EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-027-14

(UNFAIR LABOR PRACTICE)

JACKSON COUNTY,	)	
	)	
Complainant,	)	
	)	RULINGS,
v.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
SEIU LOCAL 503, OPEU/JACKSON	)	AND ORDER
COUNTY EMPLOYEES ASSOCIATION,	)	
	)	
Respondent.	)	
	)	

On July 9, 2015, the Board heard oral argument on Complainant's objections to a recommended order issued by Administrative Law Judge (ALJ) Martin Kehoe on May 22, 2015, after a hearing held before ALJ B. Carlton Grew on February 20, 2015, in Medford, Oregon.[1] The record closed on March 31, 2015, upon receipt of the parties' post-hearing briefs.

Brett A. Baumann, Attorney for Jackson County, Office of the Jackson County Counsel, Medford, Oregon, represented Complainant.

Marc A. Stefan, Supervising Attorney, SEIU Local 503, Salem, Oregon, represented Respondent.

On July 21, 2014, Jackson County (County) filed an unfair labor practice complaint against SEIU Local 503, OPEU/Jackson County Employees Association (Union) alleging that the Union failed to bargain in good faith in violation of ORS 243.672(2)(b). The Union did not file an answer.

The issues are:

1. Did the Union:

   (a) refuse to provide information requested by the County in a timely manner, refuse to provide information at all, condition providing the information on the County's

[1]The matter was transferred to ALJ Kehoe in a periodic reassignment of cases.

use of that information, or condition providing the information on the County's submission of an initial proposal?

(b) fail to respond to the County's proposal, provide the County with any proposals, or otherwise bargain with the County?

2. If so, did the Union violate ORS 243.672(2)(b)?

As set forth below, we conclude that the Union did not violate ORS 243.672(2)(b).

RULINGS

1. The Union did not file an answer. Pursuant to OAR 115-035-0035(5) and OAR 115-035-0042(9), ALJ Grew precluded the Union from providing evidence at the hearing and restricted the Union to making legal arguments. He also barred the Union from cross-examining the County's witnesses or presenting its own. The Union did not dispute the ruling. The ALJ's ruling was correct.

2. All other rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. The County is a public employer within the meaning of ORS 243.650(20). The Union is a labor organization within the meaning of ORS 243.650(13).

2. The County and the Union are parties to a collective bargaining agreement (CBA) that is effective from July 1, 2013 to June 30, 2016. In relevant part, Article 16, Section 3(b) provides,

> "On or before February 1, 2014, the parties agree that either the County or the Union may submit a written notification to the other party for the purpose of opening negotiations between the parties on the provision of a health insurance program for eligible bargaining unit employees to be effective on August 1, 2014. The parties agree that the only topics that may [be] bargained as part of these negotiations is the provision of a health insurance program for eligible bargaining unit employees through a fully self-insured plan or a high deductible/deductible reimbursement plan and a separate health insurance plan for eligible part[-]time bargaining unit employees."

3. Article 16, Section 3(b)(1) of the CBA further provides,

> "If the parties open negotiations pursuant to this paragraph and the negotiations do not result in an agreement between the County and the Union for the provision of a health insurance program for eligible bargaining unit employees through a fully self-insured plan or a high deductible/deductible reimbursement plan, then effective August 1, 2014, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand three hundred thirty five

dollars ($1,335.00) per month for each eligible bargaining unit employee toward current premium costs."

4. In January 2014, the Union gave the County written notification of its intent to open negotiations in accordance with the reopener clause. At the time, the County provided the Union a monthly fixed dollar amount for each bargaining unit member, and the Union used those funds to purchase coverage from a health insurance provider of the Union's choosing. Most recently, the Union had used a provider named PacificSource. That particular coverage was set to expire on July 31, 2014. The County's unrepresented managerial employees have historically been covered by a separate County-managed self-insured plan handled by Regence BlueCross.

5. On March 6, 2014, the Union's chief bargaining spokesperson, Laure Stockton, sent the County's chief bargaining spokesperson, Joel Benton, an e-mail directing the County to have the County's consultants contact the Union's broker, Jeffrey Jones, regarding "any information [that the County] would like to see in preparation for the upcoming re-opener." Stockton's e-mail also noted that the Union had advised Jones to be prompt in the delivery of requested information to ensure that there were no delays going forward.

6. In an April 16, 2014, e-mail, Benton gave Stockton the County's response to an earlier information request. On April 17, 2014, Stockton asked Benton for an initial proposal from the County. Benton replied that the County was still "finalizing" and asked Stockton when she thought that the Union would have a proposal. On April 18, 2014, Stockton wrote that the Union would "be looking at several avenues so it might take a little longer on [the Union's] end."

7. In a May 2, 2014, e-mail to Benton, Stockton indicated that the Union hoped that the bargaining unit members could join the managers' plan and requested an assortment of information related to that plan. She also asked when the Union would receive the County's proposals, provided a projected timeline, and noted that PacificSource had promised to have a renewal quote by May 12, 2014.

8. Renewal quotes contain a variety of health insurance information including an estimate of how much it will cost to renew an expiring plan. Brokers need that renewal information to confirm risk and formulate accurate bids for their customers. Renewal quotes are typically available 90 days before a plan expires, and are sometimes available 120 days beforehand.

9. In a May 6, 2014, e-mail, Jones asked the County's broker, Douglas DeAngelis, when the County would provide the Union with a proposal for a self-insured option. DeAngelis responded that, in order for the County to generate that proposal, the County needed a renewal quote and other information from PacificSource. Jones then replied that the Union had not given him the authority to release the requested quote, and that he was still waiting for some final renewal numbers that would take into account the bargaining unit members' "April experience." In response, DeAngelis told Jones that the renewal information would be necessary "at some point," but admitted that they could "cross that bridge" later. DeAngelis also shared Jones's reply with Benton.

10. In a May 7, 2014, e-mail to Stockton, Benton noted Jones's purported lack of authority, claimed that the requested renewal quote was "within the scope of material which the

County is entitled to request as part of negotiations," and repeated the County's prior request. Stockton responded that the Union would have the quote from PacificSource at a time "close to June or the beginning of it." Stockton also wrote that she would make sure that Jones knew that Benton was expecting it when it became available. A few hours later, Stockton informed Benton that the Union actually hoped to have the quote in a couple of weeks.

11. On May 14, 2014, Stockton sent Benton an e-mail asking if the County's self-insurance proposal was ready. The e-mail also sought to "verify what changes would be coming up on that plan," as the County's renewal was "coming up soon." Benton answered that the County was still waiting for the Union's renewal quote, which, according to Benton, the County needed to finalize its proposal. In addition, Benton asked if PacificSource had provided the Union with the renewal quote yet, and explained that the County was not interested in bargaining the managers' plan and had not made a final decision as to what, if any, changes would be made to the managers' benefit levels for the next year. Later that day, Stockton asked Benton what a PacificSource renewal quote had to do with adding the bargaining unit members to the managers' plan, clarified that the Union wanted to compare the managers' plan with its own, and confirmed that she had not seen the renewal quote yet.

12. In a May 15, 2014, e-mail, Stockton told Benton that she believed that the Union had provided the County or its broker everything that had been asked for, except for the requested renewal quote. She also proposed having the bargaining unit members join the managers' plan, and suggested that the County offer a self-insured proposal that was 12 to 14 percent lower than the Union's renewal quote. Stockton then went on to explain that the Union was reluctant to provide the requested quote first because it feared that the County would use the quote "to shadow price [the Union's] current renewal."

13. In a follow-up e-mail, Benton countered that the County's right to the requested documents trumped the Union's concerns, and argued that refusing to provide the documents was not bargaining in good faith and was an unfair labor practice. Stockton, in turn, responded that the Union did not think that the County needed the renewal quote before giving the Union a proposal. She also clarified that Jones was "continuing to work on the renewal issue" and that the Union was not refusing to give the County the requested quote.

14. Next, Benton charged that Stockton was conditioning providing the requested information on the County providing a proposal and argued that that was an additional bad faith bargaining practice. He also asked for the Union to "provide any and all renewal quotes, be they designated draft, initial, revised, final or otherwise." Stockton then denied that she was putting a condition on the County's proposal, explained that she was merely sharing the Union's concerns, repeated the Union's request for a proposal from the County, and reassured Benton that the Union would provide the requested quote.

15. In a subsequent May 15, 2014, e-mail, Benton asked Stockton why the managers' plan was such a big issue for the Union, indicated that he was not sure that the County would be agreeable to the Union's ("abundantly clear") proposal that bargaining unit members join the managers' plan, and suggested that the Union could instead use a separate self-insured plan.

16. In a May 18, 2014, e-mail, Stockton informed Benton that she did not have the renewal quote, that she would be out of the office for a week, and that she would be in contact with Benton when she returned.

17. On May 28, 2014, Benton wrote to Stockton that he was fairly certain that the Union had the quote and the other information that the County had requested, and warned that, without the data, bargaining would be very difficult. He also cautioned that, if he did not get the information by the next day, the County would have to consider other options to get the Union to comply with its legal obligation to bargain in good faith.

18. In a June 2, 2014, e-mail to Stockton, Benton alleged that Jones had confirmed that Stockton had the renewal quote. The e-mail also asserted that the Union's delay and refusal to provide the quote was a violation of the Public Employee Collective Bargaining Act and warned that the County would be filing an unfair labor practice complaint against the Union if Benton was not provided with the renewal quote by the next day.

19. On June 3, 2014, Stockton indicated to Benton that she had received the renewal quote the day before while she was out of town, expressed that her plan was to send the quote to Benton after attending a meeting, and asked when the County would send its proposal. A few hours later, Stockton e-mailed the quote to Benton, who then forwarded it to DeAngelis. The renewal quote included a 22.1 percent increase in costs over the Union's existing plan.

20. When DeAngelis received the quote, he provided it to Regence BlueCross and later submitted a bid to the County. Subsequently, Benton presented a health insurance proposal to Stockton on June 13, 2014. The County's proposed plan, which was based on the benefit levels contemplated by the Union's renewal quote, provided new benefit levels that were "substantially similar" to those of the bargaining unit members' existing plan but included "high premium increases."

21. In a July 2, 2014, e-mail, Benton asked Stockton for a status update regarding the Union's consideration of the County's proposal, noted that it had been almost three weeks since Benton sent Stockton the County's offer, and cautioned that transitioning from providing lump sum payments to a self-insured plan would take time to implement.

22. On July 7, 2014, Benton was contacted by Ashlei Richmond of the County's human resources department about implementing a new PacificSource plan that the Union had purchased for the bargaining unit members. Richmond had learned of the Union's new plan through an e-mail from Jones's assistant, Linn Eagan.

23. The same day, Benton sent an e-mail to Stockton informing her that he still had not received a response from the Union. Shortly after receiving that e-mail, Stockton rejected the County's offer, wrote that self-insuring was too costly for the Union, and confirmed that the Union had renewed its coverage with PacificSource. Purportedly, in order to make it affordable, the Union's new plan had markedly different benefit levels than those of the Union's existing plan. In reply, Benton asked Stockton why the County was not given a quote that reflected the changed benefit levels.

24. In a July 8, 2014, e-mail to Benton, Stockton explained that renewal quotes always reflected a plan's current benefits, and that she had not been aware that the County was interested in considering anything other than what the County had already proposed. Later, Benton responded, alleging that the Union had not merely misunderstood the County but instead had completely failed to bargain in good faith.

25. In a July 9, 2014, e-mail to Benton, Stockton apologized and explained that she had intended to inform him of the Union's intentions earlier, but had been out sick the week before and "was dealing with the death of a dear friend." She also claimed that Jones had been reassured that DeAngelis was not missing anything.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.

2. The Union did not violate ORS 243.672(2)(b).

Legal Standards

The County alleges that the Union violated ORS 243.672(2)(b), which makes it an unfair labor practice for a labor organization or its designated representative to refuse to bargain collectively in good faith with a public employer. In assessing whether a party has refused to collectively bargain in good faith, we generally examine "the totality of the bargaining conduct" to determine whether the party demonstrated a willingness to reach an agreement that is the result of good faith negotiations. *Tri-County Metropolitan Transportation District of Oregon v. Amalgamated Transit Union, Division 757*, Case No. UP-001-13, 26 PECBR 322, 342 (2014). In reviewing the totality of the circumstances involved, we often consider whether dilatory tactics were used, the contents of proposals, the behavior of a party's negotiator, the nature and number of concessions made, failure to explain a bargaining proposal, the course of negotiations, and other relevant factors. *Id.* at 343.

A party is also obligated to provide a timely response to a request from the other for information relevant to the collective bargaining process. *Amalgamated Transit Union, Division 757 v. Tri-County Metropolitan Transportation District*, Case No. UP-56-09, 25 PECBR 152, 164 (2012). If a party does not already possess the requested information, it is generally required to make reasonable, good faith efforts to acquire the information. *Multnomah County Sheriff's Office v. Multnomah County Corrections Officers Association*, Case No. UP-5-94, 15 PECBR 448, 472 (1994).

DISCUSSION

We first address the alleged failure to provide information. There is no dispute over any of the factors that we usually consider in deciding these cases, such as the reason for the request, the ease of producing the data, the kind of information requested and the history of labor-management relations. *See Oregon School Education Association, Chapter 68 v. Colton School District 53*, Case No. C-124-81, 6 PECBR 5027, 5031-32 (1982). Rather, the sole issue is whether the Union failed to timely provide the requested renewal quote information. We hold that it did not.

The record before us establishes that the County made its initial request for the renewal quote on May 6, 2014, and that the Union provided the requested information on June 3, 2014. Although approximately one month elapsed between the County's request and the Union's compliance, the evidence establishes that the Union did not *have* the renewal quote information until June 2.

It is axiomatic that the Union cannot provide information that it does not have. The Union told the County, the day after the County's request, that the renewal quote information would be available "close to June or the beginning of it." And in fact, the renewal quote information was received by Stockton on June 2, and turned over to the County on June 3. The Union was not untimely in its delivery of information.

The County also asserts that the Union deliberately delayed providing its renewal quote and actively blocked Jones from doing so, but those assertions are largely speculative and against the weight of the evidence. The mere fact that the Union's timing does not neatly align with DeAngelis's assertion that a renewal quote is typically available 90 days before a plan expires, although notable, does not, in and of itself, establish bad faith. The County could arguably rely on the May 6, 2014, e-mail in which Jones indicated that the Union had not given him the authority to release the requested quote. However, that statement cannot be read in isolation, and the same e-mail later clarifies that Jones had not yet completed the quote, as he was still waiting to take into account the bargaining unit members' April experience−an action that DeAngelis's testimony suggests was a "very common strategy" in the industry.

Because the Union furnished a renewal quote and other information upon request, we do not hold that the Union failed to provide information "at all," and we dismiss that allegation. To the extent that the County also alleges that the Union failed to provide other renewal quotes as requested, the evidence presented fails to show that such documents existed. Accordingly, we dismiss that allegation as well.

We turn to the County's assertion that the Union unlawfully "conditioned" bargaining by suggesting that it would provide the County with renewal quote information if the County conceded to submitting a proposal that was 12 to 15 percent below the Union's renewal quote information. *See, e.g.*, *Oregon School Employees Association v. Medford School District #549C*, Case No. UP-77-11, 25 PECBR 506, 518 (2013) (a party may not condition its participation in bargaining on the other party making a concession). As stated above, however, the renewal quote information was provided to the County once the Union received it, which was before the County submitted its initial proposal. Although the Union expressed reluctance about turning over some information and voiced concerns about how that information might be used, the overall record indicates that the Union shared the quote shortly after receiving it and repeatedly expressed a general willingness to comply with the County's requests. Accordingly, we conclude that the Union did not truly put unlawful conditions on providing the information requested by the County.

We next address the County's claim that the Union "never responded" to the County's proposal. The County's exhibits and Benton's testimony readily demonstrate that the Union unambiguously rejected the County's proposal. A rejection is plainly a response, and as a general proposition, no party is obligated to agree to a particular proposal during negotiations. ORS 243.650(4). That is particularly true when parties engage in one-issue bargaining or are

bargaining under a limited reopener, as they were here. *Oregon School Employees Association v. Clatskanie School District*, Case No. UP-9-04, 21 PECBR 599, 614-15 (2007).

The County also claims that the Union made no proposals, but it is evident that the Union repeatedly proposed having the bargaining unit members join the managers' plan–a proposal that one of Benton's May 15, 2014, e-mails describes as "abundantly clear"–and urged the County to offer a self-insured proposal that was 12 to 14 percent lower than the Union's renewal quote. Although those proposals were not particularly developed or collaborative, they at least established a general framework for subsequent negotiations and signaled an intent to bargain.

To be certain, not all of the Union's actions were consistent with a willingness to reach an agreement. We are particularly troubled by the fact that, in essence, the Union unilaterally concluded the bargaining process without notifying the County in advance. According to DeAngelis, had the Union worked with the County on benefit levels, the County could have revised its proposal within a day or two. It is also significant that, despite the approaching expiration date, the Union waited approximately three weeks to overtly reject the County's purportedly "lowball" proposal, and only did so after it had already renewed with PacificSource while away from the bargaining table.

Both of those actions had a clear negative effect on negotiations, but do not establish that the totality of the Union's conduct constituted bad faith bargaining. The Union was not simply going through the motions of bargaining with no intent of reaching an agreement. *See Lane Unified Bargaining Council v. McKenzie School District #68*, Case No UP-14-85, 8 PECBR 8160, 8196 (1985). The Union's interest was in being placed in the managers' insurance plan. After the Union's proposal was rejected, and the County proposed a plan that greatly increased costs for the bargaining unit members, the Union turned to another avenue to resolve the insurance issue. This avenue was contemplated by the parties' CBA, which set a finite period for bargaining, anticipated that the parties would not reach an agreement, designated what would happen if that occurred, and expressly provided for a subsequent reopener period in 2015. Although the parties certainly did not model good bargaining practice, the Union did not fail to bargain in good faith. The complaint will be dismissed.

ORDER

The complaint is dismissed.

DATED this 11 day of August 2015.

Kathryn A. Logan, Chair

Jason M. Weyand, Member

Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482