Seattle School District, Decision 5880 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609,	)	
Complainant,	)	CASE 11856-U-95-2787
vs.	)	DECISION 5880 - PECB
SEATTLE SCHOOL DISTRICT,	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW, AND ORDER

Scherwin, Burns, Campbell & French, by John Burns, Attorney at Law, appeared on behalf of the complainant.

Perkins Coie, by Lawrence B. Hannah, Attorney at Law, appeared on behalf of the respondent.

On June 23, 1995, International Union of Operating Engineers, Local 609 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. The union alleged that the Seattle School District (employer) took unilateral action in March of 1995, to cease the distribution of union newsletters through the employer's internal mail system. A hearing was held on August 28, 1996, before Examiner Walter M. Stuteville. The parties filed briefs to complete the record.

BACKGROUND

The employer operates the largest school district in the state of Washington, with approximately 46,000 students attending 10 high schools, 11 middle schools, 61 elementary schools, and 16 alternative schools. The Superintendent of the Seattle School District is John Stanford. Its chief negotiator during the time period

pertinent to the instant case was its director of labor relations, Larry Miner.[1]

The union represents four bargaining units which include approximately 600 classified employees of the Seattle School District: A unit of custodial engineers and gardeners; a unit of food service workers; a unit of alarm monitors; and a unit of security employees. Those employees work at more than 100 locations throughout the greater Seattle area. The union's chief negotiator during the time period pertinent to the instant case was its business manager, Dale Daugharty.

The union has been producing a newsletter titled: *"NEWSLINE: LOCAL 609"* on a monthly or bimonthly basis since 1975. That publication is used to communicate information between the local union and the school district employees that it represents. The newsletter contains updates on contract negotiations, reports on grievances, information on legislative matters or school levies, results of union elections, details of classes available to the union's membership, and information concerning leave sharing between district employees. The newsletter is edited and printed in the union's office.

Prior to November of 1988, the *NEWSLINE: Local 609* publication was routinely distributed through the employer's internal mail system.[2] Union officers delivered the newsletter to the mail room at the district's administrative headquarters building, where mail bags are designated for each of the employer's various facilities. According to Daugharty, the union officer who delivered the

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[1] Demographic information is from 1995-1996 Washington Education Directory.

[2] The employer's mail clerks are represented for the purposes of collective bargaining by an organization other than Local 609.

newsletter to the mail room would deposit copies in the marked mailbags, if the mail clerks were busy. The newsletters were then delivered with other items destined for the individual work sites where bargaining unit members were working, and were delivered to employees or posted at the work sites.[3]

On November 29, 1988, the employer sent the union a copy of an internal memo prepared by Mike Hoge, who was then the employer's general counsel, as follows:

> Subject: Guidelines for use of District mail service by outside organizations
>
> The U.S. Supreme Court's decision in Regents of the University of California v. PERB, No. 86-935 (April 20, 1988), has established that under existing federal postal service statutes and regulations, the [Seattle School] District may no longer carry within its internal mail system, most union mail, as that mail does not closely enough "relate ... to the current business of the carrier" to qualify for the quoted exception to the Postal Service's monopoly on carrying the mails.
>
> This memo attempts to set forth guidelines for when the District may distribute the mail of outside organizations. There are two statutory grounds upon which some such mail may continue to be distributed: (1) the "business of the carrier" exception (18 USC 1694), which permits the carrying of mail closely related to the District's business (as opposed to the business of outside organizations, such as unions, with whom the District has an arm's-length business relationship); and (2) the "private hands without compensation" exception (18 USC 1692(c), which permits up to 25 pieces of mail to be carried gratuitously for persons or organizations who do not have, and do not

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[3] The newsletter was distributed by job classification, and was not addressed to individual union members. If only one employee in a particular classification worked at a site, the newsletter was delivered to that employee.

seek, a business relationship with the District. 39 C.F.R. 310.3(c).

Under these exceptions, the following types of mail may be carried by the District.

1. Materials mailed to District from union, or vice versa, related to specific grievances pursuant to collective bargaining agreement grievance provisions. (Comment: Such materials may properly be considered to fall within the "business or the carrier" exception.)

2. Materials relating to jointly-presented District/union training and inservice opportunities. (Comment: Such materials may properly be considered to fall within the "business of the carrier" exception.)

3. Parent-Teacher-Student Association materials. (Comment: The Seattle School Board by resolution has recognized the special relationship between the District and PTSA, and has in effect recognized the PTSA's activities as an important part of the District's "business." This unique relationship carries over into other areas a well.)

4. Materials from the Washington State Superintendent of Public Instruction, e.g., Your Public Schools, and Department of Retirement Systems. (Comment: "business of the carrier.")

5. United Way and other approved, non-profit charitable solicitation materials, up to 25 pieces. (Comment: these materials cannot properly be considered "business of the carrier." They fall within the "private hands without compensation" exception, since such organizations do not have or seek a business relationship with the District, but are statutorily limited to 25 pieces at a time.)

6. Notices of professional training opportunities from colleges, universities, etc. with whom the District has no on-going, arm's-length business relationship. (Comment: the District has a strong interest in having staff receive on-going training in order to enhance skills and keep abreast of developments in their fields. Thus, these materials relate to the "business of the carrier.")

> 7. Notices from non-profit, non-religious youth character-building associations, e.g., boy and girl scouts. (Comment: The District has a strong interest in the educational development of youth, and considers participation in such activities an important part of students' social growth. As with PTSA activities, these activities are therefore entitled to free use of District facilities, and constitute "business of the carrier.")
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> 8. Notices of tax-sheltered annuity opportunities available pursuant to collective bargaining agreements (for represented employees) or Board-adopted compensation packages (for non-represented employees). (Comment: "business of the carrier.")
>
> 9. Notices of extra-curricular non-profit educational opportunities and events, when approved by the appropriate administrator pursuant to District Procedure H 25.02. (Comment: As with No. 7, these opportunities are a part of the "business of the carrier.")
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> Several of the above "business of the carrier" activities may also fall within the "private hands without compensation" exception.
>
> ...

The employer's brief acknowledges that the union may not have ceased its previous practice at the time of this memo, and that the union's newsletters may have been forwarded through the employer's internal mail system for a time thereafter.

On September 8, 1989, the employer and union signed a letter of agreement concerning the union's use of the employer's internal mail system, as follows:

> Reference is made to our conversations concerning the issue of Operating Engineers, Local 609's use of District mail services. As you will recall, the Superintendent has authorized Local 609's use of the District mail services if those communications meet the conditions set forth below. In exchange, Local 609 would agree to hold the District harmless and verify that agreement in writing.

> The following paragraph sets forth the provisions under which the District agreed to deliver Union mail:
>
> > The International Union of Operating Engineers. Local 609, may use District mailing services for the purpose of communicating information concerning grievances and/or matters relating to joint District/Union training or inservice opportunities. The Union shall have the responsibility to ensure that the material sent through the District mail service by representatives of the Union are accurate, non-slanderous, and conform to legal requirements and necessary District mail priorities. Further, the Union shall indemnify and hold the District harmless against any and all claims, fines, demands, suits, attorney fees, or other costs as may result from any violation of law that may result from such use of the District's mail service by the Union.
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> ...

In 1992, the employer again questioned the legality of distributing the union's newsletter. Although the question of the legality of the practice was not resolved, the union continued to use the employer's internal mail system. The credible evidence indicates that the union's use of the internal mail system was not known to or ratified by employer officials responsible for labor relations or legal matters.

In March of 1995, Miner unilaterally suspended the union's use of the employer's internal mail system in a memo to Daugharty, as follows:

> It has been called to my attention that on two occasions within the last two weeks someone from Local 609 has been using the District's mail services to distribute union news bulletins. Current case law prohibits your labor union from using the District's mail services to distribute your correspondence. Addition-

> ally, this activity is prohibited by language in the collective bargaining agreement.
>
> Please cease and desist from using the District's mail service to distribute your mail. Thank you for your assistance.

In a letter dated May 9, 1995, the union's attorney, John Burns, set forth the union's position on the issue and requested that the employer look at sub-chapter E of 39 CFR. Burns asserted that the employer should consider rescinding what he characterized as "unilateral and discriminatory" action on the basis of that federal regulation.

Miner replied on May 10, 1995. After responding to the allegations in Burn's letter, Miner stated:

> Apparently you have a very different view of the law than our lawyers. In view of the fact that I am not a lawyer, I will ask our General Counsel to respond to your letter in regards to the substantive legal issue(s). ...

Burns continued the exchange of correspondence with a letter dated May 23, 1995, as follows:

> I received your letter of May 10th and forwarded it to the client. I have waited in vain for a response from Mr. Hoge's office. I do not want to turn the newsletter issue into an unfair labor practice charge but I do want to move it along. Enclosed is a copy of the regulation that controls and that [sic] newsletter and periodicals from the excepts [sic] private express statute. I would appreciate it if you would pass this on and I would appreciate it if you could let me know when we could expect a response from Mr. Hoge's office. I will hold off filing a charge for a while, but the issue is important and I would like to have it resolved or have it charged on file before mid-June.

When the union received no reply from the employer, if filed this unfair labor practice case with the Commission.

POSITIONS OF THE PARTIES

The union argues that the employer made a unilateral change in 1995. It claims that suspension of its distribution privileges affects communications between employees concerning their wages and working conditions. It further alleges that the employer's refusal to provide the basis for its suspension of the distribution privilege is a violation of the employer's duty to bargain in a context where the employer had previously asserted a legal basis for that suspension. The union asserts that the information requested is necessary for the union to evaluate the employer's objections to continuing the distribution of the union newsletter.

The employer asserts that it never consented to resumption of union use of its internal distribution system after the 1992 letter of agreement concerning the legality of distributing the union newsletter. It argues that the union uses its newsletter largely as a vehicle for the dissemination of union-employee information, and that the union's use of the employer's internal mail system cannot be continued. Responding to the claim that it refused to provide requested information, the employer argues that federal postal law is a matter of public record, and that the union does not need the employer to recite the law to it.

DISCUSSION

Deferral to Arbitration

In its answer to the complaint and in a motion made prior to the hearing in this matter, the employer requested that this case be

deferred to arbitration. The union responded that deferral was not appropriate, because a hearing date had already been set in the unfair labor practice proceeding. The Examiner denied the employer's motion for deferral on May 8, 1996.

The administration of the Commission's policy of deferral to arbitration was discussed in Port of Seattle, Decisions 3294-B and 3295-B (PECB, 1992), as follows:

> The unfair labor practice provisions of Chapter 41.56 RCW protect employee rights in relation to the process of collective bargaining. The Commission asserts a statutory jurisdiction in such matters. Our policies call for deferral to arbitration in "unilateral change" unfair labor practice cases, where disputed employer conduct is arguably protected or prohibited by an existing collective bargaining agreement. The Commission does not defer "interference," "domination," or "discrimination" unfair labor practice charges, or other types of "refusal to bargain" charges. City of Yakima, Decision 3564-A (1991). ... While some issues in these cases may touch upon or involve the interpretation of the collective bargaining agreement, the issue of whether the union misused its position as exclusive bargaining representative is one which the Commission, not some arbitrator, must decide.

Even if these parties have had contract language and/or a letter of agreement which dealt with the issue of the distribution of the union's newsletter, the primary focus of this case is on the regulation of the collective bargaining relationship itself. The the Commission is not directly responsible for interpretation of federal law, but it is appropriate for the Commission to analyze the interface between federal law and the parties' collective bargaining relationship as it is governed by 41.56 RCW. Arbitrators sometimes turn to on external law when interpreting collective bargaining agreements, but determinations on statutory matters such

as the legality of the union's use of an employer's internal mail system are not their primary function.

The employer has not defended against the "unilateral change" allegation in this case by asserting that it had a contractual right to stop the union's use of its internal mail system. Thus, the case lacks the "arguably protected or prohibited by the parties' collective bargaining agreement" feature which is the hallmark of a case appropriate for deferral.

Finally, the "refusing to supply requested information" allegation goes to the heart of the collective bargaining relationship regulated by the Commission, rather than to the interpretation of the parties' contract. The employer argues that this allegation is subordinate to the unilateral change claim, and that an arbitrator's decision could preclude a Commission finding of relevance and/or necessity of any background legal analysis from the employer, but the Examiner does not see the two union charges as inextricably related. In fact, the resolution of the two charges will be based upon different legal analyses. Deferring one issue to arbitration while conducting an adjudicatory hearing on the other issue would produce any administrative efficiency.

Unilateral Change Not Established

Numerous decisions of the Commission have stated and restated the principle that an employer must give notice to the exclusive bargaining representative of its employees, and must provide opportunity for bargaining, prior to implementing any change of past practice concerning mandatory subjects of bargaining. To constitute a past practice which gives rise to a duty to bargain, however, the practice must be one which has been known to and authorized by the employer. King County, Decision 4258 (PECB, 1992).

There is no question that the union made use of the employer's internal mail system prior to 1988. From the fact that Hoge's memo was sent to the union in 1988, it is inferred that the practice was known to and authorized by the employer up to that time. Thus, a "unilateral change" claim might have been advanced in 1988. The union's newsletter does not appear to have fit into any of the nine exceptions outlined by Hoge's memo. If the union desired to protest that unilateral change, RCW 41.56.160 provided it a period of six months in which to file an unfair labor practice complaint with the Commission. No such complaint was filed, however.

The evidence supports a conclusion that any continued use of the employer's internal mail system by the union after November of 1988 was unauthorized. The letter of agreement signed by the parties in 1989 does not appear to authorize use of the employer's internal mail system for distribution of union newsletters, or even to ratify previously unauthorized use of the employer's internal mail system for that purpose.

Even the union appears to admit that it ceased using the employer's internal mail system for a time during 1992 or 1993. It could have filed unfair labor practice charges at that time, but did not do so. Instead, it appears that union officials merely resumed their practice of taking the newsletter to the employer's mail room and placing copies into the mail sacks destined for various work sites or giving the materials to the mail clerks. The union has provided no evidence that its renewed use of the employer's internal mail service was known to or ratified by any responsible employer officials. Again, therefore, the record supports a conclusion that the "privilege" assumed by the union was unauthorized.

The union has the burden of proof in this unfair labor practice case. WAC 391-45-270. In the context of the "unauthorized" conclusions reached in the foregoing two paragraphs, it is concluded that Miner's action in March of 1995 was a reiteration of

an existing rule or practice of the type described in discussion of the "smoking" issue in Kitsap County Fire District 7, Decision 2872-A (PECB, 1989), rather than a change of practice which obligated the employer to give notice and bargain. The union's "unilateral change" allegation in this case must be dismissed.

Union Use of Employer Mail System

Even if one were to conclude that the union's use of the employer's internal mail system had continued so long as to become a past practice, no duty to bargain exists as to such a practice. An employer is only obligated to bargain matters where it has authority to act, and is not obligated to bargain on matters which are preempted by higher law. City of Seattle, Decision 4687-B (PECB, March 18, 1997). In this case, a federal statute creates a monopoly for the United States Postal Service to carry mail within the borders of this county.

In 1988, the Supreme Court of the United States issued a decision interpreting 18 U.S.C. 1694 in a context of public sector collective bargaining. That provision of federal statute includes:

> Whoever ... carries, otherwise than in the mail any letters or packets, except such as relate ... to the current business of the carrier ... shall, except as otherwise provided by law, be fined not more than $50.

In Regents of the University of California v. Public Employment Relation Board, 485 U.S. 589(1988), a union representing employees of the University of California sought access to the university's internal mail system for the purpose of distributing unstamped, personal letters to faculty members during an organizing campaign. Reversing a decision of the California labor relations agency which had been affirmed by the highest court of that state, the Supreme Court decided that the "current business" of the university did not

include union organizing. The Regents decision was the basis for Hoge's memo in 1988.

Local 609 contends that Regents is wholly inapplicable to its unfair labor practice charge against the Seattle School District. It attempts to distinguish the situation at the University of California on the basis that it has been using the employer's internal distribution system for several years,[4] but the Examiner does not find any basis with Regents or 18 U.S.C. 1694 to implement such a distinction.[5] It also would distinguish the present case on the basis that its newsletter is addressed to classes of employees working at a specific site, rather than to individuals, but the Examiner does not find any basis with Regents or 18 U.S.C. 1694 to implement such a distinction.

A case more recent than Regents arose out of factual situation much closer to the facts of the instant case. In Fort Wayne Community Schools v. Fort Wayne Education Association, 977 F.2d 258, 364 (7th Cir. 1992), cert. denied, 510 U.S. 826 (1993), a school district brought an action seeking declaratory and injunctive relief with regard to collective bargaining provisions under which it had agreed to carry union letters to teachers through its internal mail system without payment of postage. The Fort Wayne court analyzed the issue as follows:

> As we understand the Association's position, it does not argue that the Private Express Statutes permit the School Corporation to

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[4] The union makes a companion argument that this practice has been with the school district's knowledge and permission but, as noted above, that claim is only supported by the record for the period prior to 1988.

[5] The union's interest in communications with potential voters during an election campaign which was at issue in Regents would seem to be at least comparable to the union's interest in periodic communications with members of an existing bargaining unit at issue here.

> carry letters which relate purely to the Association's business. Such letters, it concedes, do not relate to the current business of the schools. Nor would such letters be addressed to the teachers in their capacity as employees, but rather in their capacity as union members. However, letters that deal with the administration of the collective bargaining agreement are more problematic. ...
>
> Despite the close working relationship, mandated by law, between the School Corporation and the Association, it is not realistic, either as a matter of law or as a matter of fact, to characterize at least most to the business of the Association as the business of the School Corporation-carrier. ...
>
> However, mutually shared, or at least overlapping, interests do not fuse perspectives and make the business of those responsible for running the school system congruous with that of those employed as its teachers. ...
>
> Therefore, *most* of the communications at issue cannot be considered those of the School Corporation-carrier. Nor can *most* be considered in any manner to be sent "on behalf of" the Corporation-carrier. ... While they are employees of the Corporation and are recipients or senders of the correspondence in question because of that status, they cannot be said to act *as agents* of the Corporation when communicating with *their* collective bargaining representative. ...

[Emphasis by *italics* included][6]

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[6] In its brief in this case, the union argued that Fort Wayne court held that most of the questioned communications were related solely to the business of the association, and therefore supported access to that employer's internal distribution system. In fact, the court made the following observation on that point:

> ... *most* of the communications at issue cannot be considered those of the School Corporation-carrier. Nor can *most* be considered in any manner to be sent "on behalf of" the Corporation-carrier.

[Emphasis by *italics* included]

While the Fort Wayne court found the "the vast majority" of the communications at issue were not letters of or on behalf of the employer, it did note an exception with regard to communications related to joint committees set up pursuant to the parties' collective bargaining agreement, and decided that further development of the record was required on that issue.

The union argues that its newsletter discusses topics such as training, liability for after-hours employment, and the donation of sick leave to fellow employees. In the instant case, the union placed in evidence 19 of its newsletters dated between January 1, 1992 and March 21, 1996. In analyzing those exhibits, the Examiner has evaluated the contents of a total of 71 articles, with the following result:

Twelve articles (16.9%) related to issues of general interest, such that both the employer and union might want the employees to be notified of the information. These included reminders that security officers should wear identifying jackets at school functions, statements by local politicians supporting increased funding for food service and security services, information about paycheck deductions, and grievance resolutions which interpret specific contract language. Two articles described specific examples of leave sharing opportunities for employees within the bargaining unit. Six articles or entire issues were devoted to an update on legislative issues pertinent to classified employees.

Fifty-nine articles (83.1%) were largely or only of interest to employees in their capacity as union members. These included union meeting notices, a review of arguments used by the union in collective bargaining, and notices of union elections.

Applying the analysis used by the Fort Wayne court, the vast majority of the articles contained in the sampled issues of *NEWSLINE: LOCAL 609* were directed to employees as union members, and not as employees of the employer. The extreme example of this type was a notice of intent to strike published in the October 25,

1993 issue of the union's newsletter, which is counted above among the 59 articles relating to union business.

Had the union limited the content of its newsletters to the subjects agreed upon in the letter of agreement signed by the parties in 1989, there might well have been no cause for concern under the Fort Wayne decision and no controversy in 1995 or 1997. The union did not remain within those agreed-upon limitations, however. In attempting to comply with preemptive federal law by ordering the union to cease using its internal mail system, the employer did not commit an unfair labor practice.

Information Request

The scope of the duty to provide information under the National Labor Relations Act is well articulated in NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). The comparable duty under Chapter 41.56 RCW was restated in City of Tacoma, Decision 5284 (PECB, 1995), as follows:

> Chapter 41 56 RCW imposes a duty to bargain in good faith upon both labor and management. The good faith obligation includes a duty on each party to be forthcoming, upon request of the other party, with information in its possession that is reasonably necessary to implementing the collective bargaining process. City of Bellevue, Decision 3085-A (PECB, 1992), affirmed, 119 Wn.2d 373 (1994).

The Bellevue decision included an analysis of what factors were involved in the duty to provide information from City of Bremerton, Decision 5079 (PECB, 1995):

> Several factors must be present for this duty to arise. The request must be clear. The information must be requested for use in the collective bargaining context. The information must relate to the union's performance of obligations arising from its status of exclu-

> sive bargaining representative; one of these obligations is processing a grievance. The union must have a genuine need for the requested information. Finally, the duty to provide information requires an employer to articulate, and negotiate with the union over any objections it has to producing the requested information.

Thus, the conclusions that: (1) There was no change of past practice giving rise to an occasion for bargaining; and (2) the employer had no duty to bargain on a matter preempted by federal law; weigh heavily against the union's "refusal to provide information" allegation in this case.

The union's request in this case was, in reality, not a request for information at all. It was, instead, a request for a recitation of the employer's legal opinion or its legal justification for ordering the union to cease using the district's internal mail system. The dialogue actually began with Hoge's memorandum in 1988, but Burns seems to have disregarded that piece of the history when he wrote his letter dated May 9, 1995. Burns made reference to "sub-chapter E of 39 CFR", but Miner impliedly responded to that argument in his reply of May 10, 1995, when he stated: "I have also been trained to know that if a practice is illegal, then it not only can be changed but it must be changed in order to comply with the law. Apparently you have a very different view of the law than our lawyers." Burns then replied on May 23, 1995:

> I have waited in vain for a response from Mr. Hoge's office. I do not want to turn the newsletter issue into an unfair labor practice change but I do want to move it along. Enclosed is a copy of the regulation that controls and that [sic] newsletter and periodicals from the excepts private express statute.

It is clear to this Examiner that the employer had attempted to resolve the issue through legal argument, and that this exchange was a legal debate rather than a factual matter. The union was not

requesting facts or data necessary to the performance of its representational responsibilities. It was attempting to convince the employer that the legal premise upon which it based its decision was incorrect or was based upon faulty analysis. The employer did not commit an unfair labor practice when it did not follow through with its statement that it would have its legal counsel respond to the union's arguments.

FINDING OF FACT

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

2. International Union of Operating Engineers, Local 609, a bargaining representative within the meaning of RCW 41.56-.030(3), is the exclusive bargaining representative of certain custodial engineer, gardener, food service, security, and alarm monitor employees of the Seattle School District. During the period relevant to this case, those bargaining units included approximately 600 employees.

3. During or about 1975, Local 609 began producing a newsletter titled "NEWSLINE: Local 609", containing news and information pertinent to the Seattle School District employees which the union represented for the purposes of collective bargaining.

4. The newsletter was distributed to bargaining unit employees by classification and location, rather than being addressed to individuals. With the apparent approval or consent of the employer, distribution of the union newsletter prior to November of 1988 was by use of the employer's internal mail system. A union official who took copies of the newsletter to the mail room in the employer's administrative office would either: (1) leave the materials with the mail clerks for distribution as part of their usual work assignments; or (2)

perform the initial task of distributing the newsletters to mail bags designated for various work sites if the mail clerks were busy, after which the mail clerks would complete delivery of the materials to the various work sites.

5. In November of 1988, the employer distributed guidelines for the use of its internal mail system, based upon the decision of the Supreme Court of the United States in Regents of the University of California v. PERB, 485 U.S. 589 (April 20, 1988). Under the terms of those guidelines, continued use of the employer's internal mail system for distribution of the union's newsletter was no longer authorized.

6. On September 8, 1989, the employer and Local 609 signed a letter of agreement concerning the union's use of the employer's internal mail system. That agreement limited the union's use of the employer's internal mail system to communicating information concerning grievances and/or matters relating to jointly-sponsored training or inservice. Nothing in that letter of agreement authorized continued or renewed use of the employer's internal mail system for distribution of the union's newsletter.

7. Notwithstanding the guidelines set forth by the employer in 1988 and the letter of agreement signed by the parties in 1989, the union continued to distribute its newsletter through the employer's internal mail system. The union has not offered any evidence to show that its use of the employer's internal mail system was authorized or ratified by employer officials responsible for legal matters or labor relations, and such usage is found to have been unauthorized.

8. In 1992, the employer again questioned the legality of the distribution of the union's newsletter through the employer's internal mail system, and it withdrew its permission for the

union's use of its internal mail system. The union did not file an unfair labor practice complaint at that time, and it appears to have resumed distribution of the "NEWSLINE: Local 609" publication through the employer's internal mail system later in 1993.

9. The vast majority of the articles published in the sample copies of "NEWSLINE: Local 609" which were admitted in evidence in this proceeding were intended for employees in their capacities as union members, and not in their capacities as employees of the Seattle School District.

10. In March of 1995, having recently discovered that the union's newsletter was being distributed through its internal mail, the employer again stopped its distribution citing the requirements of federal law. In correspondence which ensued, the union advanced legal argument in support of its continued use of the employer's internal mail system and asked for the employer to respond with its legal arguments, but that correspondence did not constitute a request for existing factual information.

CONCLUSIONS OF LAW

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

2. The employer's action in 1995 to cease distribution of the union's newsletter through its internal mail system constituted a reiteration of a policy set forth by the employer in 1988 and agreed upon by the parties in 1989 and reiterated by the employer in 1993, and did not constitute a change giving rise to a duty to give notice and provide opportunity for bargaining under RCW 41.56.030(4), so that the employer's

unilateral action on that matter in 1995 was not an unfair labor practice under RCW 41.56.140(4) or (1).

3. Use of the employer's internal mail system for distribution of the union's newsletter is a matter preempted by federal law as interpreted by the federal courts, specifically by provisions of 18 U.S.C. 1694 which forbid a private carrier from transporting mail that is not directly related to the business of the carrier, and is not a mandatory subject of collective bargaining under RCW 41.56.030(4), so that the employer's unilateral action on that matter in 1995 was not an unfair labor practice under RCW 41.56.140(4) or (1).

4. The request advanced by the union in 1995 in connection with this controversy did not constitute a request for information under RCW 41.56.030(4), so that the employer did not commit an unfair labor practice under RCW 41.56.140(4) or (1) when it did not furnish the union with further legal justifications and/or rationale for its withdrawing of permission for the distribution of the union newsletter.

NOW THEREFORE, it is

ORDERED

This complaint charging the Seattle School District with unfair labor practices is hereby DISMISSED.

Issued at Olympia, Washington, on the 27th day of March, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, Examiner

This order may be appealed by filing a petition for review with the Commission under WAC 391-45-390.