

**[08-08-03] City of Madras, Complainant v. Madras Police Employees' Association, Respondent / Ruling on Reconsideration of Order on Remedy / Case No. UP-63-02**

On April 1, 2003, this Board issued an Order which concluded that both parties violated their duty to bargain in good faith under the Public Employee Collective Bargaining Act (PECBA). We found that the City committed a violation when it submitted a new proposal in its last best offer (LBO). We found that the Association committed a violation because, under the totality of the circumstances, it failed to make a genuine attempt to reach agreement with the City on wages. At the request of both parties, we deferred issuance of a remedial order until 30 days after the issuance of the interest arbitration award that was pending at the time of our decision.

On April 8, 2003, the Association filed motions to reopen the record and for reconsideration. On April 16, 2003, we denied both motions.

On May 27, 2003, this Board issued its Order on Remedy. The interest arbitrator had awarded the City's LBO. We vacated the award because it included a proposal (the City's 15-step compensation plan) that had not been the subject of good-faith bargaining. In addition, we recognized the need for the parties to complete the entire statutory bargaining process in good faith. The process broke down on both sides when they submitted their LBOs. We therefore returned the parties to their positions just prior to the submission of their unlawful LBOs, and we ordered the parties to submit LBOs that are consistent with the positions they took throughout the statutory process.

The Association filed a motion on June 9, 2003 seeking reconsideration of the Order on Remedy.<sup>(1)</sup> A number of the Association's arguments, however, do not address the remedy issue. They instead challenge the underlying determination that the Association failed to bargain in good faith concerning wages.<sup>(2)</sup> The Order and the Order on Reconsideration rejected these same arguments. We decline to reconsider these issues.

We write to clarify several points. First, the Association purports to be confused about what wage proposal it can take into the new interest arbitration.

Our Order on Remedy states in pertinent part:

"The parties shall submit LBOs to the arbitrator that are consistent with their conduct throughout 2002 negotiations and mediation, and consistent with their final offers submitted to the State Conciliator." 20 PECBR at 336.

The Association expresses its desire to submit a wage proposal in its LBO that is the same as or similar to the one we found unlawful. We found it unlawful because it was inconsistent with the wage proposals the Association submitted in the statutory process leading up to the LBO. Re-submission of the same proposal or a similar one would not comply with our Order on Remedy.<sup>(3)</sup>

The Association next argues that requiring its LBO to be consistent with its conduct throughout the bargaining process does not adequately consider the statute that permits the parties to change their LBOs. ORS 243.746(3) states in pertinent part:

"\* \* \* Not less than 14 calendar days prior to the [interest arbitration] hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects, and neither party may change the last best offer package unless pursuant to stipulation of the parties or as otherwise provided in this subsection. \* \* \* If either party provides notice of a change in its position within 24 hours of the 14-day deadline, the other party will be allowed an additional 24 hours to modify its position. \* \* \*"

Inherent in the Association's argument is the notion that the statute permits the parties to "change" or "modify" an LBO in any way they see fit. We do not read the statute so expansively.

To interpret the statute, we follow the familiar three-step analysis described in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-612, 859 P2d 1143 (1993). The first step is to examine the text and context of the statute. If that examination reveals a clear legislative intent, then no further inquiry is necessary. *Id.* at 610-611.

The text of the statute is silent on what the parties can include in their changed or modified LBO. We therefore consider the context. Context includes other provisions of the same or related statutes. *Jones v. General Motors Corp.*, 325 Or 404, 411, 939 P2d 608 (1997).

LBOs are part of the PECBA bargaining process. Under the PECBA, all bargaining proposals are subject to the parties' obligation to bargain in good faith. ORS 243.672(1)(e) and (2)(b). LBOs and any subsequent change to or modification of an LBO are types of bargaining proposals. They must therefore meet the standard of good faith bargaining. So, for example, a party could not lawfully include a proposal on a prohibited subject of bargaining in its initial or "changed" LBO.

This case presents another example. We found the City guilty of bad-faith bargaining because its LBO included a 15-step compensation proposal that was not previously bargained and which did not logically evolve from its prior proposals. (4) The City's conduct would have been similarly unlawful if, instead of submitting the proposal in its LBO, it had submitted the same proposal 24 hours later in the guise of a "change" to its LBO under ORS 243.746(3). In the context of the PECBA, the pertinent question is not *when* the party submits the proposal, but whether the proposal comports with its obligation to bargain in good faith. Because the meaning of ORS 243.746(3) is clear in context, we need not pursue the second and third steps of the *PGE* analysis.

We apply that standard here. We previously found the Association guilty of bad faith bargaining based on the wage proposal in its LBO. We find nothing in ORS 243.746(3) that would allow the Association to re-submit the same proposal or one similar to it, either as part of its LBO or as a "change" to its LBO.

## RULINGS

Respondent's motion for reconsideration is granted. We adhere to our prior decisions in this matter, as clarified.

DATED this 8th day of August 2003.

\*Chair Thomas concurs with this Order but was absent on the date of signing.

1. The Association filed a petition for judicial review in the Oregon Court of Appeals on July 28, 2003, prior to expiration of the 60 days the statute allows us to decide this motion. ORS 183.482(1). We notified the parties that we believed the appeal deprived us of continuing jurisdiction over this matter and that we would not proceed unless jurisdiction was restored. The Association then moved to withdraw its appeal, and the Court of Appeals dismissed the Association's petition on August 7, 2003.
2. In one form or another, these arguments all concern the Association's assertion that we failed to properly acknowledge the wage concept the Association "floated" in mediation but refused to put in writing.
3. In addition, we would likely consider such conduct knowing and repetitive, and therefore subject to a civil penalty and an award of full attorney fees against the Association. ORS 243.676(4)(a); Board Rule 115-35-055(1)(a).
4. *See ATU, Division 757 v. Rogue Valley Transportation District*, Case No. UP-80-95, 16 PECBR 559, 581-583 (1996); *Roseburg Education Association v. Roseburg School District*, Case No. UP-26-85, 8 PECBR 7938, 7956 (1985).