570(1)(a). PERC's interpretation of the collective bargaining statute is entitled to be given great weight and substantial deference.⁵ The threshold question is whether the City's contribution of health benefits at the same level as before the collective bargaining agreement expired is the status quo. If so, then no unfair labor practice occurred.

Under the Public Employees' Collective Bargaining Act, chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). It is an unfair labor practice for a public employer to refuse to engage in collective bargaining. RCW 41.56.140(4). Wages, hours and other terms and conditions of employment are mandatory subjects which must be included in collective bargaining.⁶ Health insurance benefits are one such mandatory subject.

If the parties are not able to agree on the terms of a mandatory subject they are said to have reached an impasse. When a CBA expires, an employer is required to maintain the terms and conditions of employment that existed when the agreement expired, while the parties continue to negotiate a new collective bargaining agreement.

The Union presents inconsistent arguments. It argues that the clause requires the employer to pay 100 percent of the employees' benefits. At the same time, it interprets the 10 percent limit on increased insurance contributions

⁵ Pasco Police, 132 Wn.2d at 458.

⁶ Pasco Police, 132 Wn.2d at 460 (internal quotation marks omitted).

from 2003 to be a cap on that 100 percent. But to preserve the status quo, the working relationship must continue as if the expired contract were still in effect. The expired contract provided that in 2004, the employer must pay a certain amount. The evidence presented indicated that in 2004, the City paid \$757.76, while the employees each paid \$73.57. In 2005, the City paid \$757.76, while the employees each paid \$136.14. The increased payment by the employee represents the 9.5 percent increase in the cost of health care benefits. This was the status quo ante the expiration of the collective bargaining agreement.

Status quo ante is “the state of affairs at a previous time.”⁷ Thus, during negotiations for a new collective bargaining agreement following the expiration of an existing CBA, the employer must maintain the terms and conditions of employment that existed when the agreement expired. The City found the status quo to be the dollar amount it paid in 2004.

An examination of the clause at issue necessitates finding that the employer’s position is correct. The clause must be read in its entirety. Under “the objective manifestation theory of contracts,” Washington courts “determine the parties’ intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties.”⁸ PERC followed this approach in its interpretation of Article XI of the CBA. As PERC noted, the CBA required that during the first year of the contract, the City would pay the entire amount necessary for employee health benefits. After that first year,

⁷ Bryan A. Garner, *A Dictionary of Modern American Usage* 620 (1998).

⁸ Hearst Commc’ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

however, the City's contribution level was ascertained by using a formula capped at a certain amount with the employees being required to cover any additional costs for those health benefits. As PERC noted, the key part of the formula is that the contractual language used tied "the percentage based increase to a specific rate paid in a specific time period." The only "fixed" amount was the employer's contribution.

The Union argues that PERC failed to follow its own precedent when it interpreted the language at issue. But this is not the case. PERC specifically addressed the two decisions the Union primary relies on—City of Anacortes⁹ and Val Vu Sewer District.¹⁰ In City of Anacortes, the agreement contained a clause in which the employer agreed to pay 100 percent of the health insurance premiums. The status quo in that case, was the employer's paying 100 percent. In Val Vu Sewer District, the parties were negotiating their first collective bargaining agreement. Prior to representation, the employer paid 100 percent of the employees' health benefit premiums. Once a union has been certified as the collective bargaining agent, the parties must maintain the status quo. The employer informed the union that it would only pay the same dollar amount it had paid before the union's certification as the employees' collective bargaining agent. Due to increased costs, this amount would be less than 100 percent of the costs of the benefits. In both City of Anacortes and Val Vu Sewer District,

⁹ City of Anacortes, Decision 9004 (PECB, 2005); City of Anacortes, Decision 9004-A, 9012-A (PECB, 2007).

¹⁰ Val Vu Sewer Dist., Decision 8963 (PECB, 2005) (2005 WL 1609708); City of Mukilteo, Decision 9452-A (PECB, 2008) (2008 WL 2002004).

the status quo was the employer paying 100 percent of the costs of the health benefits. There, the contractual provisions were seen to be dynamic.

PERC found the provision in this case to be more akin to a fixed health insurance contribution provision like that found in Snohomish County.¹¹ PERC noted that contractual language used capped the employer's health insurance contributions to a specific amount. When the contract expired, that amount was found to apply and any additional costs had to be borne by the employees. Here, the employer agreed to contribute only a set percentage of the increase in the cost of insurance rates over the 2003 level. The employer's payment is temporal, fixed.

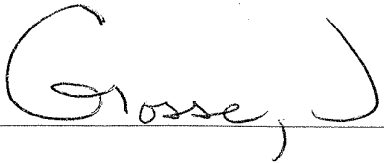
The Union also argues that a 10 percent increase in the employer's contribution in 2005 would have been consistent with previous CBAs and thus, in effect, it amounted to a past practice. But PERC defines a past practice as a "course of dealing acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous."¹² Clearly, the amount an employer contributes to health care is something that is bargained for. The amount of the City's contribution cannot be considered superfluous. The test for determining whether a specific practice is sufficiently established should, like the contract, be objective. The focus is whether the status quo would have been clearly apparent to an objectively reasonable employer at the time in question. To

¹¹ Snohomish County, Decision 9834-B (PECB, 2008).

¹² Whatcom County, Decision 7288-A (PECB, 2002).

require the City to pay increased premiums beyond the specified years contained in the expired contract changes the existing relationship in the context of the terms and conditions that are subject to the bargaining process.

We conclude that PERC properly interpreted the contract. Accordingly, we reverse the superior court, and affirm PERC's decision that there was no unfair labor practice.



WE CONCUR:

