STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIONA-BENTON SCHOOL DISTRICT, Complainant, vs. PUBLIC SCHOOL EMPLOYEES OF KIONA-BENTON, Respondent.	)	CASE 9441-U-91-2102 DECISION 4312 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Eric Nordlof, Attorney at Law, appeared for the union.

Robert D. Schwerdtfeger, Labor Relations Consultant, appeared for the employer.

On October 28, 1991, Public School Employees of Kiona-Benton, an affiliate of Public School Employees of Washington (PSE), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Kiona-Benton School District had refused to bargain, in violation of RCW 41.56.140(4), during negotiations on a successor contract between the parties. A hearing was held at Benton City, Washington, on March 24, 1992, before Examiner Rex L. Lacy. The parties filed post-hearing briefs.

BACKGROUND

Kiona-Benton School District, headquartered at Benton City, Washington, provides educational services for students in kindergarten through high school. The employer's facilities include one combined elementary and middle school, as well as one high school. Among other services, the employer operates a transportation department. Gary D. Henderson is Superintendent of Schools.

Public School Employees of Kiona-Benton is the exclusive bargaining representative of the classified employees of the Kiona-Benton School District, excluding supervisors and casual employees.

Among the classifications assigned to the transportation department is the job title "bus mechanic". That position has been filled by Harwood Pumroy since 1986. Pumroy is responsible for maintenance and repair of the employer's school buses. He has not been a member of PSE since he was employed.

The employer and the union have been parties to a series of collective bargaining agreements, including a contract which was effective from September 1, 1987 to August 31, 1990. That contract contained the following provisions pertinent to this dispute:

> RECOGNITION AND BARGAINING UNIT
>
> **Section 1.1** The District hereby recognizes the Association as the exclusive collective [sic] bargaining representative for the purposes stated in Ch. 41.56 RCW of all regular full-time and regular part-time employees employed within the bargaining unit described in Section 1.2 of this Agreement and as certified by the State of Washington Public Employment Relations Commission (PERC), but shall exclude all supervisory, temporary and substitute employees.
>
> **Section 1.2** The bargaining unit which has been recognized consists of all regular full-time and regular part-time non-supervisory classified employees in the following general job classifications: Transportation, Food Service, Teachers Aides, and Custodial-Maintenance.

The parties' 1987 - 1990 contract contained a "maintenance of membership" provision, which stated only that employees who were members of the union on the effective date of the contract "should" maintain their membership in PSE. That contract was signed on behalf of the employer by then-Superintendent H. Jerome Hansen.

On June 6, 1988, PSE filed a petition for investigation of a question concerning representation with the Commission, seeking certification as exclusive bargaining representative of a two-person bargaining unit consisting of the bus dispatcher and bus mechanic.[1] The Commission's docket records for Case 7437-E-88-1273 disclose that Superintendent Gary A. Henderson was listed as the principal representative of the employer.

Routine processing of PSE's representation petition in Case 7437-E-88-1273 was commenced, but the parties subsequently notified the Commission that the employer had extended voluntary recognition to PSE. That case was then dismissed in Kiona-Benton School District, Decision 3095 (PECB, 1989). The order specifically mentioned "voluntary recognition", and that the dismissal was "for the reason that no question concerning representation presently exists". The employer did not file a petition for review at that time, or otherwise dispute the characterization of its actions as a "voluntary recognition". The position held by Harwood Pumroy thereby came to be included in the bargaining unit described above.

In 1989, the parties negotiated a one-year extension of their 1987-90 collective bargaining agreement, keeping that agreement in effect (with certain modifications not pertinent to this dispute) until August 31, 1991.

During contract negotiations between the parties in the autumn of 1991, the parties agreed to amend the recognition clause of their collective bargaining agreement, as follows:

> **Section 1.1** The District hereby recognizes the Association as the exclusive collective [sic] bargaining representative for the pur-

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[1] PSE had sought, without success, to have the bus dispatcher and bus mechanic included its existing bargaining unit during the parties' contract negotiations leading to their 1987-1990 collective bargaining agreement.

> poses stated in Ch. 41.56 RCW of all regular full-time and regular part-time employees employed within the bargaining unit described in Section 1.2 of this Agreement and as certified by the State of Washington Public Employment Relations Commission (PERC) ((~~, but shall exclude all supervisory, temporary and substitute employees~~)).
>
> **Section 1.2** The bargaining unit which has been recognized consists of all regular full-time and regular part-time non-supervisory classified employees in the following general job classifications: Transportation, Food Service, Teachers Aides, and Custodial-Maintenance. Exclusions: Supervisor of Transportation, Food Services, Maintenance, Secretaries, Substitutes working less than thirty (30) accumulative days in a work year, and all other employees of the District.

[Deletions shown by ((~~strikeout~~)); new material indicated by underline.]

Additionally, new "union security" language was added to the parties' contract in 1991, as follows:

> **Section 13.5. Representation Fees.** (Reference RCW 41.56.122) No member of the bargaining unit will be required to join the Association; however, those employees who are not members, but are part of the bargaining unit, will be required to pay a representation fee to the Association. The amount of the fee shall be determined by the Association and transmitted to the Business Office in writing. The representation fee shall be regarded as fair compensation and reimbursement to the Association for fulfilling its legal obligation to represent all members of the bargaining unit. (RCW 41.56.080 applies fully to this language.)
>
> In the event that the representation fee is regarded by an employee as a violation of their right to non-association, such bona fide objections shall be resolved according to the provisions of RCW 41.56.122, or the Public Employment Relations Commission.

Although the complaint filed in this matter on October 28, 1991 indicates that the parties reached an impasse in their contract negotiations based on a "last and final offer" advanced by the employer on October 23, 1991, the record indicates that they later resumed their negotiations and reached agreement on a three-year contract to be effective for the period from September 1, 1991 through August 31, 1994.

At the conclusions of negotiations, the parties submitted the negotiated contract amendments, including Sections 1.1, 1.2 and 13.5, for ratification. The union membership approved the new agreement. The employer's board of directors also approved the successor contract at an open public meeting.

In accord with its normal practice, PSE prepared the successor agreement for the parties' signature, and presented the document to Superintendent Henderson for his signature. At that point in time, Henderson refused to sign the contract unless the bus mechanic position held by Harwood Pumroy was excluded from the bargaining unit.[2] As a result of Henderson's action, the parties' 1991-94 collective bargaining agreement was not signed and effectuated.

POSITIONS OF THE PARTIES

Although the complaint alleged that the employer refused to bargain in good faith during and before October of 1991, the evidence and arguments presented by both parties at the hearing concerned the subsequent agreement and refusal of the employer to sign the negotiated agreement.

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[2] Evidence in this record indicates that the parties engaged in further negotiations on December 3, 1991.

The union contends that the inclusion of the bus mechanic in the bargaining unit was previously the topic of the Executive Director's order in Kiona-Benton School District, Decision 3095 (PECB, 1989). The union contends, further, that the same unit inclusion was agreed to by the parties in their negotiations in the 1991, when the parties agreed to the amended language of Sections 1.1 and 1.2. PSE asks that the employer be ordered to sign and effectuate the contract.

The employer contends that the bus mechanic is not a member of the bargaining unit represented by PSE, that the Commission should apply the principles set forth in Toppenish School District, Decision 1143-A (PECB, 1981) to this case, and that the employer should not be required to sign the contract as it was presented.

DISCUSSION

Chapter 41.56 RCW defines unfair labor practices for a public employer as:

> **RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED.** It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
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> ...
>
> (4) To refuse to engage in collective bargaining.

That leads, in turn, to the provisions of statute which define "collective bargaining", specify the rights of employees and permit union security arrangements, as follows:

> RCW 41.56.030 DEFINITIONS. As used in this chapter:
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> ...

> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. ...
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> **RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE.** No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.
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> ...
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> **RCW 41.56.122 COLLECTIVE BARGAINING AGREEMENTS--AUTHORIZED PROVISIONS.** A collective bargaining agreement may:
>
> (1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision ...

The clear intent of the Legislature was to establish a process which defined the duties and obligations of parties engaged in collective bargaining.

Impasse on Unit Determination Issue

In this case, the breakdown of the collective bargaining process has occurred at the point of the employer's insistence that the position held by Harwood Pumroy be excluded from the bargaining unit. The record in this case, as well as review of the docket

records of the Commission, amply supports a conclusion that the disputed position was included in the bargaining unit by agreement of the parties in 1989.

The determination of bargaining units is a function delegated by the Legislature to the Public Employment Relations Commission. RCW 41.56.060. Unit determination is not a mandatory subject of collective bargaining. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). A party which insists to impasse on a unit determination matter can be found guilty of an unfair labor practice. Spokane School District, Decision 718 (EDUC, 1979).

If the employer had some basis to claim that changed circumstances warranted the exclusion of the position held by Pumroy from the bargaining unit in 1991, it was entitled to file a petition for clarification of an existing bargaining unit under Chapter 391-35 WAC. In the meantime, however, the position remained in the bargaining unit until such time as its exclusion would be agreed upon by the parties or ordered by the Commission. The employer was not at liberty to hold up the contract negotiations on this issue, and it committed an unfair labor practice in attempting to do so.

The Duty to Sign a Contract

The Legislature clearly contemplated that, upon the completion of good faith collective bargaining negotiations, the parties are to reduce their agreements to writing and sign the contract. Both the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and the Educational Employment Relations Act, Chapter 41.59 RCW, impose an obligation upon labor and management alike to execute a written agreement at the conclusion of the bargaining process. In RCW 41.56.030(4), the obligation is quite explicit, as the:

> ... performance of **the mutual obligation** of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and **to execute a written agreement** ...
>
> [Emphasis by **bold** supplied.]

In RCW 41.59.020(2), the obligation to sign a contract reflecting agreed-upon terms is stated as the:

> ... **the mutual obligation** of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in light of the time limitations of the budget making process, and to bargain in good faith in the effort to reach agreement with respect to wages, hours, and terms and conditions of employment: ... **A written contract incorporating any agreement reached shall be executed if requested by either party.**
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> [Emphasis by **bold** supplied.]

Noting that preservation of the public's business in written form is sound public policy, the Supreme Court of the State of Washington has opined that only written collective bargaining agreements are valid under Chapter 41.56 RCW. State ex. rel. Bain v. Clallam County, 77 Wn.2d 542 (1970).

It can be said that the Commission has also taken a very strict view of the statutory obligation to reduce collective bargaining agreements to writing. The Commission has held that an unfair labor practice was committed where an employer which was dissatisfied with the results of negotiations attempted to withdraw its offer after it was accepted by the union. Island County, Decision 857 (PECB, 1980). Where the contract document signed by the parties did not reflect the terms actually agreed upon by the parties in collective bargaining, the reformation of the contract was ordered. Olympic Memorial Hospital, Decision 1587 (PECB, 1983). In Mason County, Decision 2307-A (PECB, 1985), the Commis-

sion ruled that a breach of the good faith bargaining obligation occurs in circumstances where one of the parties to an agreement seeks to "disavow" a contract undertaking.

The state statute and precedents on this subject are consistent with federal law. Section 8(d) of the National Labor Relations Act (NLRA) similarly obligates the employer and exclusive bargaining representative to execute a written agreement if requested, and refusal to sign a contract document incorporating the terms agreed upon has been held in numerous cases to be a per se violation of the statute. Duro Paper Bag Mfg. (Teamsters Union Local 100), 216 NLRB 1070, enf. 91 LRRM 2849 (6th Circuit, 1976); H. J. Heinz Co. v. NLRB, 311 U.S. 514 (1941); K-Mart Corp., 238 NLRB 166 (1978).

The task remaining for the Examiner in this case is simply to determine whether an agreement was reached between the parties on the issues they were lawfully entitled to have on the bargaining table when they met in December of 1991. If a contract has been created, then: (1) the parties were obligated to sign a document reflecting the terms agreed upon; and (2) the terms and conditions of the agreement are in effect, and neither party is allowed to alter or renegotiate any provision of the agreement that was reached at the bargaining table.[3]

The record establishes that the two bargaining teams did reach a complete agreement on a successor contract. Unrefuted testimony establishes that the clear and unambiguous language of Section 1.2 of the 1991-1994 collective bargaining agreement was mutually agreed to during the negotiations. Once the negotiations were completed, the fate of the amendments to Section 1.2 was at the

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[3] Even if no collective bargaining agreement had been reached, the employer was obligated to maintain the status quo while bargaining in good faith until a new contract, or impasse, is reached. NLRB v. Carilli, 648 F.2d 1206 (9th Circuit, 1981).

mercy of the parties during the ratification process. The union quickly approved the proposed 1991-1994 contract. Thereafter, the employer's board of directors also ratified the agreement in an open public meeting. Nothing in this record indicates that either party objected to the proposed language of Section 1.2 during the ratification process.

All that remained after the ratification by both parties was to reduce the agreements reached to writing, and to execute the new contract. At that point the process broke down. Henderson, on his own behalf, refused to execute a contract document reflecting the terms agreed upon in negotiations. Henderson unilaterally sought removal of the "bus mechanic" classification from the contract.[4] That was a material change, and the union objected. Apart from arguably being ultra vires (i.e., in contravention of the school board ratification), Henderson's actions were a violation of the good faith requirement of the statute and constitute an unfair labor practice.

FINDINGS OF FACT

1. Kiona-Benton School District is a "public employer" within the meaning of RCW 41.56.020. The employer's headquarters are located at Benton City, Washington.

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[4] It is inferred that the superintendent was acting on the basis of direct dealings with Pumroy in which the employee objected to being included in the bargaining unit represented by PSE and/or objected to paying dues or fees under the union security provision of the new contract. Direct dealings between an employer and its represented employees can be a basis for finding a "circumvention" violation under RCW 41.56.140(4), but that was not a theory pursued by PSE at the hearing in this matter. Accordingly, no specific findings of fact, conclusions of law or order are made on this issue.

2. Public School Employees of Kiona-Benton, an affiliate of Public School Employees of Washington, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of full-time and regular part-time non-supervisory classified employees of the Kiona-Benton School District in the general job classifications of transportation, food service, teacher aide, and custodial-maintenance. A "bus mechanic" position was included in that bargaining unit as the result of a voluntary recognition leading to termination of representation proceedings before the Commission in Case 7437-E-88-1273.

3. The parties have been signatory to a series of collective bargaining agreements. Their latest full agreement was effective from September 1, 1987 to August 31, 1990. The only union security obligation specified in that contract was a "maintenance of membership" provision. The parties signed a contract extension in 1989, keeping their 1987-90 contract in effect to August 31, 1991.

4. In the autumn of 1991, the employer and union negotiated and reached agreement on a successor contract to be effective for the period from September 1, 1991 through August 31, 1994. That contract included a union security provision which obligated all bargaining unit employees to either join the union or pay a representation fee. After the agreement was reached, and in accordance with the parties' past practice, the terms of the successor agreement were submitted for ratification. The union's membership ratified the agreement. At its next scheduled open-public meeting, the employer's board of school directors ratified the agreement.

5. After ratification of the successor agreement by both parties, the union presented the superintendent of the school district a copy of a document reflecting the terms agreed upon, and

requested execution of the ratified agreement. Superintendent Henderson demanded a material change of the agreement, by the deletion of the bus mechanic position from the bargaining unit and coverage of the contract. PSE objected to Henderson's alteration of the contract, and refused to sign the contract as altered by the employer official.

CONCLUSIONS OF LAW

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

2. By conditioning the execution and effectuation of the parties' 1991-94 collective bargaining agreement on the removal of a position from the bargaining unit, the Kiona-Benton School District has refused to bargain in good faith within the meaning of RCW 41.56.030(4), and has committed an unfair labor practice under RCW 41.56.140(4) and (1).

3. By refusing to execute a collective bargaining agreement reflecting the terms agreed upon by the parties, as tendered to it by Public Employees of Kiona-Benton, the Kiona-Benton School District has refused to bargain in good faith within the meaning of RCW 41.56.030(4), and has committed unfair labor practices under RCW 41.56.140(4) and (1).

ORDER

Kiona-Benton School District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

a. Insisting to impasse on matters concerning the determination of appropriate bargaining units or the eligibility of positions for inclusion in or exclusion from a bargaining unit.

b. Failing and refusing to execute and effectuate the parties' 1991-94 collective bargaining agreement, as tendered by Public School Employees of Kiona-Benton.

c. In any like or related manner interfering with, restraining or coercing its employees in their 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 41.56 RCW:

a. Execute and retroactively effectuate the parties' 1991-94 collective bargaining agreement, as tendered by Public School Employees of Kiona-Benton.

b. 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". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Notify the above-named 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 above-named complainant with a

signed copy of the notice required by the preceding paragraph.

d. 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 required by this order.

Issued at Olympia, Washington, on the 15th day of March, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

REX L. LACY, Examiner

This order may be appealed by filing timely objections with the Commission pursuant to WAC 391-45-590.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT refuse to sign the collective bargaining agreement reached with Public School Employees of Kiona-Benton during negotiations in the fall of 1991.

WE WILL NOT unilaterally change the terms and conditions of the agreement reach with Public School Employees of Kiona-Benton during negotiations in the fall of 1991.

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

WE WILL sign the agreement, as presented, reached with Public School Employees of Kiona-Benton in the fall of 1991.

WE WILL immediately, and retroactively, effectuate the terms and conditions of the collective bargaining agreement reached with Public School Employees of Kiona-Benton in the fall of 1991.

DATED: _____

KIONA-BENTON SCHOOL DISTRICT NO. 52

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.