STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,	)	
Complainant,	)	CASE 18898-U-04-4804
vs.	)	DECISION 9309 - PSRA
WESTERN WASHINGTON UNIVERSITY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Eric Nordloff, Staff attorney, for the union.

Robert McKenna, Attorney General, *by Morgan Damerow*, for the employer.

On October 24, 2004, Public School Employees of Washington (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, which named Western Washington University (employer) as respondent. The employer operates an institution of higher education and the union is the exclusive bargaining representative of certain supervisory classified employees who work in that institution. The union alleges that the employer failed to bargain in good faith and interfered with rights protected by the Personnel System Reform Act of 2002 (PSRA), Chapter 41.80 RCW.

Agency staff issued a preliminary ruling under WAC 391-45-110, finding that a cause of action existed under the PSRA, RCW 41.80.110(1). Examiner Carlos R. Carrión-Crespo held a hearing on the case on May 25 and 26, 2005, and on July 15, 2005. During the

hearing, the union withdrew one of its allegations and moved to amend the complaint to conform to the evidence. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Did the employer fail to bargain in good faith by not providing its representatives sufficient authority to reach an agreement?

2. Did the employer fail to bargain in good faith when it set October 1, 2004, as a deadline to reach an agreement?

3. Did the employer interfere with collective bargaining rights when it rejected a union proposal for an additional day of paid leave, on the basis of alleged bad behavior?

4. Was the union's motion to amend its complaint during the hearing timely?

On the basis of the record presented as a whole, the Examiner rules that the employer failed to bargain in good faith and interfered with the collective bargaining rights of employees, and thus violated RCW 41.80.110(1)(a) and (e). The Examiner denies the union's motion to amend the complaint.

ANALYSIS

Burden of Proof

Under the Commission's rules regarding unfair labor practices, the complaining party carries the burden of proving by a preponderance of the evidence that an unfair labor practice occurred. WAC 391-45-270(1)(a); *State - Corrections*, Decision 7872-A (PSRA, 2003).

Issue 1: Did the employer fail to bargain in good faith by not providing its representatives sufficient authority to reach an agreement?

The union alleges that the employer failed to bargain in good faith because its bargaining team limited its proposals to replicate what other institutions of higher education offered in their negotiations with the unions that represented their employees. The employer argues that its bargaining team was vested with authority to negotiate to finality within legally permissible limits.

Legal Principles

The PSRA established procedures under which collective bargaining would take place to cover those state employees that are represented by unions. Under the act, the governing board of an institution of higher education, or its designee, is the employer for purposes of collective bargaining. RCW 41.80.010(4). The PSRA thus maintains the institution's traditional autonomy in the handling of personnel matters under the previous system established by the State Civil Service Law, RCW 41.56.201(1), while it preserves the legislature's budgetary authority. The governing board may elect to have the governor or governor's designee conduct collective bargaining. RCW 41.80.010(4).

Under the PSRA, an employer and the exclusive bargaining representative of its employees have the duty to bargain, as RCW 41.80.005(2) defines it:

> "Collective bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to the subjects of

> bargaining specified under RCW 41.80.020. The obligation to bargain does not compel either party to agree to a proposal or to make a concession, except as otherwise provided in this chapter.

The PSRA enforces the duty to bargain through RCW 41.80.110(a) and (e), which make it an unfair labor practice for a public employer to interfere with public employees in the exercise of their rights guaranteed by the statute, or to refuse to bargain with the representatives of its employees. The PSRA empowers the Commission to prevent unfair labor practices and to issue appropriate remedial orders. RCW 41.80.120(1). The Commission has found that the legislative intent was not to deviate from Commission precedent when interpreting the PSRA. *State-Natural Resources*, Decision 8458-B (PSRA, 2005).

The PSRA directs higher education employers to "consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations." RCW 41.80.010(4). The Legislature also reserved the right to approve or reject all agreements. RCW 41.80.010(3) and (4). That way, the employer is expected to know its limitations beforehand and bargain accordingly.

Authority to bargain

Where appropriate, the Commission will look to persuasive decisions of the Supreme Court of the United States, the Supreme Court of the State of Washington, the National Labor Relations Board, and the Federal Labor Relations Authority for guidance in applying the law.

The Commission adopts the National Labor Relations Board's (NLRB) standard to determine if an employer bargained in good faith:

> [C]onduct reflecting a rejection of the principle of collective bargaining or an underlying purpose to bypass or undermine the union manifests the absence of a genuine desire to compose differences and to reach agreement in the manner the Act (there meaning the NLRA) commands. All aspects of the Respondent's bargaining and related conduct must be considered in unity, not as separate fragments each to be assessed in isolation.

Federal Way School District, Decision 232-A (EDUC, 1977).

More recently, the Commission declared that "[a] party is not entitled to reduce collective bargaining to an exercise in futility." *Mansfield School District*, Decision 4552-B (EDUC, 1994). The Commission also holds that an employer must "meet with a willingness to hear and consider a union's view and a willingness to change its mind. . . . [but] such behavior cannot mitigate other [violations] of its good faith obligation." *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988). One indication of bad faith is if the words and actions of a party show that it is merely "going through the motions" of bargaining, also called "surface bargaining"; among them, "fail[ing] to designate an agent with sufficient bargaining authority." *Atlanta Hilton & Tower*, 271 NLRB 1600 (1984).

The Commission applies the Washington State Supreme Court's definition of apparent authority:

> Apparent authority can be created by appointing a person to a position, such as that of manager or treasurer, which carries with it generally recognized duties, and to those who know of the appointment, there is apparent authority to do the things ordinarily entrusted to one occupying the position, regardless of unknown limitations which are imposed upon the particular agent.

City of Brier, Decision 5089-A (PECB, 1995), citing *King v. Riveland,* 125 Wn.2d 500, 508-509 (1994). The courts assume that a person knows the limits of the power and authority of a government official when dealing with such an official. *State ex rel. Bain v. Clallam County,* 77 Wn.2d 542 (1970). The Commission distinguishes between actual, apparent and implied authority as follows:

> With actual authority, the principal's objective manifestations are made to the agent; with apparent authority, they are made to a third person or party. Implied authority is actual authority, circumstantially proved, which the principal is deemed to have actually intended the agent to possess. Washington courts have held that the "authority to perform particular services for a principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services."

Lower Columbia College, Decision 8117-B (PSRA, April 13, 2005)[Citations omitted].

Although the Commission has not defined the phrase "authority *to bargain,*" the aforementioned holdings are in line with the NLRB's decisions distinguishing actual from titular authority to represent a party in collective bargaining. The NLRB defined the former as "sufficient authority to engage in meaningful negotiations." *Southwestern Portland Cement Company,* 289 NLRB 1264 (2002). The Federal Labor Relations Authority (FLRA), in turn, has found that the parties in the federal public sector must "provide representatives who are empowered to negotiate and enter into agreements on all matters within the scope of negotiations in the bargaining unit." *National Treasury Employees Union and Department of the Treasury, Internal Revenue Service,* 13 FLRA 554 (1983).

Public sector collective bargaining is different from its private sector counterpart because "public sector unions cannot expect management representatives to possess final authority to conclude agreements at the bargaining table." *Sultan School District*, Decision 1930 (PECB, 1984), *aff'd.*, Decision 1930-A. Keeping that distinction in mind, commission precedent requires a bargaining team to be able to effectively represent the employer in labor relations, by virtue of its position in the bargaining table. The team must have actual authority to reach tentative agreements, not tentative authority to reach actual agreements.

In light of the foregoing summary of the applicable law, the complainant in this case must establish, by a preponderance of the evidence and considering the totality of the employer's conduct, that the employer failed to provide its bargaining team with the authority to consider different proposals and to make commitments on mandatory subjects of bargaining on behalf of the employer, subject to approval by the governing board and the legislature. The Examiner concludes that the union has met this burden.

Analysis

The issue concerns events that took place in September 2004. The union alleges that the employer's bargaining team showed a lack of authority to bargain. The employer states that it met its duty to bargain because the law allowed the limits it placed upon its bargaining team. The employer argues that it set forth its final position when the parties first met and explained that it wanted to meet the statutory deadline. The employer asserts that its bargaining team explained to the union that the employer would not grant in bargaining benefits that exceed what it or other institutions of higher education would grant other bargaining units. The employer

claimed that it desired to avoid disparities that would generate resentment among employees.

In early September 2004, the employer's bargaining team received notice that the governor's office would not ask the legislature to provide more money to the institutions of higher education than to the general government agencies to fund their collective bargaining agreements. Karen Morse, president of the university, had the authority to allow deviations from the status quo. Val Berry, director of human resources, had broad authority to negotiate regarding all aspects of the contract, but was only authorized to negotiate a contract with costs that the employer expected the Office of Financial Management (OFM) to support. The employer had instructed the team to keep the status quo with respect to paid leave. The employer's bargaining team thought that paid leave had economic impact because the employer saw it as an unfunded potential cost.

The employer's bargaining team did not think the legislature would support something that caused higher labor costs than what other state contracts called for, and asked the union to accept such a proposal. The employer offered to grant the same benefits that other institutions of higher education would eventually grant their employees. The employer's bargaining team stated during bargaining that it would not use money generated locally to fund wage increases or benefits. These are discretionary funds that the employer acquires independently of the state government, and which the employer has discretion to spend as it deems fit. The parties met several times in September. The employer consistently rejected the union's economic proposals throughout the negotiations, and considered them "abhorrent" because they differed from what the employer was agreeing to with its other bargaining units.

On September 27, 2004, the union offered to enter into an agreement if the employer agreed to one additional economic benefit, and the employer could choose among four alternatives that the union suggested. The employer rejected each one of them. At a meeting on September 28, the employer expressed concern to the union that the bargaining unit members would miss the wage raises that other state employees negotiated. The parties agreed to meet on September 29 and talk about an additional day of leave. Wolfe-Lee and Berry testified that they had no authority to grant an additional day of paid leave.

On September 29, 2005, the parties discussed whether the employer would grant an additional day of paid leave and a provision to reopen bargaining on compensation if exempt employees received a higher compensation package. The meeting adjourned so Berry could report to Morse about the status of negotiations, because the team would go beyond its general authority if it agreed to grant an additional day of paid leave. Morse rejected the idea because she felt that such an agreement would reward the union for holding back negotiations. Morse felt that the employer, by engaging in collective bargaining, had given the employees an opportunity to be included in the impending wage increases; that granting an additional day of paid leave would increase its labor cost; and that it would stimulate other groups to hold out for more in future negotiations. Morse instructed the employer's bargaining team to discuss "other concepts, [such as more] liberal use of leave, [and] other things that [the employer] could do to permit people to have some additional time off essentially around the holidays."

Berry subsequently announced that there was no agreement. The employer then proposed to allow noncritical staff to take more existing leave during the holiday period, when staffing needs were

greatly reduced. Under the proposal, the parties would not include in the agreement any language regarding this practice.[1] The union's bargaining team rejected the arrangement. However, it accepted the employer's written proposal to conduct a salary survey but no additional paid leave. The union members rejected this tentative agreement the following day.

The parties eventually entered into and ratified an agreement in April 2005. It did not include a salary survey or additional paid leave, and went into effect on July 1, 2005.

Conclusion

When the employer opted under the statute to bargain with the unions on its own instead of being represented by the governor's office, it assumed full responsibility for the course of bargaining. The employer consulted the OFM before bargaining started, as the PSRA requires. However, the statute does not mandate that the employer receive instructions from the office of the governor *during* bargaining.

The foregoing summary of the evidence shows that the governing board did not name a bargaining team with actual authority to bargain with an open mind on economic matters, but with only the apparent author-

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[1] Under the PSRA, the parties must reduce agreements to writing. RCW 41.80.030(1). Where a statute binds the parties to reduce agreements to writing, Commission examiners have held that refusing to do so constitutes a *per se* violation of the statute. See, e.g., *Clark Community College*, Decision 9009 (CCOL, June 27, 2005), following the U.S. Supreme Court's interpretation of the NLRA in *H.J. Heinz v. NLRB*, 311 U. S. 514 (1941). However, the preliminary ruling in this case does not include this allegation, and the Examiner will not rule on it independently.

ity that their respective titles gave them. The union counted upon this implied authority to reach a tentative agreement. The setting of holiday schedules is a mandatory subject of bargaining. *Skagit County*, Decision 8746-A (PECB, 2006).[2] The financial parameters that the employer's witnesses described would not have kept the employer's bargaining team from agreeing on an additional day of paid leave, and in fact Berry sought authorization to put it in writing. But the team had no authority to come to an agreement on the issue on September 29. Berry only had authority to meet with the union and attempt to convince the union to accept the employer's latest offer. As a result, the employer refused to put in writing its offer to apply leave policies liberally.

Under the statute, bargaining units have different communities of interest. Therefore, it is an inherent part of collective bargaining that unions will propose different terms and conditions of employment in each bargaining unit. While employers are not bound to acquiesce to union proposals, it is disingenuous to justify denial as necessary to keep all groups equal before the eyes of the employer.

The evidence shows that the employer treated collective bargaining as a way to impose an expected legislative wage increase on bargaining unit members, and instructed its bargaining team to convince the union to accept the employer's proposal to avoid being left out. The fact that the employer refused to include in the written agreement the only item that it did offer indicates a pattern of disregard of the bargaining process. Considering the totality of the

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[2] RCW 41.80.020(6) forbids agreements that conflict with the terms of a statute, but RCW 1.16.050 allows bargaining over holidays.

employer's conduct, the Examiner finds that the employer's bargaining team lacked the authority it needed to bargain in good faith.

Issue 2: Did the employer fail to bargain in good faith when it set October 1, 2004, as a deadline to reach an agreement, stating that it had to submit the agreement to the legislature for funding?

The union alleges that the employer set up an artificial obstacle to settlement when it stated that it needed to submit the agreement to OFM by October 1. The union argues that the PSRA did not require the employer to do so. The employer, in turn, states that the law supports its statement.

Legal Principles

Different sections of the PSRA became effective in different dates in order to enable a transition to the new scheme, which includes bargaining on wages, hours, and other economic terms and conditions of employment. To that effect, requests for funds necessary to implement the provisions of bargaining agreements must be submitted to the OFM by October 1 prior to the legislative session at which the requests are to be considered. RCW 41.80.010(3)(a). After the OFM receives and certifies that the requests are financially feasible for the state, the governor will submit to the legislature a request for funds, or legislation necessary to implement bargaining agreements. RCW 41.80.010(3), 41.80.010(3)(b). The Legislature shall approve or reject the governor's request for funds as a whole, and shall not consider requests that are not included in the governor's budget document. RCW 41.80.010(3).[3]

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[3] These sections apply to institutions of higher education. RCW 41.80.010(4).

Analysis and conclusion

The cited sections indicate that after October 1, the employer would have had no right to petition the governor to include funds to pay the costs of implementing the contract in the budget document, and the parties would have been able to bargain only regarding funds generated by other funding sources. Although the employer may have bargained after the statutory deadline, its insistence that the agreement be reached by October 1, 2004, was based on a well-founded concern that the legislature would not appropriate funds to support it. The fact that the employer offered to bargain non-economic matters after October 1 indicates that the employer was not closing the door on the process, but merely attempting to submit the request for legislative appropriations in a timely fashion. The employer did not set the deadline arbitrarily, and its actions did not violate the statute.

Issue 3: Did the employer interfere with the collective bargaining rights of its employees when it rejected a union proposal for an additional day of paid leave on the basis of alleged bad behavior?

The union claims that the employer interfered with collective bargaining rights when it withdrew the offer of an additional day of paid leave to punish the union for not promptly agreeing to accept the employer's salary proposal. The employer argues that it was not required to agree to the union's proposals.

Legal Principles

The PSRA, in RCW 41.80.050, grants public employees the right to organize and designate representatives of their own choosing without interference, restraint, coercion or discrimination from their employer. RCW 41.80.110(1)(a) protects these rights when it declares that it is an unfair labor practice for employers to inter-

fere with employees when they exercise such rights. RCW 41.80.005(2) protects a party's right to reject a proposal. However, the Commission holds that the duty to bargain in good faith "requires parties engaged in collective bargaining to explain and provide reasons for their proposals, as well as for their rejection of proposals made by the other party." *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004).

The Commission has held that an employer interferes with an employee's rights:

> [W]henever a complainant establishes that a party engaged in separate conduct that an employee could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. The burden of proving unlawful interference rests with the complaining party and must be established by a preponderance of the evidence, but the test for deciding such cases is relatively simple.

King County, Decision 6994-B (PECB, 2002) (citations omitted).

In *Columbia County*, Decision 2322 (PECB, 1985), the examiner concluded that bargaining "cannot be allowed to become a forum in which punitive measures are taken because of a perceived reluctance to accept a party's proposal on a mandatory subject of bargaining." The Commission later adopted this conclusion, and ruled that "regressive bargaining proposals made to punish the opposite party raise an inference of bad faith." *Spokane County Fire Protection District 1*, Decision 3447-A (PECB, 1990). More recently, the Commission found that an employer had failed to bargain in good faith when it rejected a proposal because the union had served subpoenas for an unfair labor practice hearing before this agency. *Grant County Public Hospital District 1*, Decision 8378-A.

Analysis

Although the parties differ on whether there was an agreement when the September 29 meeting adjourned, that is not the issue at hand. It is rather whether the employees could reasonably perceive that the employer threatened adverse action in reprisal for engaging in collective bargaining, which is a protected activity. Therefore, the Examiner will address the perceived threat and its relationship with the protected activity.

The employer advised the union that the employer needed to have an agreement before October 1 in order to acquire funding for it. Later, however, the employer decided that the union's decision to keep bargaining until September 29, two days before the employer's deadline, was inappropriate. The employer then informed the union that for that reason, the employer rejected the union's proposal for an additional day of paid leave. The union acted upon the employer's word that the parties needed to reach an agreement before October 1, 2004, and met with the employer on September 29 to attempt to reach an agreement. But the employer refused to grant an additional day of paid leave because an earlier, unannounced deadline had passed: the date in which other bargaining units had come to agreements with the employer. All of the employer's witnesses testified that the employer intended to send a message that the unions that represent its employees shall not wait until two days before the October 1 deadline as a bargaining strategy. In fact, Berry announced to the union on September 29 that there was no agreement because the university president refused to "reward bad behavior." Berry explained that the president referred to the fact that the union had withdrawn from the bargaining table on September 27 without an agreement.

Conclusion

When the employer refused to accept the union's proposal based solely on the above-mentioned reason, the employer retaliated openly against the union for not settling at the time and under the terms of the employer's choice. The parties are not entitled to dictate one another's strategy, and the union's bargaining team had a protected right to reject the employer's proposals until its members felt it was appropriate to accept them. Bargaining unit members could reasonably feel that the employer's assertions threatened their right to bargain collectively in a meaningful manner. Thus, the employer interfered with the employees' collective bargaining rights when it retaliated against the union for engaging in protected activity.

Issue 4: Was the union's motion to amend its complaint during the hearing timely?

The union moved during the hearing to amend its complaint to conform it to evidence presented at the hearing. The evidence consisted of a memorandum dated October 27, 2004, electronic messages dated October 28 and November 4, 2004, and a copy of a newspaper article dated October 29, 2004. According to the union, the contents of the documents supported the additional interference allegations. The employer argues that the motion was untimely. The Examiner took the motion under advisement, and both parties discussed it in their briefs.

Legal Principles

The Commission allows parties to amend complaints in certain circumstances, among them "to conform the pleadings to evidence received without objection, upon motion made prior to the close of the evidentiary hearing." WAC 391-45-070(2)(c). However, WAC 391-45-

070(1)(b) requires all amendments to be timely as to new facts. RCW 41.80.120(1) specifies that the Commission shall not process a complaint if the facts have occurred more than six months before the complainant files it.

Analysis

The union moved to amend the complaint before resting its case, and relies on two exhibits that the Examiner admitted into evidence. The hearing was held on May 25 and 26, 2005, which was more than six months after the date of the alleged interference took place. Therefore, the motion is not timely.

Conclusion

The Examiner denies the union's motion to amend the complaint.

CONCLUSIONS

The evidence in this case demonstrates that the employer unlawfully failed to bargain in good faith when it named a bargaining team that lacked the authority that the PSRA requires to engage in collective bargaining. The evidence in this case does not demonstrate that the employer imposed an artificial or arbitrary deadline on the negotiations. The Examiner denies the union's motion to amend the complaint to conform pleadings to the evidence because it is untimely.

Any facts or arguments presented at the hearing that are not cited within this decision are immaterial or not persuasive.

Remedies

The union requests that the Examiner order the employer to pay costs and attorney's fees. Commission and judicial precedent allows an

award of attorney fees as part of a remedial order where it is necessary to make the order effective and where the defenses are frivolous. *See Lewis County v. PERC*, 31 Wn.App. 853 (1982) and *City of Tukwila*, Decision 2434-A (PECB, 1987). Although the employer's conduct evidenced disregard for collective bargaining, the Examiner declines to award attorney's fees in the present situation because it is a case of first impression. *See City of Bremerton*, Decision 6006-A (PECB, 1998). The union cites the examiner's warning in *Western Washington University*, Decision 9068 (PECB, August 30, 2005). This Examiner will not follow the course of action that the previous examiner suggested because the cited decision was issued after the facts in the case at hand occurred and cannot be considered prior admonition; also, because it was issued in a different bargaining relationship. The Examiner also considers such course of action inappropriate in this case because the union did not prevail on all three of its charges.

The union also requests that the Examiner order that the parties submit the issues not resolved at the bargaining table to interest arbitration. The Washington State Supreme Court has determined that the Commission can issue such an order as part of an unfair labor practice remedy, but that it "must be cautiously and sparingly used . . . and used only in those cases where there is a clear history of bad faith refusal to bargain and where there is a very strong likelihood that such refusal will continue despite PERC's order to bargain in good faith." *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 826 P.2d 158 (1992). In the instant case, the parties have not utilized the resources that the PSRA offers, namely mediation and fact-finding. If the employer continues to refuse to bargain in good faith, the union can file another complaint and request more stringent remedies, based on a clear history.

FINDINGS OF FACT

1. Western Washington University is an "institution of higher education" within the meaning of RCW 41.80.005(10). The governing board of Western Washington University is an "employer" for collective bargaining purposes, within the meaning of RCW 41.80.010(4).

2. Public School Employees of Washington is an "exclusive bargaining representative" within the meaning of RCW 41.80.005(9), and represents the bargaining unit "D", which comprises certain classified employees assigned to supervisory classes in the institution. *Western Washington University*, Decision 8634 (PSRA, 2004).

3. The employer and the union met during 2004 to attempt to draft the economic terms of a collective bargaining agreement under Chapter 41.80 RCW.

4. The employer opted to bargain with the representatives of its employees on its own, and not through the office of the governor.

5. The employer delegated on its bargaining team the authority to reach an agreement that matched the economic terms that the office of the governor agreed with the representatives of higher education employees, and to maintain the status quo on leave issues. The employer authorized only the university president to deviate from such terms.

6. The employer asked the union to finalize an agreement on economic issues before October 1, 2004. The employer rejected

each of the economic proposals that the union advanced between August, 2004, and September 29, 2004. During that time, the employer proposed wage raises equivalent to those that the office of the governor offered the representatives of other higher education employees. On September 29, 2004, the employer's bargaining team agreed to ask the president to authorize them to agree to include in the contract an additional day of leave.

7. On September 29, 2004, the university president declined to authorize the employer's bargaining team to include in the contract an additional day of leave, alleging that doing so would reward the union for not agreeing to the employer's proposals at the time the other bargaining units had.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.

2. By failing to grant its bargaining team with authority to bargain, Western Washington University committed unfair labor practices in violation of RCW 41.80.110(1)(e).

3. By asking the union to finalize an agreement by October 1, 2004, Western Washington University did not commit unfair labor practices in violation of RCW 41.80.110(1)(e).

4. By refusing to agree on a union proposal exclusively to retaliate against the union's bargaining strategy, Western Washington University committed unfair labor practices in violation of RCW 41.80.110(1)(a).

ORDER

Western Washington University, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing to bargain in good faith with Public School Employees of Washington, as the exclusive bargaining representative of the appropriate bargaining unit described in paragraph 2 of the foregoing findings of fact.

   b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.80 RCW:

   a. Upon request, meet and bargain collectively in good faith with Public School Employees of Washington, concerning mandatory subjects of bargaining as described in Chapter 41.80 RCW for the members of Bargaining Unit "D".

   b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto. Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure

that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice attached to this order into the record at a regular public meeting of the Governing Board of Western Washington University, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, on the 3rd day of May, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CARLOS R. CARRIÓN-CRESPO, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to bargain in good faith with the Public School Employees of Washington, representing the members of Bargaining Unit "D", concerning mandatory subjects of bargaining.

WE UNLAWFULLY interfered with the members of Bargaining Unit "D" in the exercise of their collective bargaining rights under state law.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL meet and bargain collectively in good faith with Public School Employees of Washington, concerning mandatory subjects of bargaining as described in Chapter 41.80 RCW for the members of Bargaining Unit "D".

WE WILL NOT, in any manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____ WESTERN WASHINGTON UNIVERSITY

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.