STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	)	CASE NO. 4227-U-82-673 DECISION NO. 2079 - PECB FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER

Hafer, Cassidy and Price by John Burns, Attorney at Law, appeared on behalf of the complainant.

Perkins, Coie, Stone, Olsen and Williams by Lawrence B. Hannah, Attorney at Law, and Russell L. Perishio, Attorney at Law, appeared on behalf of the respondent.

On September 15, 1982, the International Union of Operating Engineers, Local 609, (IUOE) filed a complaint with the Public Employment Relations Commission (PERC) charging unfair labor practices against the Seattle School District, and at the same time filed a motion requesting temporary relief. The motion was denied since the provision for temporary relief found in WAC 391-45-430 is inapplicable to complaints filed under Chapter 41.56 RCW. RCW 41.56.490 limits the authority of the Commission to seeking relief from the courts only after the issuance of the Commission's findings of fact, conclusions of law and order. A first amended complaint was filed September 16, 1982; followed by a second amendment, October 1, 1982; a third amendment, November 22, 1982; a fourth amendment, February 28, 1983; and another "fourth" amendment, June 3, 1983. On January 18, 1983, between the filing of the third and fourth amended complaints, the Executive Director issued a preliminary ruling under the authority of WAC 391-45-110, finding that the original complaint through the third supplement stated a cause of action based on allegations of unilateral changes in wages, hours and working conditions. On March 15, 1983, a review was made of all the allegations in the complaint and amendments filed at that time and a cause of action was found based on an alleged course of conduct which included interference, discrimination, possible attempts to interfere with the union's selection of its representatives for bargaining, failure to meet at reasonable times and places, failure to bargain in good faith during negotiations, unilateral changes directly or indirectly affecting employee wages, hours and working conditions and circumvention of the union. On June 6, 1983 the Executive Director ruled that the second "fourth amended complaint" would be more appropriately treated as a separate case.

A hearing was held on the matter July 11, 12 and August 15 and 17, 1983 in Seattle before Examiner Katrina I. Boedecker. The parties filed post-hearing briefs in January, 1984.

FACTS

The IUOE Local 609 represents the custodians and gardeners employed by the Seattle School District. Unit members are assigned to each elementary school, middle school and high school, as well as to the administration building, stadium, the warehouse and the facilities/maintenance building. Unit members are responsible for cleaning the buildings, keeping up the grounds, minor maintenance, and operating the boilers that provide heat to the buildings.

Historically, if an elementary school was on an every day cleaning schedule, a licensed assistant custodian and an assistant custodian would be permanently assigned to the building. Starting in the 1980-81 school year, the district moved from a 3-day cleaning cycle to a 5-day cleaning cycle in most elementary schools. On this schedule an elementary school would be cleaned every fifth day by a "moving crew" consisting of a licensed assistant custodian and one or two assistant custodians. The 5-day cleaning cycle was subject to criticism by the district employees in the buildings. Representatives of Local 609 and district employees from the business and finance division started meeting in December, 1981, as a "clean building improvement committee" to develop a plan to provide improved cleaning services to the elementary schools. The committee decided to initiate a pilot program starting March 8, 1982, and concluding at the end of the 1981-82 school year. The program would test out an every-other-day cleaning schedule for all school buildings. The union and the district negotiated what the staffing levels would be during the pilot program. Some of the union's ideas were adopted by the district. For example, the union wanted licensed assistant custodians (H pay range) in the elementary schools at night to work where they would travel among schools during the eight hour shift, thereby avoiding any part-time shifts. The district first wanted to assign a part-time assistant custodian (at the lower G pay range) to each grade school to clean by him or herself in the night shifts. The union claimed the job description for an assistant custodian required that employee work under direct supervision, while the job description for a licensed assistant custodian allowed the employee to work without continual supervision. A compromise was reached which allowed some licensed assistants to work traveling assignments, and some assistant custodians to receive the higher H range wages. At the time of the pilot program, the district did not employ as many H's as G's. Griffin, general manager of facilities, testified that he found split assignments inefficient because of wasted time traveling among the buildings, lack of over-time utilization and sick leave coverage problems.

The parties began bargaining in the summer of 1982 for replacement of the 1980-82 contract due to expire August 31, 1982. Although there is a conflict in testimony, credible evidence establishes that the union submitted its package proposal May 28, 1982 and that the district, with permission from the union, delivered its package proposal in July, 1982. There were no negotiation sessions in July, since the union had agreed with the district to delay meeting until the assistant superintendent with responsibility for facilities was permanently named.

School district buildings were categorized in the expiring collective bargaining agreement as G-1 (most cleaning activity required) through G-5 (least cleaning activity required). Depending on the building's classification and the employee's job title, the employee would be placed on a salary schedule from Step L (highest pay range) through Step K (lowest pay range). There is conflicting testimony as to how the buildings are classified. Credible testimony indicates that during contract negotiations in 1980 the union was given a document by Carl M. Andresen, then general manager of facilities entitled "building reclassification". It read in part:

> Since the late 1950's the operations section has traditionally classified buildings and facilities owned and operated by the Seattle School District by using the following formula:
>
> 1. Divide building square feet by 100 = _____ Group Base
> 2. Divide enrollement by 10 = _____ Group Base
> 3. Divide community uses by 5 = _____ Group Base
>
> TOTAL BUILDING GROUP BASE _____
>
> As a result of applying the formula to all of the district's facilities five major building classifications were created.

That the above formula was accepted and used by both parties is substantiated by a memo written October 1, 1980 from Andresen and Griffin, then supervisor of operations:

> In accordance with the established procedure several building and other facilities will be reclassified as of September 1, 1980. Building classification is based on size (square feet), student enrollment and number of community uses. Reclassification is implemented when there are significant changes in any one or combination of these factors. (emphasis added)

* * *

The record shows that the formula was used up to the time of the negotiations sessions that gave rise to the present unfair labor practice complaints. On

May 18, 1982, Griffin and Frank Warstler, supervisor of operations, sent the following memorandum to all custodians regarding reclassification of buildings:

> Building classifications have been based on square footage of the building, student enrollment and outside community uses. To create stability in assignments and eliminate the reclassifications caused by variances in the base factors in recent years, all buildings will be reclassified according to the following schedule. (emphasis added)
>
> Group I (L classification) will include all high school buildings.
>
> Group II (K classification) will include all middle school buidlings.
>
> Group III (J classification) will include all elementary school buidlings.
>
> Other buildings in the district;
>
> (K classification) A & S center, Boren, Marshall, Memorial Stadium, Wilson/Pacific, Sharples.
>
> (J classification) Colman, Mann, Facilities.
>
> (H classification) Columbia Annex, North End Annex

Prior to reclassifying all middle schools as Group II, there were some middle schools which fell in Group I when the formula was applied to them. The change as implemented in September, 1982 reduced "L" pay range custodial engineers in those schools to "K" pay range. Proposed reclassification language for the collective bargaining agreement was presented to the union by the district on October 5, 1982:

> ARTICLE XIV
>
> * * *
>
> An employee whose building is reclassified to a lower group will retain his/her present salary for two years. Building classification and employee staffing mix shall be determined by the district. (emphasis added)

The previous language had read:

> Article XIV
>
> SECTION A: Building Reclassification
>
> If a building is reclassified to a higher group classification, the custodian engineer may be transferred to another school. The promotion, necessitated by reclassification of the building, will be given to the most qualified employee in the bargaining unit. The reclassification of the building

> to a lower group may necessitate the transfer of the custodian engineer to another building. An employee whose building is reclassified to a lower group will retain his/her present salary for two (2) years.

Testimony established that a building's classification not only regulated the rate of pay a unit member received, but it also affected the size of the custodial staff assigned to a building and promotional opportunities for unit members.

At a negotiating meeting on September 7, 1982, Merlin Walsh, manager of grounds and operations, gave the union team a document entitled "Staffing configuration, custodian standards for 82-83 School Year," and indicated that the changes in the document were being implemented for the 1982-83 school year. The plan called for: 1. The implementation of new time allocation standards; 2. The change of shift hours for certain custodians in the elementary and middle schools; 3. The elimination of four assistant engineers in four high schools; and 4. The use of part-time "G" assistant custodians and the concomitant elimination of the "H" licensed assistant custodian position at 47 elementary schools.

Time Allocation Standards

Griffin testified that, prior to the 1982 pilot program, the district hired the consulting firm of Barnicuff and Gilmore to study the district's maintenance and operations section. The consultants' recommendation was that the time allocation standards should be reviewed and "updated to modern technology." The district released one union officer with pay for five to six weeks to monitor the study. After the preliminary recommendations for the new time allocation standards were formed, the union and the district met through May and June, 1982 to discuss changes in the recommendations. The 1980-1982 collective bargaining agreement had contained a section which read:

> Article XVIII - Time Allocation Standards
>
> When time allocation standards (i.e., minutes per specific task, e.g., one and four-tenths (1.4) minutes cleaning time per wash basin) for the assignment of task to individual employees are to be changed, studied or new established the union will be notified in writing. Union representatives will be given the opportunity to give input to the process used to modify change or establish standards and will then meet with the district representatives to make recommendations. The frequency of the work to be done shall be determined solely by the district.

The district provided all the written drafts of the proposed changes to the

union and it also gave the union the raw computer data that the study gathered. Griffin testified that the discussions were "completed" by the end of June, 1982, and the new time allocations standards were "implemented" in September, 1982. Dale Daugharty, business manager for Local 609, testified that the time allocations standards were one of the two most important items of bargaining during the 1982 negotiations. He stated that the union would not make a correct or adequate counter proposal, since it kept asking for more information and the district refused to provide it.

Shift Schedules

The "staffing configuration and custodial standards" document presented to the union in September of 1982, indicated all the opening and closing times for the district's buildings. A union representative testified that some of the opening times were altered by a half-hour from what the schedule had been the previous year and that there had been no agreement or impasse during negotiations regarding a change in shift hours. Article XIII - Shifts and Hours of the 1980-82 collective bargaining agreement read as follows:

> The work shift shall cover an eight-and-one-half hour period which shall include a 30 minute unpaid lunch period.
>
> Work shifts shall be designated as first, second or third work shifts according to the scheduled starting time.
>
> First shift between 5 AM and 9:59 AM.
> Second shift between 10:00 AM 5:59 PM.
> Third shift between 6:00 PM and 4:49 AM.

Removal of Assistant Engineers in High Schools

Griffin testified that the district was concerned during the 1982 negotiations with the rise in the cost of utilities. (The district's utility bills had risen from a $1.5 million in 1970 to $4.5 million during the 1982 bargaining.) The John Graham Architectual Engineering Firm recommended that the district install an "optimum start/stop" on boilers in a number of buildings. Griffin testified that the district planned to install an experimental program in four "G-I" schools - Hale, Ingraham, Rainier Beach and Sealth - in the autumn of 1982. The program would put a sensor device within the building that measured the outside temperature versus the inside temperature and feed the data into a computer which would turn the boilers on and off automatically. In contemplation of this, the district proposed eliminating the assistant engineers paid at the "I" range who were the second licensed employees working days at each of these buildings. The custodian-engineer assigned to each building had a license and could run the boilers.

Griffin stated, "Here again it was looking at economics putting assistant custodian "G's"; we were not reducing the number of people, we were just changing the level of classification." The four assistant engineers were to be reassigned to other buildings. There was no agreement reached on the issue. The district implemented the proposal in September, 1982; however, the contracter did not complete its work as scheduled so the assistant engineers were transferred back to their buildings after a few weeks.

Part-Time Employees

As unit members retired during the pilot program the district replaced them with part-time assistant custodians, paid at the "G" level, ending up with 90 new assistant custodians. Under the 1980-82 collective bargaining agreement there had been no part-time employees in the unit except for those during the pilot program. In fact, language regarding part-time employees did not appear in the 1980-82 contract as it had in the previous collective bargaining agreement. Language regarding job descriptions did appear in the following manner:

> Article XVII: Job Descriptions
>
> When any job description is changed materially or a new one created, the District shall notify Local #609, and at that time negotiate pay scale and classification using the following criteria: Skill factors, knowledge to perform the job, duties and responsibilities, and workload.

Daugharty testified that the part-time assistant custodians did the work of a licensed assistant ("H" pay range) in that they went into a building and worked alone in the evening and performed all the license assistant's job duties. However, the assistant custodian did not substitute for the custodian engineer during the day as the licensed assistant would be called upon to do. Daugharty claimed working in an unsupervised situation was outside the assistant custodian job description. He stated that the district did not negotiate with the union regarding the duties prior to assigning unsupervised assistant custodians to buildings. In September, 1982, after the part-time employees were hired, the district gave the union a new job description for an assistant custodian which allowed the employee to work independently. On September 10, 1982 Walsch sent Daugharty the following letter:

> This letter verifies our telecommunication on September 9, 1982, 3:30, at which time I informed you on behalf of the Seattle School District of our intent to hire part-time custodians effective September 13, 1982.
>
> These custodians will be used in the secondary buildings four hours and in due time will be fed into two-six hour shifts at elementary schools.

The district's position at the bargaining table was that it always had the right to hire part-time employees. There is evidence that the parties were discussing certain part-time employee issues (break time, insurance, job duties) around July 9, 1982, although the union did not receive a written proposal from the district until September, 1982. The district justified its need for part-time employees because of a one-half million dollar budget cut that had been imposed on the operations section budget in 1982, combined with a directive from the superintendent and school board to improve on the 5-day cleaning cycle. The district's position was that by using part-time employees it could save money and provide more service. Daugharty testified that the union told the district that it had "no qualms" about the district hiring part-time employees and that the union "would talk to them about part-time employees when they would talk to us about benefits" for the part-time employees.

Course of Bargaining

By September 16, 1982 the employer had eight issues remaining on the table, the union had 22 issues, and there were six common issues still unsettled. The parties called for mediation from PERC. Mediation sessions went through November, 1982. No agreement was reached in mediation. The parties went back to negotiating on their own on November 18, 1983. After the opening package proposal there were only three written proposals from the union to the district: September 16, 1982, February 22, 1983, and March 1, 1983.

On February 22, 1983 the district gave the union officials "notice of complete termination of agreement" pursuant to Article XXIV of the 1980-82 collective bargaining agreement. Also on that day the union negotiating team was given a complete contract proposal dated February 9, 1983 and was informed that the district intended to implement that document. The proposal had a wage scale and benefit section in an amendment dated February 22, 1983. The proposal also contained language on certain issues that Daugharty testified he had never seen before; however, creditable testimony shows that the concepts had been discussed previously. At the meeting, the district proposed that part-time employees had to work 70 hours in one month or a three and one-half hour shift per day to receive insurance benefits. A cutoff of 90 hours per month (four hours per day) had been implemented in September when the part-time employees were hired. During negotiations on February 22nd, the union pointed out the practice had changed and the district withdrew its proposal. Later that day the district proposed a 90 hour per month cutoff threshold. Larry Sera, assistant director staff relations for the school district, wrote Daugharty February 23, 1983, in part:

> This letter is a follow-up to the letter I handed you at our negotiations session on February 22, 1983 in which

> we notified of our intention to cancel our 1980-82 collective bargaining agreement.
>
> * * *
>
> Local 609 has stated that a number of operational changes made under the 1980-82 collective bargaining agreement caused much of the problems in reaching a settlement (e.g., building reclassification and use of part-time employees). The district's position in bargaining is that it has always had the right to make these changes in the existing 1980-82 collective bargaining agreement. However, new language was introduced because Local 609 stated that the language in the agreement did not allow the district to make such changes.
>
> During our meeting yesterday it was apparent there was no room for movement. Most of the issues on the table in August are still on the table now. As such, effective March 4, 1983, the district will implement its last best offer which we made to you yesterday. The implementation, however, will result in no changes from what is currently being done by the operations department.

On February 23, 1983, Griffin and Walsh sent a notice to all custodians and gardeners at their business locations regarding the cancellation of the contract between Local 609 and the district. The notice explained the district's action of giving the union officials a letter of intent to cancel the contract, and alerted the employees that they would be receiving a letter from the superintendent at their homes. It concluded:

> Please be assured that should March 4 come upon us without a signed contract and the contract is indeed cancelled; no adverse or negative changes will be made by the District in respect to your working hours, rate of pay, or benefits.

Indeed, a separate letter signed by Donald J. Steele, superintendent, was sent to each custodian and gardener at his or her residence. The letter explained the district's position on its health and welfare offer and part-time employees' proposal. The last paragraph read:

> Most of the factors forcing changes in our operations program have been outside of our control. We have done our best to deal with these factors in a responsible way and to assure that they do not unnecessarily harm any employee. We appreciate your continued support, and you can be assured that we will continue to work with you and your union to resolve any remaining problems.

On February 28, 1983 the parties again met at the bargaining table. At this meeting the union proposed new items affecting out of class pay, time between

shifts and the payment of an arbitrator by the losing party to a grievance. Daugharty testified that although there were many discussions after the union withdrew its part-time employee language, the union never changed its position on that issue through February 28, 1983.

Through negotiations, the union moved toward the district in its language regarding leave for union officers, union activities, promotion, holiday pay, and insurance benefits for full-time employees. The union did not change its position on shifts or hours, on-the-job injuries, job descriptions or building reclassification. Even with the wage freeze imposed by the state legislature in 1980, the union did not drop its demand for a wage increase until February, 1983. From June 1982 through February 1983 the union made no movement on the issues of staffing of buildings or time allocation standards.

Leave for Union Activity

On September 22, 1982 Griffin wrote Daugharty:

> It has been brought to our attention that leaves for union activities are being taken that do not comport of the terms of the 1980-82 collective bargaining agreement.
>
> * * *
>
> Article X does not contemplate the release of union officers or members for union activities such as executive board meetings or preparation for negotiations. As such this is to notify you officially that union officers will only be released for those union activities stipulated in Article X of the 1980-82 collective bargaining agreement.

Three officers of Local 609 had payroll deductions made from their checks on November 1, 1982 for misuse of leave for union activities. The union grieved the deductions.

On November 10, 1982 Walsh wrote Daugharty:

> This letter is to inform you that the class action grievance of, "withholding pay for union activities," that you filed on behalf of Bonnie Baker, Dave Hutchins, and Paul Devereaux will not be heard at Step One until all three (3) of the aforemetioned employees appear with you in my office.
>
> * * *

Walsh did have a meeting in November as step one of the grievance procedure, wherein he authorized the pay to the officers be restored and the district bill the union itself. On November 16th, Walsh sent a letter to the union indicating that no such billings would be allowed in the future as "sufficient notice has now been given and the district's intention is the union and not the district has violated the contract." On December 2nd, the union had a step two grievance conference with Griffin. Griffin also denied the grievance writing in part:

> In the past the district has allowed union officers to be off work without questioning the nature of business, but never for the number of days as been experienced this year. With the present restraints on budget that face operations section I feel Mr. Walsh's actions were proper and therefore must deny this grievance.

The grievance proceeded to step three on January 6, 1983. At that meeting R. W. Wilkenson, executive director of business and finance for the district, reversed the findings of step one and step two and had the grievance settled meritoriously finding that the union had the right to have officials at its executive board meetings and call on its officers in matters pertaining to grievances or negotiations sessions. The findings of steps one and two were modified in that release time for grievances or negotiations sessions had been historically allowed and would continue to be recognized as legitimate.

POSITIONS OF PARTIES

The union argues that the parties were not at impasse when the district made unilateral changes in September, 1982 to the working conditions and wages of the custodial bargaining unit, thus the changes affected mandatory subjects of bargaining. The union avers that it tried to continue bargaining, but that on February 22, 1983 the district illegally implemented a contract which had proposals in it that were materially different than any shown to the union at the bargaining table. At this time, the union alternatively argued that were was no impasse or if there was it was caused by the district's illegal acts. The union points to deductions to bargaining team members' wages and the preconditioning of grievance settlements as harrasment of union negotiators and as part of the broader pattern of lack of good faith bargaining by the district. The union argues that the district had no authority in the management rights clause or by union agreement, to implement without bargaining the changes in shift assignment and wage calculations.

The district first urges PERC to defer to the arbitration process in the collective bargaining agreement. Secondly, the district argues that it did not make any unlawful unilateral changes in the course of bargaining. The district claims it acted under contract language confirming its authority to

reclassify buildings, that building reclassification was not a mandatory subject of bargaining, and that the union waived its right to bargain by its past bargaining. As for the part-time employees, the district argues that it has always hired part-time hourly employees, that it explained its staffing plan to the union before implementing it and that the union waived its bargaining rights. The district goes on to allege it has frequently had to revise its work assignments to adapt to changed conditions in the elementary school buildings and that such changes were made here after notice and opportunity to bargain the revised job description were given to the union. Further the district argues that it had express contract authority to determine the frequency of cleaning and to set shift starting times. It also argues that the discrimination charge is without merit. Finally, the district claims that it always bargained in good faith and that only when no prospect of agreement was in sight in February, 1983, did it implement its last offer.

DISCUSSION

The parties behaved admirably through the spring of 1982. The creation of the pilot program was a healthy exercise: the employer and the union met together to discuss potential changes in working conditions. There is no doubt that management received and incorporated input from the union at that stage. It is what happened during the summer of 1982, after the pilot program ended and while the bargaining for a new collective bargaining agreement was proceeding, that raises questions.

The Onset of Bargaining

The duration clause of the 1980-82 collective bargaining agreement directed that the bargaining for the new contract was to begin by June 1, 1982. The union's opening package was date stamped by the district June 2, 1982 although Daugharty testified credibly he delivered it May 28, 1982. Testimony from Sera established that he requested an extension from the union until mid-summer to file the district's proposals and that the union permitted the request, thinking it would be in a better bargaining position once a permanent, instead of an acting, assistant superintendent was appointed over the operations department. The union now seems to allege that the district was dilatory in getting to the bargaining table. Such an allegation is an uncalled for side-swipe following the union's prior approval. None of the allegations regarding the district's timing in getting to the bargaining table will sustain a finding of unlawful action in this case.

Validity of Contract and Contract Waivers

The district relies heavily in its defense upon what it claims are waivers in the collective bargaining agreement. The district implies that through bargaining over the years, it received language from the union which allowed the employer to make changes in mandatory subjects of bargaining without working the change through the collective bargaining process. This defense assumes that the collective bargaining agreement was valid and in effect at the time the changes were made; it was not.

The contract's duration clause reads, in part:

> Article XXIV: Terms and Recognition of Agreement
>
> This two (2) year Agreement is effective September 1, 1980 through August 31, 1982, provided that the Agreement shall continue in effect, thereafter, unless and until either party gives written notice of complete termination of the Agreement, which notice can be effective no sooner than ten (10) days after its delivery to the other party.

Although used frequently used in the private sector, such an automatic extension clause flies in the face of the Public Employees Collective Bargaining Act, RCW 41.56.070 states in part:

> Any agreement that contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall such Agreement be valid if it provides for a term of existence for more than three years. (emphasis supplied)

The statute clearly prohibits collective bargaining agreements from being automatically renewed or extended. There is a question of whether the statutory language, "shall not be a valid agreement," would void ab intitio any collective bargaining agreement calling for an automatic extension. However, when the Commission was faced with a similar situation in Seattle School District, Decision 1803 (PECB, 1984), it did not completely void the collective bargaining agreement in question. In that case the duration ran from March 21, 1969 to July 1, 1970 and the clause read,

> ... In the absence of notice, it [the collective bargaining agreement]will continue from year to year.

The contract "continued" for 12 years without being renegotiated. On April 21, 1981, the district gave the Building and Construction Trades Council notice of its intention to renegotiate. The parties did not reach an agreement. The Commission found that the contract had expired July 1, 1981; July 1st was the month and day which measured the "year-to-year" calendar of the collective bargaining agreement. The contract in question in the present

case, has no "year-to-year" language; however, it does have a set expiration date. Therefore, following the precedent of the Commission's previous decision, the examiner finds the automatic extension language did not void the contract ab initio, but that the contract did expire on August 31, 1982, the date listed in the duration clause.

The examiner has considered and rejected the possibility that the parties extended the contract by their actions i.e., grievances were processed after August 31, 1982 following the procedures of the collective bargaining agreement; the union's bargaining notes of meetings after August 31, 1982 show the union was working from the language in the collective bargaining agreement; and the union's brief refers to the extension of the contract. No written extension document was put into evidence. In State ex Rel Bain v. Clallam County Board of County Commissioners, 77 Wn.2d 542 (1970) the Supreme Court read the definition of "collective bargaining" found in RCW 41.56.030(4) to show a "legislative intention that there be no oral collective bargaining agreements." (77 Wn.2d at 547). The court went on to deny the argument that the parties had reached if not a written, at least an implied contract. The court wrote "the law does not support liability by implication against a county for personal services," citing Hailey v. King County, 21 Wn.2d 53 (1944). Granted the employer in this case is not a county but, as a school district, it is still a political sub-division of the state. The court in Bain referred to RCW 42.32.010 which called for official action such as enactment of a resolution adopting proposed contracts or salary schedules by any political sub-division be made in conformity to strict open meeting requirements.[1/] There is no evidence of formal action by the school board in a public meeting which could substitute for a written contract. In conclusion, since automatic extensions are not valid under the statute and state law prohibit the parties to imply a collective bargaining agreement by their actions, the collective bargaining agreement in question is found to have expired on August 31, 1982.

The employer argues that it had received certain "protective" bargaining waivers from the union in the collective bargaining agreement. These waivers addressed time allocation standards, shifts and hours, building reclassification and staff adjustments, and job descriptions. The Commission does not lightly infer the waiver of the right to bargain on mandatory bargaining topics City of Chehalis, Decision 1534 (PECB, 1982), Yakima County, Decision 1124-A (PECB, 1981). However,if a union willingly

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1/ RCW 42.32.010 has since been repealed and replaced by Chapter 42.30 RCW Open Public Meetings Act which is specifically applicable to school districts. RCW 42.30.020(1)(b).

waives its right to bargain on a given issue the other party will not be required to negotiate on the subject during the period of the waiver.[2/] With the contract gone, the employer could neither rely on nor impose the waivers which had been contained in that contract.

The "waiver" of a mandatory subject of bargaining is merely a permissive subject and even then agreement must be reached through genuine collective bargaining. In Shell Oil Company, 93 NLRB 20 (1951) the union and employer agreed upon a grievance procedure which limited the negotiations of grievances to a select committee. When the union attempted to bring others into the discussion of a grievance, employer left and the union charged refusal to bargain. The trial examiner ruled the contract waiver was in derogation of the union's statutory right to be present at the adjustment of grievances. The NLRB reversed writing:

> In the first instance the union is not required to bargain at all with respect to waiving or restricting its right to be represented by any specific class regardless of the employer's insistence. But here the union either voluntarily or because it yielded to the normal persuasion attendant upon good faith collective bargaining, as distinguished from the case where yielding is made a condition of an excution of agreement willingly bargained with respect to the subject matter in question and agreed to the restrictive restriction pursuant to the ordinary give and take of good faith bargaining.

The Federal Labor Relations Authority has also ruled that contract language on permissive subjects of bargaining expires when the collective bargaining agreement does. The authority wrote in Federal Aviation Administration, 14 FLRA 89 (1984) that its conclusion regarding permissive subjects stands in contrast to its policy on the continuing validity of contract language on mandatory subjects. Mandatory topics regarding terms and conditions of employment last beyond expiration unless expressly changed by the parties because of the need to promote stability in federal labor relations.

As permissive subjects, the waivers which the employer relies on in the present case were not wrapped in the protective cloak of required maintenance of status quo, as the mandatory subjects were, past August 31, 1982. Nor could the waivers be subjects of a valid impasse. Only if the changes made by the district had been announced and implemented prior to the expiration of

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2/ See Leroy Machine Company, 56 LRRM 1396, 1964, where contractual language giving the employer the right to "determine the qualifications of employees" removed the subject of a unilaterally implemented requirement for physical examinations from the scope of bargaining during the term of the contract.

the contract, could the district's claimed protective waivers from the union have made such changes legal. In this instance the changes were announced prior to the expiration of the contract but implemented after the expiration date. Thus the implementations could be illegal if the areas that were changed are found to be mandatory subjects of bargaining and if the district and union were found not to be at a good faith impasse.

Building Classification

It is clear from the manner in which the salary schedule is constituted that an employee in the job of custodian-engineer or licensed assistant receives one of several different rates of pay, depending on the classification in which his or her building is placed. Although certain isolated examples were produced by the employer to show some buildings that were not in the classification the formula would have dictated, the weight of the evidence shows that both parties relied on the formula. In fact, the testimony suggests the union was unaware of and surprised by some of the employer's examples and felt them to be contract violations. The most telling evidence against the employer is the letters from its own agents which reference that the classification formula had been used historically. Building classification directly impacts salary and is a mandatory subject of bargaining.

Time Allocation Standards

The 1980-82 contract gave the district the right to establish time allocation standards after the union representatives were "given opportunity to give input ... and make recommendations." As long as the district followed the contract procedures it could establish the time allocation standards it decided were needed if the district acted within the life of the contract. The record in this case establishes that the employer provided the union with proposed time allocation standards several times during the summer, each time soliciting and incorporating input. The union's own bargaining notes indicate that at a negotiations meeting August 31, 1982 - the last day the contract was in effect - the district announced the time allocation standards "that we will use." Such action was proper while the contract was in effect. If the time allocation standards are found to be a mandatory subject of bargaining, then the waiver in Article XVIII would die with the contract's expiration and the employer would be required to bargain the time standards, not to just "seek input." If the time standards are a permissive subject then Article XVIII would allow an opportunity to give input the union would not normally have and that benefit to the union would be cancelled after the contract expired.

The duty to bargain in this area must be balanced against allowing management a sufficient degree of flexibility that it may fashion innovations promoting a more efficient operation. While at the same time considering where an employer does not change its service but changes its operations in delivering the service, the change would constitute a mandatory subject of bargaining if it had a "demonstrably adverse effect" on the job of any worker. Coca Cola Bottling Works, 186 NLRB 142 (1970). See also: Westinghouse Electric Corp., 150 NLRB 136 (1965) and King County, Decision 1957 (PECB, 1984). In Kal-Equip Co., 237 NLRB 194 (1978) the board found that the employer had violated the Labor Management Relations Act (LMRA) when it unilaterally changed its production standards. The board found that, since employees could be reprimanded for poor performance, the changes had more than a minimal impact on the terms and conditions of employment. The board saw no merit in the contention that the new production standards were the result of permissible managerial flexibility. In Tenneco Chemicals, 249 NLRB 171 (1980) rules raising employees' output to certain levels also were found to be a mandatory subject of bargaining.

In the present case, the new time allocation standards impacted on unit members' workload beyond the scope of routine job directions allowed by management. The record shows that employees in the unit were evaluated in part on how they performed to the time allocation standards and that poor evaluations could negatively effect an employee's consideration for more promotions or even result in discipline. This constitutes a "demonstrably adverse effect" which outweight management's need for flexibility. Time allocation standards here are found to be a mandatory subject of bargaining.

After August 31, 1982, when the union requested bargaining regarding the amount of time allocated to a task, the district refused. There is no adequate explanation on record for the basis of the district's refusal. Thus the conclusion must be reached that by its behavior after August 31, 1982 the district illegally refused to bargain regarding the mandatory subject of time allocation standards after the union requested bargaining in the September negotiation sessions.[3/] The district's implementation of the new time allocation standards September 13, 1982 was not the result of a good faith impasse.

3/ There is evidence in the union's bargaining notes that the two parties did bargain regarding the administration of the new time allocation standards, ironing out "problems" in the manner in which supervisors in different buildings were using the set standards. There is no convincing record that the time allotted per task was bargained after the district made its announcement August 31, 1982.

Shift Schedules

Shift schedules affect "hours" and are a mandatory subject of bargaining. In City of Yakima, Decision 767 (PECB, 1979), the Executive Director found that the scheduling of work shifts fell within the scope of hours of employment under RCW 41.56.030(4) and, therefore, dismissed an unfair labor practice alleging that a union committed an unfair labor practice when it insisted on the bargaining of a proposal concerning a shift schedule. See also: City of Auburn, Decision 901 (PECB, 1980). Thus, while the district had a waiver by contract relieving it of the obligation to engage in bargaining the starting of shifts within a certain corridor, any changes of the shifts within the corridor had to be implemented prior to August 31, 1982 when the contract expired. Since the change was implemented in September, 1982, the district had to bargain with the union upon request. In failing to do so, the district violated the statute since there was no good faith impasse.

Removal of Assistant Engineers in High School

Bargaining notes from both negotiating teams show that the first negotiating with the union about the installation of the optimum start/stop computer on the boilers was September 7, 1982. Notes from the next day's meeting show that the union was quite upset because the team had found out that at the very time they had been negotiating about this proposed change the day before, the district was implementing the system and transferring the incumbent employees to other positions. As stated in the above background section, the employees were restored to their previous positions sometime during the autumn of 1982, because the computer system was not functional. The employer argues that since the employees were transferred back and did not suffer any economic loss, the impact is diminimus. The union stresses that operating the boilers was just one aspect of the assistant engineers' work and by their transfer, someone else had to do the rest of the assistant engineers' unit work.

In Brockway Motor Trucks vs. NLRB, 582 F.2d 720 (3d Cir. 1978) the court considered whether an employer has a duty to bargain about an economically motivated managerial decision to terminate all or part of a bargaining unit's work. In Brockway the court relied on Fiberboard Paper Products, 379 U.S. 203 (1964), writing "there seems to be no justification for drawing any bright line between a partial closing situation ... and the subcontracting issue of Fiberboard .... With regard to both matters, bargaining would serve an important statutory function." S. 82 F.2d at 735. Also relying on Brockway and Fiberboard the court of appeals has held in Davis vs. NLRB, 617 F.2d 1264 (7th Cir. 1980) that a restaurant employer had a duty to bargain with the union both about his decision to convert the full-service restaurant

into a self-service cafeteria and the effects of the decision on the bargaining unit. The instant case presents a similar situation of an economically motivated managerial decision which terminates part of a bargaining unit's work; the three step Fiberboard analysis is also appropriate here. First, it is apparent that the implementation of the computerized system is a "condition of employment" because the decision leads to the eventual demotion of some unit members and loss of promotional opportunities. Second, bargaining over the change in operation would promote a basic purpose of the Public Employees Collective Bargaining Act:

> ... to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees ... to be represented by such organizations in matters concerning their employment relations with public employers. RCW 41.56.010.

The final consideration is whether the conversion to the computer system involved a substantial capital investment or altered the basic operation of the district whereby the district's right to run its school would be significantly abridged if required to bargain over such a decision. In Davis the court favorably quoted Fiberboard:

> Nothing the Court holds today should be understood as imposing a duty to bargain collectively regarding such managerial decisions, which lie at the core of entrepreneurial control. Decisions concerning the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment, though the effect of the decision may be necessarily to terminate employment.

379 U.S. at 223.

And yet the Davis court found while some new equipment was installed as a result of the conversion to a cafeteria operation, the record did not reflect that this new equipment constituted a major reinvestment of capitol. Similarly, there is no record in the instant case that the district undertook a major capitol investment or disinvestment when installing the computerized start/stop system. Therefore, the conversion is a mandatory subject of bargaining. Although the district has the right to determine the need for a modification of its operation along cost-saving lines, it is obligated by the law to notify the union of the planned change and give the union an opportunity to negotiate concerning the change itself, the manner and timing of the implementation and the effect of the change on those employees whose jobs were eliminated. The record shows no emergency situation which was facing the district that would have demanded swift and immediate action. Instead there is evidence that the district was suffering from a financial crunch due to rising energy costs for a long time -- long enough to have a consultant study the situation and make recommendations. Additionally,

after abruptly eliminating the four engineering positions without bargaining with the union, the district just as abruptly reconstituted the positions when it discovered the contractor would be delayed in installing the new system. Preliminary bargaining could have alleviated the disruption to these employees' lives. Since the removal of the four assistant engineers was found to have been done illegally without bargaining, this decision need not reach the union's allegtion that act exhibited bad faith since the transfers were made in violation of the negotiated bidding procedures.

Part-Time Employees

The rewriting of the job description for assistant custodian was within the district's management prerogative. The union's right to bargain is limited to the wage rate assigned to the newly created job. However, the employer cannot change a job's duties and/or description so as to eliminate bargaining unit work without bargaining with the union. Lakewood School District, Decision 755 (PECB, 1979), Central Cartage, Inc., 236 NLRB 163 (1978). While the district could lawfully create the part-time positions of assistant custodian, it had to bargain the wage rate and the impact on the present job descriptions. The record shows that the district attempted to do so but was met with an adamant refusal to bargain by the union - first by saying the district had no right to create the part-time employee positions, then saying it would not talk about the position until the district discussed the benefits for the part-time employees. Since the employer was at an impasse not of its own making, it will not be found to have initially acted illegally in hiring the part-time employees or in setting their initial working conditions. As of September, 1982 when the union changed its position the union resurrected its right to bargain the effects of hiring the part-time employees and their concomiotant wages, hours and working conditions as well as the impact of the assignment of duties on the rest of the unit. At that time the record supports a finding that the district was willing to bargain benefits with the union but that the union refused to settle for anything less than its opening position and gave no adequate justification for its position. This was another impasse not created by the district and therefore the district will not be found to have violated the statute. For these same reasons, the union's allegations regarding the creation of a sub-pool system are not persuasive. The union had an opportunity to bargain the issue and by demanding its opening position with no adequate rationale, it in effect, chose not to bargain.

Course of Bargaining

There are allegations in this case that the employer's entire course of conduct was destructive to the collective bargaining process. The

Commission has considered situations where there has not been one per se violation but a series of questionable acts which when examined as a whole show a lack of good faith bargaining. In Shelton School District, Decision 579-B (EDUC, 1984) the Commission wrote:

> We find, however, that in 1976 the district created a context of bad faith to such a degree that its position on specific items cannot be evaluated in isolation. A position taken by a party in a context of good faith bargaining may be perfectly lawful, while the same position if adopted as part of an overall plan to frustrate agreement, and to penalize employees for trying to exercise their statutory right to bargain collectively, cannot be given agency imprimatur.

Similarly, the Commission had found in Federal Way School District, Decision 232-A (EDUC, 1977) that the only impasse existing had been illegally contrived by the school district which then sought to take advantage of it. The Commission held that no legally cognizable impasse can exist where it was created by the unfair labor practices of one of the parties. The questions in the present case are whether the district came to bargaining with a pre-set inflexible position of where it had to be at the conclusion of the negotiations and in the interim merely went through the motions of bargaining, or whether the union froze its position on bargaining when it saw the district needed relief from some of the provisions of the contract.

An examination of the conduct on both sides of the bargaining table leads to the conclusion that neither party is a harborer of innocence in this matter. The district should be applauded for establishing the pilot program in spring, 1982. It was a commendable cooperative effort to address a problem, the solution of which impacted working conditions. What is confusing is why the district rushed to implement new wages, hours and working conditions in September, 1982. The district employs some custodians year round, but the changes were not implemented during the summer, 1982 while the district had protective waiver language. While uncontroverted testimony shows the district's position is credible that it had a business necessity to reduce the operations department's budget which was increasing due to high engery costs, there is no adequately explained business necessity to have had the services changed one week into the 1982-83 school year. The changes did not coincide with the first day of the school year, so the argument of convenience for the school calendar does not stand. The pilot program had been started mid-year and there is no evidence that its mid-year onset was harmful. The district did not prove a business necessity for the unilateral changes occurring when they did in September, 1982. See: Lower Snoqualmie Valley School District No. 407, Decision 1602 (EDUC, 1983).

An examination of the record shows that the union could have been getting mixed signals from the employer. The employer's bargaining team seemed to be

split and working against itself. District representatives from the labor relations department seemed willing to bargain to agreement, while representatives from the operations department appeared to be working from a pre-determined, unbending set of changes to the working conditions. By circumventing the bargaining table, the operations people not only went around the union, but they ran around their own team as well.

Nor does the timing of the changes imply a good faith impasse existed. The employer's position is that it needed to institute changes in its operations. The union was understandably reluctant to agree to changes which it considered adverse to its unit. There is not enough evidence to show that the union had frozen its position prior to September 7, 1982 to substantiate that an impasse on all the areas where changes were made had been reached at that time. The union was presented with a fait accompli in September, 1982, and then the district continued to "bargain" the changes, not declaring impasse until February 22, 1983. At that meeting in February, 1983, the district handed to the union the contract which it announced it was going to implement. That document contained mandatory subjects of bargaining regarding wages, hours and terms and conditions of employment. It also contained permissive items including the waivers of mandatory subjects.

The union alleges that the letters the district sent to unit members, individually to each one's residence and as a notice at each business location, were illegal direct dealings with employees. Caution must be taken in examining this charge that the union retains its guarantee of being the exclusive bargaining representative while at the same time not trammelling on the district's right of free speech. The notice to employees at their business locations clearly referenced that the district was dealing with the union officials. The notice was factual and non-inflamatory, as was the letter sent to each individual's home. Since the communications were of a noncoercive nature and substantially factual with no new benefit offers being extended, these documents are not found to be illegal direct dealings with the employees in an attempt to undermine the union. Such action by an employer lacks good faith and is destructive of the collective bargaining process.

Coercion, Retaliation and Intimidation Against Union Representatives for Protected Concerted Activity

Docking the pay of certain union bargaining team members while they were on union business appears to be another example of the employer working against itself. Clearly, the employees had a right to participate in the union activity on "district time" as is shown in the contract language and the

employer's later reversal of its position. Walsh's November 10, 1982 letter to Daugharty contained a condition for discussing the grievance that is not referred to in the bargained grievance procedure of the contract. As such it was an illegal pre-condition. The operations department's conduct was an unconcealed act of retaliation for union activity and as such a violation of the Public Employees Collective Bargaining Act.

Deferral to Arbitration

The district continually urges PERC to defer to three arbitration awards which were issued between the filing of the first complaint and the hearing in this matter. In a grievance filed on the unilateral reclassification of the district's buildings, the arbitrator found that a building's classification affected wages, but the district had authority under Article XIV to take the action that it did. As seen above, automatic extensions of collective bargaining agreements are illegal in this state, so the permissive language in Article XIV that waived the union's right to bargain the reclassification's effect on unit member's wages expired with the contract. There is no evidence that the change was implemented prior to the end of the 1980-1982 collective bargaining agreement. PERC cannot defer to an arbitration award which did not consider the prohibitions in RCW 41.56.070.

Another arbitrator found that language in the contract which gave the employer the right to determine starting and quitting times and the number of hours to be worked, included giving the employer the right to hire part-time employees. There is evidence that the district exercised this right as employees retired during the pilot program. Deferral will not be made to this award since the pivotal language constituted permissive waivers of mandatory subjects by the union and there were part-time employees hired after the collective bagaining agreement expired.

In the third award, the arbitrator found the new job descriptions were presented September 7, 1982 and implemented between September 7 and 14, 1982. The arbitrator held that the district failed to provide the union with adequate opportunity to negotiate over wage rates as required in Article XVII. Again, there can be no deferral to an award which bases its essence on a contract which has been found to have expired prior to the grievable event occurring.

FINDINGS OF FACT

1. The International Union of Operating Engineers, representing an appropriate bargaining unit of custodians and gardeners of the Seattle

School District, is a bargaining representative within the meaning of RCW 41.56.030(3).

2. The Seattle School District is a public employer within the meaning of RCW 41.56.030(1).

3. The parties had a collective bargaining agreement with a duration of September 1, 1980 through August 31, 1982. The contract included an automatic extension clause in its duration section. On May 28, 1982, the union subimtted its opening package proposal to the district for the replacement of the expiring collective bargaining agreement. The district, with permission from the union, delivered its new proposals in July, 1982.

4. School district buildings were historically classified as G-1 (most cleaning activity required) through G-5 (least cleaning activity required). Depending on the building's classification and the employee's job title the employee would be placed on a salary schedule from Step L (highest pay range) to Step G (lowest pay range).

5. On May 18, 1982, the district, through Robert Griffin, general manager of facilities, and Frank Warstler, supervisor of operations, announced to the union as a fait accompli a unilateral alteration of the method of classifying the district's buildings. Under these parties' collective bargaining agreement, building classification directly impacted wages.

6. At a negotiating meeting on September 7, 1982, Merlin Walsh, manager of grounds and operations, gave the union team a document entitled "Staffing configuration, custodian standards for 82-83 School Year," and indicated that the changes in the document were being implemented for the 1982-83 school year. The plan called for: 1. The implementation of new time allocation standards; 2. The change of shift hours for certain custodians in the elementary and middle schools; 3. The elimination of four assistant engineers in four high schools; and 4. The use of part-time "G" custodians and the concomitant elimination of the "H" licensed assistant position at 47 grade schools. There was no business necessity established for these changes to occur after the 1982-1983 school year had started.

7. The implementation of changed time allocation standards had a demonstrably adverse effect on bargaining unit members.

8. The district implemented, without bargaining to an agreement or a good faith impasse, changes in some unit member's shift schedules after the parties' 1980-1982 collective bargaining agreement expired.

9. The conversion to a computerized optimum start/stop system for the district's boilers is a "condition of employment." The record does not establish that the installation was a result of an emergency situation or that it involved a substantial capital investment.

10. The union refused to bargain with the district regarding part-time employees until September, 1982. At that time, and continuing until the hearing on these unfair labor practice complaints, the union refused to settle for anything less than its opening position and gave no adequate justification for its position.

11. In the autumn of 1982, after giving notice to the union, the district altered its administration leave for union activity clause of the collective bargaining agreement. On November 10, 1982, the district attempted to establish a pre-condition not contained in the contract's grievance procedure for discussing the grievance filed in response to the altered administration. In January, 1983, at step three of the grievance procedure, the district reversed itself and reverted to its previous method of granting union activity leave.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to RCW 41.56 et seq.

2. The district was not dilatory in getting to the bargaining table in the summer of 1982 in violation of RCW 41.56.140(4) and (1).

3. The automatic extention clause in the 1980-82 collective bargaining agreement's duration section violates RCW 41.56.070. The invalidity of the automatic extension language causes the contract to expire no later than the date listed in the duration section prior to the extension provision. The waiver language regarding mandatory subjects ceases to exist when the collective bargaining agreement expires.

4. By unilaterally altering the method of building classification which impacts wages herein, the district violated RCW 41.56.140(4) and (1).

5. By its behavior after August 31, 1982 the district illegally refused to bargain regarding the mandatory subject of time allocation standards after the union requested bargaining, in violation of RCW 41.56.140(4) and (1). The district's implementation of the new time allocation standards September 13, 1982 was not the result of a good faith impasse.

6. The district's unilateral changes in unit members' shift schedules without bargaining to agreement or reaching a good faith impasse, was a violation of RCW 41.56.140(4) and (1).

7. The district's unilateral decision to install a computerized optimum start/stop system on boilers in four high schools and the concomitant elimination of four assistant engineer positions at those schools, without bargaining to agreement or reaching a good faith impasse, was a violation of RCW 41.56.140(4) and (1).

8. The district did not violate RCW 41.56.140(4) or (1) by hiring part-time employees, since it was at a bargaining impasse on this issue created by the union. At no time after the part-time employees were hired did the union lift the impasse it had created.

9. The communications from the district to unit members February 23, 1983 were not illegal direct dealings with the employees in violation of RCW 41.56.140(4) and (1).

10. The district, by altering during bargaining, its method of granting leave for union activity violated RCW 41.56.140(1) and (2).

11. The district by trying to establish a pre-condition not contained in the collective bargaining agreement to the processing of a Step One grievance violated RCW 41.56.140(1) and (4).

12. The district by its course of conduct which included bargaining an item at the negotiations table while making unilateral changes in the same area in its operations department - exhibited a lack of good faith bargaining which violated RCW 41.56.140(4) and (1).

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the Seattle School District, its officers and agents, shall immediately:

1. Cease and desist from:

   a. Refusing to bargain with the International Union of Operating Engineers, Local 609;

   b. Making unilateral changes in building classification which affect unit members' wages without giving notice to, and upon request,

bargaining collectively with the International Union of Operating Engineers, Local 609;

c. Making unilateral changes in time allocation standards without giving notice to, and upon request, bargaining collectively with the International Union of Operating Engineers, Local 609;

d. Making unilateral changes in shift schedules without giving notice to, and upon request, bargaining collectively with the International Union of Operating Engineers, Local 609;

e. Making unilateral decisions which affect terms of employment and which are not the result of an emergency situation or involve a substantial capitol investment -- specifically, installing a computerized optimum start/stop system on the boilers in four high schools -- without giving notice to, and upon request, bargaining collectively with the International Union of Operating Engineers, Local 609;

f. Controlling, dominating or interfering with collective bargaining representatives by changing the method of granting leave for union activities.

g. Attempting to establish pre-conditions not contained in the collective bargaining agreement for processing a Step One grievance;

h. Proceeding with a course of conduct which discourages collective bargaining;

i. Interfering with, restraining or coercing its employees in any other manner in the free exercise of their rights guaranteed them by the Act.

2. Take the following affirmative action to remedy the unfair labor practices and to effectuate the policies of the Act:

a. Upon request, bargain collectively in good faith with the International Union of Operating Engineers, Local 609, as the excluding bargaining representative of an appropriate bargaining unit with respect to wages, hours and working conditions and specifically with respect to building classifications, time allocation standards, shift schedules, and a computerized optimum start/stop system;

b. Reinstate the employment practices in effect prior to September, 1982 regarding granting leave for union activity.

c. Make whole the four assistant engineers who were transferred due to the installation of the computerized optimum start/stop system on the high school boilers by restoring any lost wages, benefits, seniority rights or other privileges of employment in accordance with WAC 391-45-410;

d. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the Seattle School District, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Seattle School District to ensure that said notices are not removed, altered, defaced, or covered by other materials.

e. Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this order as to what steps have been taken to comply herewith and at the same time provide the Executive Director with a signed copy of the Notice required by the preceding paragraphs.

DATED at Olympia, Washington, this 3rd day of December, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively with the International Union of Operating Engineers, Local 609.

WE WILL NOT make unilateral changes in wage rates for revised job descriptions of bargaining unit positions.

WE WILL NOT refuse to bargain the effects of the decision to install computerized controls on boilers in schools.

WE WILL NOT implement an entire contract, including a duration clause, even after reaching a good faith impasse.

WE WILL NOT circumvent the union or initiate communications to bargaining unit employees which derogate the union in the eyes of its members.

WE WILL NOT unilaterally change the method of granting leave for union activity.

WE WILL NOT assert pre-conditions not contained in the collective bargaining agreement for processing of grievances.

WE WILL NOT interfere with, restrain or coerce our employees in any other manner in the free exercise of their rights guaranteed them by the Act.

WE WILL, upon request, bargain collectively in good faith with the International Union of Operating Engineers, Local 609, as the exclusive bargaining representative of an appropriate bargaining unit with respect to wages, hours and working conditions, and specifically with respect to the wage rate to be paid to the revised job description of "Assistant Custodian" and the effects of the decision to install computerized controls on school boilers.

WE WILL, upon request, rescind the collective bargaining agreement which we purported to unilaterally implement as of March 3, 1983 with a duration of September 1, 1982 through August 31, 1983, and will bargain collectively in good faith for its replacement.

SEATTLE SCHOOL DISTRICT

BY: _____
AUTHORIZED SIGNATURE

DATED: _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice of compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.