STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF ABERDEEN, an affiliate of PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. ABERDEEN SCHOOL DISTRICT, Respondent.	)	CASE NOS. 6584-U-86-1309 and 6634-U-86-1324 DECISION 3063 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Eric T. Nordlof, Attorney at Law, appeared on behalf of the complainant.

Brown, Edwards, Lewis & Janhunen, by Curtis M. Janhunen, Attorney at Law, appeared on behalf of the respondent.

On September 30, 1986, Public School Employees of Aberdeen filed a complaint charging unfair labor practices on behalf of Ms. Lee Olson, alleging that Aberdeen School District had violated RCW 41.56.140(4) by reducing a 12-month position to an 11-month position. (Case No. 6584-U-86-1309). An additional complaint was filed on November 3, 1986, alleging the district had violated RCW 41.56.140(4) by reducing the number of hours worked by aides during conference periods for November 18-21, 1986, and March 16-19, 1987. (Case No. 6634-U-86-1324). A hearing was held on the consolidated matters at Aberdeen, Washington, on May 14, 1987, before Jack T. Cowan, Examiner.

BACKGROUND

The union is the exclusive bargaining representative of office-clerical and teacher aide employees of the school district. The parties had a collective bargaining agreement at the time pertinent to these proceedings.

Wages for the position of "head high school secretary" were negotiated into the collective bargaining agreement by the parties under both Schedule "A", relating to 12-month positions, and Schedule "B", relating to school year positions.

Since at least 1973, the employer has had a 12-month secretarial position (most recently termed "head high school secretary") at its Weatherwax High School. The wages for the 12-month position were specified in Schedule "A" of the collective bargaining agreement between the employer and the union. The position was filled for many years by Ms. Lee Olson. Under the 12-month system, Ms. Olson's salary continued over holiday periods and she received vacation time which varied from 10 to 15 days per year, depending on length of service.

The work load which Olson had processed over the years had been reduced by July 1986, due primarily to computerization of the processing of student grades and transcripts. During or about July 1986, the employer concluded that Weatherwax High School would henceforth be closed during the month of July each year, with such closures to begin in July 1987. The high school was the only one of the employer's schools which remained open during the month of July 1986 and Ms. Olson was the only secretary working at the high school during that month.

Effective August 4, 1986, Ms. Olson's position was changed from a 12-month position under Schedule "A" of the collective

bargaining agreement to an 11-month position under Schedule "B" of the same agreement. Under the 11-month system, her salary was increased by approximately 6.2%, but holiday and vacation benefits were reduced. The employer did not notify the union in advance of the change, or negotiate with the union prior to moving Olson from the 12-month schedule to the 11-month schedule. Lee Olson did not file a grievance concerning this matter under the collective bargaining agreement between the parties, nor did she appear as a witness at the hearing in this matter. The record indicates that she retired from employment with the school district in January, 1987.

Students attend school for only a half day during conference periods scheduled each autumn and spring. During the 1986-87 school year, the conference periods were scheduled for November 18-21, 1986, and March 16-19, 1987. Shortly after the start of the 1986-87 school year, certain of the employer's aide employees were advised by their respective school principals that aides were not needed if there were no students in the buildings, so that the aides would be working fewer hours during that school year. Aides in one building were told that they could choose between a reduction in hours for all aides or a lay-off of the least senior aide to accomplish necessary cost reductions. There was no union representative or bargaining unit officer present at the time of those discussions.

The union representative subsequently requested information or documentation concerning the reduction of hours, but the union's request was refused by the employer, based on a belief that the requested information was "confidential" and could not be released without the authorization of the individual employees involved.

POSITIONS OF THE PARTIES

The union alleges the employer acted in an unlawful manner by its unilateral discontinuance of the 12-month secretarial position at Weatherwax high school. In the matter of hours reduction for the aides, the union alleges the employer violated the statute by dealing directly with the bargaining unit members, by its refusal to bargain concerning the reduction of hours, and by refusing to respond to the union's request for specific information regarding the hours reduction.

The employer responds that any issues concerning the high school head secretary position became moot by reason of Olson's retirement. On the merits of that dispute, the employer maintains that the decision to close the high school during the month of July was based on the fact that there was no work for the secretary to do during that month. Regarding the aides, the employer contends that an effort has been made to accommodate the aides in their attempt to minimize the impact of the hour reduction on pension eligibility. The employer emphasizes the primary import of running the schools for the benefit of students and taxpayers, not for the aides and their retirement benefits. It contends that the current method being used to allocate aide time is a method which had been used by the employer and agreed to by the union for many years, and that such matters should be pursued when the contract is open for negotiation, rather than through unfair labor practice proceedings.

DISCUSSION

The duty to bargain imposed by the Public Employees' Collective Bargaining Act, RCW 41.56.030(4), entitles the union, as

exclusive bargaining representative of the employees, to several things. The first is notice of any changes of wages, hours or working conditions where there is a duty to bargain; the second is bargaining on such matters upon a timely request made by the union; and the third is prompt response to requests for information reasonably necessary to the performance of the union's functions in negotiations and contract administration. At the same time, the employer is prohibited from dealing directly with bargaining unit employees on matters that are proper subjects for negotiation between the employer and the union.

The signing of a collective bargaining agreement is the usual outcome of the collective bargaining process, but the duty to bargain is not limited to contract negotiations. Parties may waive their bargaining rights by contractual terms, and the Public Employment Relations Commission does not assert jurisdiction to remedy violations of contract through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). On the other hand, the unfair labor practice provisions of the statute are available to enforce the duty to bargain concerning matters not covered by the contract. South Kitsap School District, Decision 472 (PECB, 1978).

A collective bargaining agreement existed between the parties to this case for the period September 1, 1985, through August 31, 1987. Relevant articles are as follows:

> Article II - Rights of the Employer
>
> Section 2.1
>
> It is agreed that the customary and usual rights, powers, functions, and authority of management are vested in management officials of the District. Included in

these rights in accordance with and subject to applicable laws, regulations, and the provisions of this Agreement, is the right to direct the work force, the right to hire, promote, retain, transfer, and assign employees in positions; The right to suspend, discharge, demote, or take other disciplinary action against employees; and the right to release employees from duties because of lack of work or for other legitimate reasons. The District shall retain the right to maintain efficiency of the District operation by determining the methods, the means, and the personnel by which such operation is conducted. (Emphasis supplied)

* * *

Article V - Appropriate Matters for Consultation and Negotiation

Section 5.1

It is agreed and understood that matters appropriate for negotiations between the District and the Association are hours, wages, grievance procedures and general working conditions of employees in the bargaining unit subject to this Agreement.

* * *

Article IX - Probation, Seniority and Layoff Procedures

. . .

Section 9.9.5

Nothing contained in this Article shall be construed to prohibit the District from making a systematic reduction in the hours worked by employees at individual work sites as the need arises because of program or budgetary reasons ....

The Secretarial Position -

Many things changed over the period of time during which the 12-month head secretary position existed. Enrollment changes,

funding changes, computerization, changed administrative techniques and other factors have, to varying degrees, affected the subject position and other positions as well. There was only one employee at the school during the month of July, and there was no work for that employee to do. The employer came, in apparent good faith, to a conclusion that because of these cumulative changes, it no longer made any sense to keep the school open during the month of July. Such indisputable logic would mandate closure of the school during the month of July and reassignment of the one employee to an 11-month position. The employer would benefit from both cost savings and increased efficiency.

The plan to close the school, in and of itself, had no direct impact on Ms. Olson, since the closure would not occur until July, 1987, six months after her retirement. Her wages and paid leave rights were altered, however, by the conversion to an 11-month position which was implemented effective on or about August 4, 1986. To her benefit, she received a salary increase of 6.2% when she was moved to Schedule "B". To her detriment, holiday and vacation benefits were reduced. The high school position was the only 12-month position in the bargaining unit, so there was no possibility of a transfer to preserve her paid leave rights. Looked at from the perspective of the employee, the changes of "hours", with resulting changes in pay and benefits, could have been significant. Clover Park School District, Decision 2560-B (PECB, 1988).

RCW 41.56.030(4) requires negotiation on both "wages" and "hours". Paid leave benefits are but variants of "wages" and "hours". An employer's unilateral change of its employees' hours of employment, without prior notice to and discussion with the employees' bargaining representative, ordinarily constitutes a refusal to bargain unfair labor practice. NLRB v.

Katz, 369 U.S. 736 (1962); Federal Way School District No. 210, Decision 232-A (EDUC, 1977). The employer was under a duty to give notice and bargain here, unless the matter was already controlled by contract. The Examiner must thus make an interpretation of the collective bargaining agreement.[1]

The language of the collective bargaining agreement applicable in the instant case would appear to specifically permit the employer to make certain unilateral change in hours of employment, without prior notice to or discussion with the employees' exclusive bargaining representative. Article II allows the employer to release employees from duties because of lack of work or other legitimate reasons. Article IX permits reduction of hours whenever the need arises because of program or budgetary reasons. The evidence indicates that there was a lack of work for Ms. Olson during the month of July. The need to close a school occupied by only one employee would constitute a legitimate reason. The reduction in hours to accommodate change in program or for budgetary reasons could likewise be legitimized.

The presence of alternative wage provisions under both Schedule A and Schedule B indicates that, regardless of the practice in the recent past, the parties had considered the possibility of the position working either schedule and left the discretion to the employer. The 6.2% wage bonus for the 11-month employee makes up for more than two-thirds of the difference created by the number of hours.

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[1] The Commission would ordinarily "defer" such questions to contractual grievance arbitration procedures under Stevens County, Decision 2602 (PECB, 1987), and a deferral inquiry was made in this case. The employer resisted the processing of the dispute through arbitration, so no deferral was possible.

There is nothing in evidence to indicate that the reduction in hours was, in any way, a calculated tactic to discriminate against Ms. Olson. The Examiner thus concludes that the union waived its bargaining rights on the matter by signing the collective bargaining agreement. As in Pasco School District, Decision 2546-A (PECB, 1987), this case amounts, at most, to a dispute concerning the application of two alternative provisions of the collective bargaining agreement.

The Layoff of Aides During Conference Periods

The legal principles and contract language relied upon in the foregoing discussion concerning hours of employment for the high school head secretary also apply in disposing of the issue concerning the aides.

For the reasons stated, the employer has the contractual right to make certain changes in hours of employment, without notice to or further negotiation with the bargaining representative. If the employer had only laid off or cut the hours of the aides, however termed, during the conference weeks, the case could be dismissed without further consideration.

Circumvention of the Union -

The allegations of direct negotiation with employees must be considered separately. It is clear that the employer did not act under the authority reserved to it by the contract, but rather backed away from a unilateral decision to include the employees (but not the union) in the decisionmaking process.

Each of the employer's school principals is responsible for structuring his/her particular school to best utilize allocated funding. This includes determining the hours to be worked by classified personnel. Based on funding amounts determined in April or May, the principals advised the aides in September or

October as to what hours they will be working during student conference days. Each principal performs this task in his/her own particular manner, whether by directive, discussion or by providing options for the aides to select. Most principals appear to make an effort to accommodate needs of individual staff members where possible.

Although this process had been going on for a number of years, it apparently was of no particular concern to the aides until a state audit pointed out that both medical and pension benefits were adversely affected by the reduction of hours during conference days. The aides pursued the matter with their principals and were given varied answers to their questions.

As a means of accommodating budgetary cut-backs, aides at Stevens Elementary were given the choice of reducing the number of hours worked or implementing lay-off of the least senior employee. An aide at Stevens testified:

> We had an aide meeting, and just shortly after school started, and told us there was a cut-back in budget. So that was going to affect our hours. We had a choice of either -- he was leaving it to us either to lay off the low man on the staff, the aide, or it would take a cut-back in our hours to equal out this cut.

The aides elected to take a reduction in hours, which the employer then implemented in lieu of the offered alternative.

Roberts' Dictionary of Industrial Relations, Revised Edition, 1971, defines "negotiation" as:

> The process whereby the representatives of employees and the employer meet for the

> purpose of reaching agreement on wages, hours and conditions of employment for those in the appropriate bargaining unit, and methods for administering the agreement.

The principal, acting as a representative of the employer, both offered alternatives directly to bargaining unit employees, and considered their preferences on matters of "wages", "hours" and "administering the agreement". Such action on the part of the employer constituted direct negotiation with the employees.

Direct dealings with bargaining unit employees on matters concerning changes in wages and working conditions were found to constitute an unfair labor practice in Lake Washington School District, Decision 1863 (EDUC, 1984). In City of Raymond, Decision 2475 (PECB, 1986), the employer committed an unfair labor practice by its failure to give the union proper notice of an opportunity to bargain a mandatory subject of collective bargaining and by dealing directly with bargaining unit employees concerning changes in wages and working conditions. It must be concluded that the employer committed an unfair labor practice here by, having made the subject of aide hours a subject for mid-term negotiations, it dealt directly with the employees, in circumvention of its obligations to the union.

The Refusal to Provide Information -

The employer's refusal to provide wage information to the union in the absence of specific authorization of bargaining unit employees must also be considered separately. Citing both City of Yakima, Decision 1124, 1124-A (PECB, 1987); also NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956), the examiner in King County, Decision 3030 (PECB, 1988), states that both the Commission and the National Labor Relations Board have repeatedly held that it is an unlawful repudiation of the

bargaining obligation for an employer to refuse to provide the exclusive bargaining representative with information necessary for that organization to perform its statutory representation functions in negotiations and grievance administration.

A "grievance administration" basis could be found for the union's request for information in this case, based on the contract language itself. Terms such as "legitimate reasons" invite scrutiny of the facts by the union, to form its own opinion about whether the reasons given would meet the contractual test of legitimacy. "Lack of work" and "budget" are also quantifiable.

A "negotiation" function was created in the instant case, as noted above, by the onset of the negotiation commenced by the principal at the Stevens school. The exclusive bargaining representative was therefore entitled to receive necessary information to facilitate those negotiations and, having created the bargaining scenario, the employer was obligated to provide the requested materials.

FINDINGS OF FACT

1. Aberdeen School District is a school district operated pursuant to Title 28A RCW and is a public employer within the meaning of RCW 41.56.030(1).

2. The Public School Employees of Aberdeen, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit which includes office-clerical and aide employees of the Aberdeen School District.

3. The employer and the union had a collective bargaining agreement in effect for the period from September 1, 1985 through August 31, 1987. That contract contained management rights and layoff provisions permitting the employer to alter employee work hours for reasons of lack of work, lack of funds or other legitimate reasons. That contract contained two alternative wage and paid time off provisions for the position of high school head secretary.

4. On or about August 4, 1986, the employer reduced the position of high school head secretary from a 12-month position under Schedule "A" of the collective bargaining agreement to an 11-month position under Schedule "B" of the contract, thereby reducing both hours worked and accompanying benefits for the incumbent while increasing her hourly rate of pay.

5. Early in the 1986-1987 school year, the principal of one of the employer's schools advised bargaining unit aide employees of a budgetary reduction. The principal negotiated directly with the aides on alternatives consisting of reduced hours for all employees or a lay-off of the least senior employee. The employer did not give notice to or negotiate with the union.

6. The exclusive bargaining representative requested wage information from the employer which was necessary for that organization to perform its statutory representation and grievance administration functions with respect to the reduction of aide hours and the negotiation of alternatives. The employer refused to supply such information.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. By the terms of the collective bargaining agreement between the parties, Public School Employees of Aberdeen waived its right to bargain during the life of that contract concerning a change of the high school head secretary position from the 12-month terms provided by "Schedule 'A'" of the contract to the 11-month terms also provided in "Schedule 'B'" of the contract.

3. By failing to give notice to the exclusive bargaining representative and by dealing directly with bargaining unit employees concerning changes in wages, hours and working conditions of its aide employees, Aberdeen School District has committed an unfair labor practice in violation of RCW 41.56.140(1) and (4).

4. By its failure and refusal to provide the exclusive bargaining representative with requested information necessary for that organization to perform its statutory representation function, Aberdeen School District has committed an unfair labor practice in violation of RCW 41.56.140(1) and (4).

ORDER

IT IS ORDERED that the Aberdeen School District, its officers and agents, shall immediately:

1. Cease and desist from:

   A. Circumventing its duty to bargain with the exclusive bargaining representative of its employees by dealing directly with bargaining unit employees concerning changes in wages, hours or working conditions.

   B. Refusing to provide the exclusive bargaining representative of its employees with information necessary for that organization to perform its statutory representation functions.

2. Take the following affirmative action to effectuate the purposes and policies of Chapter 41.56 RCW:

   A. Provide Public School Employees of Aberdeen, upon request, with information necessary to perform its statutory representation function.

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

   C. Notify Public School Employees of Aberdeen, 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 Public

School Employees of Aberdeen with a signed copy of the notice required by paragraph 2.B. of this Order.

D. Notify the Executive Director of the Public Employment Relations 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 paragraph 2.B. of this Order.

DATED at Olympia, Washington, this 19th day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. T. COWAN, Examiner

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

APPENDIX

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, THE ABERDEEN SCHOOL DISTRICT HEREBY NOTIFIES OUR EMPLOYEES THAT:

WE WILL NOT meet with individual employees represented by the Public School Employees of Aberdeen with respect to wages, hours, terms or conditions of employment.

WE WILL, upon request, provide the Public School Employees of Aberdeen with information necessary for that organization to perform its statutory representation function.

ABERDEEN SCHOOL DISTRICT

By:_____
Authorized Representative

DATED _____

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

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