STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RIDGEFIELD EDUCATION ASSOCIATION, Complainant, vs. RIDGEFIELD SCHOOL DISTRICT NO. 122, Respondent.	CASE NO. 391-U-76-44 DECISION NO. 102-B-EDUC DECISION ON APPEAL

In this case the Ridgefield Education Association has charged Ridgefield School District No. 122 with failing and refusing to bargain with it in good faith, alleging six respects in which the school district has failed in its statutory duty, and included a derivative charge that the school district had deprived employees of their rights under RCW 41.59.140(a). At the commencement of the hearing the complainant's first allegation of bad faith bargaining was withdrawn.

At the hearing the complaint was amended to allege that the school district had discriminated against certain named employees by docking them a day's pay for testifying at the hearing.

The Examiner made certain preliminary rulings which we find to be erroneous, but without prejudice to the objecting party. We comment on them here for future guidance of parties and staff members.

The school district moved that the complaint be made more definite and certain. The charging portion of the complaint, insofar as not withdrawn, read:

> "BASIS OF THE CHARGE: Since on or about April, 1976, the above-named employer by its directors, negotiators, agents and representatives has failed and refused to bargain in good faith with the Ridgefield Education Association, the bargaining representative for the certified employees, inter alia by:
>
> * * *
>
> "B. Maintaining totally intrasigent positions in bargaining;
>
> "C. Repudiating agreements reached in the course of bargaining and insisting on proposals diminishing benefits and otherwise designed to undermine the status of the Ridgefield Education Association;

"D. On July 28, 1976, unilaterally adopting a salary schedule and extra-curricular schedule without bargaining with the Association either to mutual agreement or to impasse;

"E. Thereafter unilaterally issuing individual contracts reflecting the Board's illegal adopted wages and other terms and conditions of employment;

"F. Refusing to meet and otherwise attempting to thwart the bargaining process and to undermine and disparage the REA as the representative of its employees.

"By these and other acts and conduct the above-named employer has refused to bargain and has bargained in bad faith, in violation of Section 15(1)(e).

"By these and other acts and conduct the employer has attempted to undermine the status of the employees bargaining agent and otherwise has deprived employees of their Section 7 rights and has violated Section 15(1)(a)." (Emphasis supplied)

The underlined portions of the charge did not apprise the school district of what it would be expected to meet in at the hearing.

The motion to make more definite and certain should have been granted. In the absence of discovery procedure, a party charged with an unfair labor practice is entitled to know what acts will be questioned. Since the Examiner found merit in only charges D and E, the error in denying the motion was not prejudicial to the school district. The record of the hearing fills four volumes and is 750 pages long. Granting the motion might well have reduced the record and hearing by one-half.

At the hearing the school district objected that the unfair labor practice charge was filed by counsel instead of by the complainant or charging party. The Rules of the Commission in effect at that time provided:

"A complaint charging that any person has engaged in or is engaging in unfair labor practice, hereinafter referred to as a 'complaint', may be filed by any employee, group of employees, employee organization or employer." WAC 391-30-500.

Hence the objection was well taken. However, at the hearing the charge was ratified by the president of the Ridgefield Education Association, who testified that his organization had authorized the filing of the charges. Accordingly, this error was not prejudicial. WAC 391-30-500 has been amended to provide that agents of the real parties in interest may file charges.

The Examiner made the following findings of fact which require consideration on appeal:

III

"That during the course of successive bargaining sessions between the charging party and the District, a wide range of issues were negotiated. One central issue, salaries, eventually became imbedded in the District's 'last and best offer' extended to the charging party along with other provisions and economic matters on or about July 20, 1976. The District witnesses contended negotiations were finished, and insisted that the last and best offer required a total acceptance.

IV

"The charging party contended that negotiations were still open at the time of the last and best offer. Whether impasse had been reached in context of this matter is a mixed question of fact and law. That no subjective bad faith bargaining by the District was found, however, insistence of an all or nothing position for its last and best offer directly inhibited the process of discussion at a critical stage of bargaining. That the thrust by the charging party of filing the instant unfair labor practice charge did little to ease tension or enhance the discussion process.

V

"That insufficient evidence was presented to establish that an unfair labor practice was committed by the District as to: taking any intransigent positions; repudiating agreements, or failing to recognize the REA as the bargaining representatives.

VI

"That no impasse had been reached when the last and best offer was made or implemented by the District.

VII

"That by a preponderance of the evidence presented insisting on an all or nothing approach in its last and best offer, the District conduct was inimical to the collective bargaining rights intended by the legislature for educational employees in Chapter 41.59 RCW. That such conduct inhibited the actual process of discussion.

VIII

"That issuance of individual contracts, while generally contemplated by law in RCW 28A.67.060 and .070 and certainly anticipated generally by these parties during the course of these negotiations, does not in and of itself, in the context of the circumstances of this problem warrant circumvention of the statutory bargaining process contemplated by law or salary matters.

"That such contracts, coupled with a transmittal of the District's last and best offer reflects unilateral action in the circumstances of this case warranting PERC's issuance to the District of a cease and desist order against such practice in the future."

Both parties appealed.

The complainant assigned error on the Examiner's "finding" that the complainant's proposals had been "met" with responses by the school district. The Examiner made no such finding, but made an observation to that effect in

stating the background of the case. We find no prejudicial error in the observation.

The complainant assigned error on the "finding" that the school district made efforts to negotiate a sizeable package to common terms as being contrary to the evidence. Again the Examiner made no such finding but offered an observation to the effect that "the voluminous record reflects the efforts of both sides to negotiate a sizeable package to common terms." The quoted language is less than clear, but is again an observation in summarizing the background of the case and is not prejudicial error.

Complainant alleges error in finding of fact V quoted above. No specific instances of intrasigent positions taken by the school district or repudiations of agreements are pointed out in the brief. The evidence supports the finding of the Examiner.

Complainant assigned error to the Examiner's "finding" that:

> "Insufficient evidence and authorities were presented to warrant a finding that the District's docking of pay of five employees for attending this hearing was an unfair labor practice charge for the District's policy arguably required advance permission which had not been obtained."

While the quoted paragraph is not set out as a finding of fact, but occurs in the hearing officer's summary of the background of the case, it requires discussion.

At the hearing the complainant was allowed to amend its complaint to show that five employees it called as witnesses were "docked" in pay for the days they attended the hearing. Such a showing was made. The letter counsel attached to complainant's argument on appeal was not offered in evidence and cannot be considered on appeal. Counsel made the following representations on the record at the hearing:

> "MS. LONNQUIST: I would say for the Record, Mr. Examiner, that I did telephone Mr. Gregg prior to the first date of this Hearing, which was set sometime in September, and discussed with him the availability of witnesses. He asked me who I would be needing and I said that I would be requiring the attendance of the Association's bargaining team, that is, all of the people named with the exception of Mr. Koethe, Collins, Dynes, Hyatt, and Kurus. I said, 'Will you release them or would you prefer that I issue a subpoena?' I got a letter from Mr. Gregg indicating that he had checked with Mr. Blair and they had requested that I issue subpoenas. To comply with that request, I did so; so that all of these people have been appearing here pursuant to subpoena. (Emphasis supplied.)
>
> "As far as Mr. Gregg's not being informed of the facts behind this amendment -- or a motion to amend, we had no control over when Mr. Blair would choose to notify the people. Had he notified them in

> advance of the Hearing, we would have, of course, raised it prior to the commencement of the Hearing; however, he chose to notify these people during the course of the Hearing, after we had completed our case in chief."

Mr. Blair is the superintendent of the school district. Counsel's statement was not contradicted. The named witnesses are the witnesses who were docked. Notice to counsel for the school district would have been notice to the district, and compliance with the terms counsel mentioned would have been adequate request for and granting of leave. Informing the employees at the hearing that they would be "docked" would have been punitive under the circumstances and the employees would have to be reimbursed for such lost pay. Unfortunately, the transcript shows that counsel asked for the attendance of the Association's bargaining team with the exception of the named individuals. There is, therefore, nothing on which we can find that the district was notified that the named individuals would be called or were subpoenaed. The transcript may be in error, or counsel may have misspoken, but there is a failure of proof on this essential point.

Complainant assigned error to the hearing officer's remark that, "The District could have satisfied its statutory obligations under Chapter 28A.67 RCW and Chapter 41.59 RCW by taking a position somewhat less conditioned on total acceptance of the last and best offer." In view of the Examiner's findings which we affirm, the quoted expression of opinion was not prejudicial.

Complainant assigned error to the last sentence of finding of fact IV quoted above. The assignment is well taken and the sentence is stricken. Filing charges of refusal to bargain does not impair the bargaining process whether the charges are well or ill founded. Were the rule as expressed by the Examiner, RCW 41.59.140(e) would be self-defeating.

The school district assigned error to the denial of its motion to make more definite and certain and allowing a charge to be filed by an attorney instead of the real party in interest. These assignments have been considered above and found to be meritorious, although the errors were not prejudicial.

The school district assigned error to the admission of evidence as to matters which transpired after the charge was filed. The evidence complained of went largely to the issue of whether or not the parties

had reached an impasse in good faith bargaining on or before the date the charge was filed. As such, the evidence was relevant and was properly admitted. To the extent the evidence touched on other matters, its admission was not prejudicial.

Error is assigned to the finding of fact III quoted above. The evidence amply supports this finding.

Error is assigned to finding of fact IV from which we have already stricken the last sentence. The "finding" is discursive and inconclusive, but not prejudicial.

The school district assigns error to finding of fact VI, that no impasse had been reached when the so-called "last and best offer" was made and implemented by the district. The district argues that a finding that no impasse existed required the Examiner to go outside the charges and the record "as the word 'impasse' is a provision of the Educational Employment Relations Act treated in RCW 41.59.120(1)(e) and to determine that no impasse had been reached on the items being bargained is not treated in the finding." RCW 41.59.120(1) has no subsections. The section deals with the resolution of impasses and does not define the term "impasse".

The word "impasse" has been defined as a breakdown in collective bargaining negotiations when neither side will make further concessions, Labor Terms, Commerce Clearing House, Inc., 1955 p. 391. In the instant case neither party broke off negotiations. Between July 5 and after charges were filed negotiations continued and concessions were made. There was no breakdown in negotiations. Duro Fittings Co., 121 NLRB 377.

The resolution of the school board of July 28, 1976, authorizing "the final and best offer" makes no reference to any breakdown in negotiations. It recites its own good faith, that in excess of twelve meetings had been held, that negotiations should not continue forever, that it was not required to make a concession or agree to a proposal and that it would take from August 20, 1976 to issue individual contracts and allow fifteen days for their return. The school district could have issued the contracts with the 1975-1976 salary inserted and attached the rider thereto. This rider provided:

> "This contract shall be subject to the terms and conditions of any agreement between the District and the organization certified as the negotiating representative for the certificated personnel employed by the Board."

Instead the school district adopted a new salary schedule, presented it to the bargaining agent to accept it or reject it in its entirety and sent out individual contracts with its proposed salary inserted and the rider. The rider itself indicated that there was no impasse in negotiations. The action of the school district in adopting the salary schedule unilaterally and presenting it on an all or nothing basis was designed to precipitate an impasse and was inconsistent with good faith bargaining.

The school district argues that its adoption unilaterally of a salary schedule and implementing it by including it in individual contracts which were sent out to teachers with the rider was simply a bargaining technique. As such, it was an illegal technique, NLRB v. General Electric Co., (CA-2, 1969) 418 F.2d 736, cert. den. 397 U.S. 965; The Developing Labor Law, pp. 278-283; Cum. Supp. 1971-1975, pp. 164-165. Here the mailing of the individual contracts containing the salary schedule the board had adopted unilaterally, to widely scattered invididual teachers, despite the rider, brings the district's conduct clearly within the General Electric rule. At best, the school district's action was a ploy designed to disrupt collective bargaining and was inconsistent with good faith.

The school district assigned errors to all the hearing officer's conclusions of law. In view of the opinions hereinabove expressed we will not discuss these individually but instead make the following:

FINDINGS OF FACT

I

The Commission has jurisdiction of the parties and of the subject matter of the case.

II

On or about July 28, 1976, without any impasse having been reached in bargaining the school district unilaterally adopted a salary schedule.

III

The school district presented said salary schedule to the complainant on a take it or leave it, all or nothing, basis.

IV

When the complainant rejected the said salary schedule, the school district implemented it by mailing to its certificated employees individual contracts with said salary schedule therein, no impasse in bargaining having been reached.

V

Collective bargaining between the parties continued thereafter.

VI

The conduct described in Findings II, III, and IV interfered, restrained and coerced the certificated employees in the exercise of their rights guaranteed in RCW 41.59.060.

From the foregoing FINDINGS OF FACT the Commission makes the following:

CONCLUSIONS OF LAW

I

Ridgefield School District No. 122 has violated RCW 41.59.140 (1)(a) and (e) by its actions described in paragraphs II, III, IV and VI of the findings of fact.

II

Ridgefield Education Associaton has failed to sustain its burden of proof with respect to the other allegations of its complaint.

From the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Commission makes the following

ORDER

IT IS ORDERED that Ridgefield School District No. 122, its officers and agents shall immediately:

1. Cease and desist from:
   (a) Refusing to bargain collectively with Ridgefield Education Association as the exclusive representative of nonsupervisory certificated employees of Ridgefield School District No. 122, or any other employee organization such employees may select as their exclusive representative.

   (b) Unilaterally implementing changes of salary schedules, wages, hours of employment or other terms or conditions of employment without first giving notice to and bargaining with respect thereto with Ridgefield Education Association.

(c) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights as guaranteed by RCW 41.59.060.

2. Take the following affirmative action which the Commission finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Ridgefield Education Association as the exclusive representative of the employees in the aforesaid bargaining unit, with respect to wages, hours and terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Rescind the resolution of the Board of Directors dated July 28, 1976 concerning the unilateral implementation of a new salary schedule.

(c) Notify each employee affected by the aforesaid unlawful conduct, and each present employee in the aforesaid bargaining unit, by mailing to each such employee and/or former employee a copy of the notice attached hereto and marked "Appendix A" at the last known address of such employee or former employee. Such notices shall be signed by an authorized representative of the Respondent and shall also be posted at each of the schools operated by the Respondent, in conspicuous places where notices to employees are usually posted. Such notices shall remain posted for sixty (60) days and reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

(d) Notify the Executive Director of the Commission, in writing, within ten (10) days following the date of this Order, what steps have been taken to comply herewith.

DATED at Olympia, Washington this 15th day of August, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY EILEN KRUG, Chairman

Michael H. Beck
MICHAEL H. BECK, Commissioner

Paul A. Roberts
PAUL A. ROBERTS, Commissioner

(c) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights as guaranteed by RCW 41.59.060.

2. Take the following affirmative action which the Commission finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Ridgefield Education Association as the exclusive representative of the employees in the aforesaid bargaining unit, with respect to wages, hours and terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Rescind the resolution of the Board of Directors dated July 28, 1976 concerning the unilateral implementation of a new salary schedule.

(c) Notify each employee affected by the aforesaid unlawful conduct, and each present employee in the aforesaid bargaining unit, by mailing to each such employee and/or former employee a copy of the notice attached hereto and marked "Appendix A" at the last known address of such employee or former employee. Such notices shall be signed by an authorized representative of the Respondent and shall also be posted at each of the schools operated by the Respondent, in conspicuous places where notices to employees are usually posted. Such notices shall remain posted for sixty (60) days and reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

(d) Notify the Executive Director of the Commission, in writing, within ten (10) days following the date of this Order, what steps have been taken to comply herewith.

DATED at Olympia, Washington this 31st day of August, 1977.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, Chairman

Michael H. Beck
MICHAEL H. BECK, Commissioner

Paul A. Roberts
PAUL A. ROBERTS, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No. 391-U-76-44 Date Issued _____

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION RIDGEFIELD SCHOOL DISTRICT NO. 122 HEREBY NOTIFIES OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively with Ridgefield Education Association as the exclusive representative of all of our employees in the appropriate bargaining unit consisting of nonsupervisory certificated employees of Ridgefield School District No. 122 with respect to rates of pay, wages, hours of employment and other terms or conditions of employment.

WE WILL NOT unilaterally change wages, salary schedules, hours of employment or other terms or conditions of employment without first giving notice to and bargaining with respect thereto with Ridgefield Education Association.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights to self-organization, to form, join or assist Ridgefield Education Association or any other employee organization, to bargain collectively through representatives of their own choosing as guaranteed by RCW 41.59.060, or to refrain from any and all such activities.

WE WILL rescind the resolution of the Board of Directors of Ridgefield School District No. 122 dated July 28, 1976 unilaterally adopting changes of the salary schedule for certificated employees of the District.

WE WILL, upon request, bargain collectively with Ridgefield Education Association as the exclusive representative of the employees in the aforesaid bargaining unit, with respect to wages, salary schedules, hours of employment and other terms of conditions of employment and if an understanding is reached, will embody such understanding in a signed agreement.

All of our employees are free to become, remain or refrain from becoming members of Ridgefield Education Association or any other employee organization.

DATED: _____ RIDGEFIELD SCHOOL DISTRICT NO. 122

BY: _____

Copies of this notice posted in school buildings operated by the School District must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by other material.

Any questions concerning this notice or compliance with its provisions may be directed to the PUBLIC EMPLOYMENT RELATIONS COMMISSION, 603 Evergreen Plaza, Olympia, Washington, 98504. Telephone (206) 753-3444.