STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609	)	CASE NO. 4227-U-82-673
Complainant,	)	
vs.	)	DECISION 2079-B PECB
SEATTLE SCHOOL DISTRICT,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.	)	

Hafer, Price, Rinehart and Schwerin, by John Burns, Attorney at Law, appeared on behalf of the complainant.

Perkins, Coie, Stone, Olsen and Williams, by Russell L. Perisho, Attorney at Law, appeared on behalf of the respondent.

On December 3, 1984, the undersigned Examiner issued findings of fact, conclusions of law and an order in the above-entitled matter, Seattle School District, Decision 2079 (PECB, 1984). That order dismissed some allegations filed by the complainant union, but found that unfair labor practices were committed by the employer on certain of the union's allegations. Remedies were ordered for the violations found. The Examiner's decision interpreted RCW 41.56.070 in a manner neither party had expected, anticipated or briefed. The union filed a petition for review, and the respondent school district then cross-petitioned for review. On review, the Commission reversed, based on a "novel point of law which undergirds the entire decision", and remanded the case to the Examiner, "who saw and heard the witnesses". Seattle School District, Decision 2079-A (PECB, June 13, 1985).

The parties did not request, and were not requested, to rebrief the issues involved in this case. With the direction provided by

the Commission as to how the statute is to be interpreted and applied on these facts, the original briefs filed by the parties adequately address the legal issues involved. The facts were set out fully in the original decision of the Examiner, and need not be elaborated upon.

POSITION OF THE UNION

The union's position is that the parties were progressing normally through bargaining during 1982 in an attempt to reach a negotiated agreement to replace the collective bargaining agreement due to expire August 31, 1982. The union alleges that in early September, 1982, the district unilaterally implemented changes in the custodians' working conditions. The union objects specifically to alleged changes in the following:

- re-classification of certain buildings which, in part, determined the salary ranking of the custodians assigned to those buildings;
- changes of time standards allotted for cleaning activities;
- changes of shift schedules;
- implementation of a computerized start/stop boiler program, which caused the removal of certain positions at the high schools;
- down grading the ranking of certain classifications by altering the job descriptions; and
- the commencement of use of part-time employees.

The union argues that these acts devastated the bargaining process. Further, the union complains that the district announced, effective February 22, 1983, "the implementation of a collective bargaining agreement" which the union characterizes as materially different in four areas from any proposals it had seen

at the bargaining table. The union argues that no impasse existed at that time, or that if one did exist it was caused solely by the district's illegal acts. The union asserts that it never waived its right to bargain, either by its conduct or by contract language. Finally, the union sees the district's change in granting leave for union activity as being illegal in and of itself, as well as being part of a broader pattern of lack of good faith bargaining.

POSITION OF THE EMPLOYER

The district claims that the Examiner should defer to certain arbitration awards issued through the grievance and arbitration process created by the contract between the parties. That process has now yielded awards in the disputes about building classification, job descriptions and use of part time employees. As for the change in time allocation standards and the change in shift schedules, the district argues that it had a clear contract waiver from the union. The district argues that the computerized start/stop program for the boilers "never got off the ground" and ended after approximately two weeks with no employee losing any benefits or salary. The district views negotiations as being at a stalemate as of February 22, 1983, and it asserts that it thereafter lawfully implemented its last proposal. The district describes the changes which it implemented as being reasonably comprehended within its pre-impasse proposals, and not "materially different" from proposals the union had seen during bargaining. The district urges that the allegation regarding the change of leave for union activity be dismissed as moot, since an apology was rendered, an understanding was reached and the affected employees were made whole. The district argues that it continually bargained in good faith throughout the negotiations.

DISCUSSION

In Seattle School District, Decision 2079-A, the Commission held that the automatic extension clause contained in the collective bargaining agreement between the parties did not void the contract under RCW 41.56.070, since the parties had performed under the contract as though the collective bargaining agreement was valid and no rights of third parties were shown to have been prejudiced. Inasmuch as the contract was operative as between its parties, the "deferral to arbitration" and "waiver by contract" arguments advanced by the employer from the outset of this case become more persuasive in considering the case on remand.

Deferral to Arbitration

The Commission does not assert jurisdiction over "violation of contract" claims through the unfair labor practice provisions of Chapter 41.56 RCW. City of Walla Walla, Decision 104 (PECB, 1976). On the other hand, unilateral changes of wages, hours or working conditions subject to the duty to bargain are a per se unfair labor practice. City of Mercer Island, Decision 1026-A (PECB, 1981). Where allegations of "unilateral change" are met with defenses of "waiver by contract", it is the practice of the Commission to defer to contractual dispute resolution procedures to determine the application of the contract where the employer's conduct is arguably protected or prohibited by the contract. King County, Decision 2193 (PECB, 1985). The Public Employment Relations Commission does not thereby give up or lose its jurisdiction over the "unilateral change" allegations in the unfair labor practice case, and may be called upon to go ahead with the unfair labor practice case following completion of the contractual dispute resolution procedures. In then considering whether to defer to the opinion and award of the arbitrator, the

Commission considers whether the arbitration proceedings were fair and regular and whether they reached a result which is repugnant to the policies of Chapter 41.56 RCW. City of Richland, Decision 246 (PECB, 1977); Clark County Fire District No. 5, Decision 1343, (PECB, 1982). The arbitration awards involved here are not challenged as unfairly obtained, as based on irregular procedure or as being repugnant to the policies of the Act. They are applied in the paragraphs which follow.

Building Reclassification

Arbitrator Zane Lumbley ruled on March 31, 1983 that the district did not violate the collective bargaining agreement by adopting the new building classification system which is challenged in this unfair labor practice proceeding. Article XIV of the parties collective bargaining agreement, dealing with "Building Reclassification and Staff Adjustments", contains language that dictates what the parties are to do AFTER a building is reclassified. Under cross-examination, Dale Daugharty, business agent for Local 609, testified that he understood that language to give the district the authority to reclassify school buildings. Indeed, the arbitrator wrote:

> ... As the union concedes, the District has the authority, pursuant to Article XIV of the Agreement to reclassify buildings... It is self evident that if the District has the authority to reclassify buildings, it has the authority to alter the system by which it does so ... Additionally, given the lack of ambiguity in the language contained in Article XIV of the Agreement, neither the alleged practice nor any precontract oral assurance can be considered here.

* * *

> I cannot agree with the Union that the language contained [in the recognition article] in and of itself, creates some obligation of the District to negotiate prior to implementing the kind of changes in issue here. Whether such an obligation may exist pursuant to Chapter 41.56 RCW or some rule or regulation of the Public Employment Relations Commission is not a question I have been asked to decide.

The question nominally left unresolved by the Arbitrator is, of course, the question that the examiner is asked to decide. The answer to that question is clear, since the arbitrator has found that the language of the collective bargaining agreement covered the subject and allowed the employer to take the action, that the union waived its bargaining rights on the subject for the life of the contract by signing the contract. Since the Commission has found the collective bargaining agreement to be valid as between the parties, the employer did not commit an unfair labor practice by following the contract language concerning re-classification of its buildings.

Wage Downgrading / Altering Job Descriptions

Arbitrator Zane Lumbley held on November 9, 1983 that the employer violated the collective bargaining agreement in connection with its downgrading of the wage classification for certain positions. Prior to September, 1982, the district employed licensed assistants ("H" pay range) on night cleaning crews in its elementary school buildings. Among their duties was overseeing employees in the assistant custodian classification (who were paid at the lower "G" pay range). At a bargaining session on September 7, 1982, the first day of school for the 1982-83 school year, the district presented the union with a proposal to change the job description of the assistant custodian classification to allow employees in that classification to work

without supervision. The purpose of the district was to remove the licensed assistants from some cleaning crews, replacing them with lower paid assistant custodians. The union demanded that the highest step of the "H" pay range be attached to the new job description. It gave as its rationale that the elimination of the licensed assistants would affect approximately 50 bargaining unit members. Additionally, the proposal was seen as eliminating a major promotional opportunity for entry level employees, and as effectively freezing 20 people in their present pay ranges. Between September 7 and 13, 1982, the district implemented its proposal over the objections of the union.

On August 4, 1983, the parties arbitrated the following issue:

> Did the district violate the Collective Bargaining Agreement by Assigning part-time Assistant Custodians certain second-shift work in elementary school buildings during the 1982-83 school year?

Finding that the employer had implemented material changes in the assistant custodian position description, the arbitrator held that the district violated Article XVII, Job Descriptions, by failing to negotiate with the union concerning the change. It follows that the district did not have either a contractual right to unilaterally alter the job descriptions in question or a waiver by the union of its bargaining rights under the statute.

The district argues that the September 7, 1982 meeting created a "mini-impasse". It reasons that, since it saw no changes in the duties assigned to the assistant custodians,[1] state salary control legislation[2] precluded the granting of the wage increases

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[1] The employer's reasoning in this regard was faulty. The arbitrator concluded the changes were substantial.

[2] RCW 28A.58.095(1), often referred to as House Bill 166.

sought by the union. Further, the district claims urgency, since it was faced with the opening of schools, and saw no movement from the union.

The district's abrupt presentation of a material change in wages and promotional potential for unit members is suspect of lacking good faith. The timing of the proposal on the first day of school and the district's speedy implementation are also questionable. Bargaining had been going on for some time prior to the events complained of. An employer's sudden injection of a new proposal at an advanced stage of bargaining has been held to be indicative of a lack of good faith and an unfair labor practice. City of Snohomish, Decision 1661-A (PECB, 1984); Columbia County, Decision 2322 (PECB, 1985). The record does not establish that the district had a pressing business necessity[3] to alter the job descriptions during the first week of school. Giving credence to the school district's claim of a need to achieve financial relief on the first day of school, when the union does not see the proposal until that day, would allow the employer to escape its statutory bargaining obligation. The impasse that existed on this proposal was unlawfully created by the district. By its unilateral implementation of a wage rate to be paid for the revised job description, the district refused to bargain in good faith and interfered with the rights of employees under the Act.

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3 For a discussion of business necessity, generally, see: Lower Snoqualmie School District, Decision 1602 (EDUC, 1983).

Use of Part-time Employees

Arbitrator Michael Beck ruled on November 21, 1983, that the district did not violate the collective bargaining agreement by employing custodians for work shifts of less than eight hours. The employer had made increasing use of part-time employees in entry-level positions. The union protested, claiming that the shift-scheduling provisions of the contract precluded shifts of less than eight hours.

In ruling for the employer, the arbitrator made it clear that the collective bargaining agreement between the parties contained numerous references to part-time employees, and so contemplated their employment. It follows that there was a waiver of the union's statutory bargaining rights by contract. The record does not support a finding of union animus on the part of the employer. Nor was it established that the part-time employees were hired to sabotage the bargaining process or otherwise to undermine the exclusive bargaining representative by means such as promoting decertification of the bargaining agent. The district's hiring of part-time employees was not a violation of the Act, and is not evidence of a course of conduct of refusal to bargain.

Time Allocation Standards

The 1980-1982 collective bargaining agreement contained the following language:

> Article XVIII: TIME ALLOCATION STANDARDS
>
> When Time Allocation Standards (i.e. minutes per specific task, e.g., one and four-tenths (1.4) minutes cleaning time per washbasin) for the assignment of tasks to individual employees are to be changed, studied, or new ones established, the Union will be notified

> in writing. Union representatives will be given the opportunity to give input to the process used to modify, change, or establish standards and will then meet with the District representatives to make recommendations. The frequency of work to be done shall be determined solely by the District.

While the union has accused the employer of unfair labor practices, as part of a course of conduct, by making changes of time allocation standards, the parties have not arbitrated the issue. The Public Employment Relations Commission does not remedy contract violations through unfair labor practice procedures of the statute, but it may have to interpret contract provisions where, as here, a question of waiver by contract arises in connection with charges based on a totality of the district's conduct.

Testimony from union business agent Daugharty and from the Recording Secretary of Local 609, David Hutchins, establishes that the district did notify the union in writing of the proposed changes, and that the district did allow the union to provide "input" prior to establishing new time allocation standards.

The language of Article XVIII constitutes a clear contract waiver of the district's obligation to bargain to impasse with the union on changes of time allocation standards made during the life of the contract. Since the contract has been held to have existed between the parties at the time of the conduct at issue, the waiver also existed. The district's conduct was within the scope of the contract waiver it had received from the union. The record does not substantiate the allegation of lack of good faith bargaining with respect to the district's actions concerning the time allocation standards.

Shift Schedules

Article XIII of the parties' contract, relating to "Shifts and Hours", established a range of starting times for each of the three shifts:

* * *

> Work shifts shall be designated a first, second, or third work shifts according to the scheduled starting time.
>
> First shift between 5:00 am and 9:59 am
> Second shift between 10:00 am and 5:59 pm
> Third shift between 6:00 pm and 4:59 am

The union has alleged that the employer unilaterally changed the starting time of some work shifts. The employer admits that shift schedules were changed, and even that they are a mandatory subject of bargaining, but claims a contractual right to do so. The interpretation of the contract has not been arbitrated.

The employer correctly points out that the district's setting of starting times was expressly authorized by the parties through the collective bargaining agreement. The union has granted the employer specified time corridors in which to schedule the start of the various shifts. There is no indication that the employer went outside the designated corridors in its scheduling. No allegations of unfair labor practices will carry regarding the changing of the starting times of the custodians' shifts.

Computerized Start/Stop Program for Boiler System

In September, 1982, the district presented to the union a plan to re-assign assistant engineers from four high schools to other buildings, because a new energy management program was being instituted in those high schools. Since the program included

implementation of a computerized start/stop monitor system for the boilers in the affected high school buildings, the District claimed that the assistant engineers ("I" pay grade) could be replaced with entry level positions (at the lower "G" pay grade). The reassignment of the employees was put into effect prior to the installation of the energy management program. Two weeks after the initial reassignment of the assistant engineers, they were transferred back to their original classifications in their respective high schools. At that time, the district indicated that the program was undergoing problems in its implementation, and would be delayed. No employee lost any pay or benefits as a result of these transfers.

An employer's unilateral change in operations will be a mandatory subject of bargaining if the change has a significant impact on the bargaining unit. Westinghouse Electric Corp. 150 NLRB 1574 (1965); Coca Cola Bottling Works, 466 F.2d 380 (D.C. Circuit, 1972), enforcing in part 186 NLRB 1050 (1970). The new computer system at issue here was a capital investment, however, within the prerogatives of management and having only a secondary impact on employees. The Examiner thus concludes that the district did not have a duty to bargain with the union concerning the decision to install the computer system. See, also, King County, Decision 1957, (PECB, 1984).

There were effects of the decision to install the computerized controls on the boilers in the four high schools: Employees were transferred; classifications of positions were changed; promotional ladders were altered. Even where there is no duty to bargain on a management decision, or where bargaining on the decision has been waived, the employer will have a duty to bargain with the exclusive bargaining representative on the effects of its decision on the bargaining unit employees. Entiat School District, Decision 1361-A (PECB, 1982). No party has

argued that the district failed to follow the collective bargaining agreement when it transferred the assistant engineers. Without getting into interpretation of the parties' collective bargaining agreement regarding the employer's duty to bargain other potential effects which might have flowed from the decision to computerize, it is noted that there was at most a technical violation of the duty to bargain from which no changes remain to remedy. The aborted introduction of the computer system caused the transfer, for two weeks, of four employees out of a bargaining unit of 350 people. The transferees were to retain their "I" class pay rate for up to two years following their transfer. There is no evidence that any other employee was economically harmed. The reinstatement of the transferees to their original jobs eliminated any potential impact on promotional opportunity.

Impasse and Implementation

The Commission has held that "where there are irreconcilable differences in the positions of the parties after good faith negotiations, an impasse exists". Federal Way School District, Decision 232-A, (EDUC, 1978). An employer's implementation of changes of wages, hours or working conditions will not be held to be an unfair labor practice if it has bargained in good faith so as to fulfill its obligations under the statute prior to the implementation of the changes. Spokane County, Decision 2167-A (PECB, 1985).

In the instant case, the parties had been bargaining from June, 1982 through February, 1983, when the employer declared an impasse. Twenty-two formal negotiating sessions had been held, including seven mediation sessions. The mediators had withdrawn, and the parties were back to meeting on their own. The district

implemented changes of wages, hours and working conditions on February 22, 1983.[4]

The union's position is that the "impasse" in February was due to the allegedly illegal acts committed by the employer during September, 1982. Then, citing the holding in Federal Way School District, supra, that "there can be no legally cognizable impasse if a cause of the deadlock is the failure of one of the parties to bargain in good faith", the union argues that no impasse existed. Additionally, the union contends that it made movement at the February 22, 1983 bargaining session.

The National Labor Relations Board has set out a succinct test for determining whether an impasse exists in a given fact situation:

> Whether bargaining impasse exists is a matter of judgement. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Taft Broadcasting co., 163 NLRB 475, 478, enf'd sub. nom. AFTRA v. NLRB, 395 F.2d 622 (D.C. Cir., 1968).

The bargaining history laid out in the union's bargaining notes up to and including the February 22nd meeting shows that the parties were far apart on every significant issue: part-time employees, building reclassification, insurance, grievance

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4 The employer's characterization of its action as "implementing a contract", of course, overstates the nature and effect of its action. A contractual agreement is a bilateral action of a type which clearly did not exist here.

procedure, promotions and transfers. Unquestionably, the parties had spent long hours at the bargaining table in many meetings over several months. A review of the union's bargaining notes from the bargaining sessions held in February shows that the union was peppering its responses to the employer's proposals with "No", "We disagree", "Not at this time", and "Next time we'll ask for heads to roll at school board". The employer continued to insist on operational changes which were the source of much of the deadlock. The notes clearly reflect frustration and stalemate. At the February 22nd meeting, the union delivered to the district a letter from the head of the King County Labor Council asking the district to show cause why the district should not be placed on the "unfair list". Clearly, the parties understood that there was a gap between them.

The final point of the Taft Broadcasting test is to determine whether the parties were bargaining in good faith. The union cites in its unfair labor practice complaint that it had grieved three actions that the district had taken in September. The district defended that it had a contract right to take the grieved actions. Neutral arbitrators found for the district in two out of the three grievances. The sustained grievance does not establish a course of conduct on which to base a conclusion that the district lacked good faith in its bargaining.

The existence of a legally cognizable impasse does not terminate the duty to bargain, however. Rather, it merely temporarily suspends the duty to bargain as to the items at impasse. Thus, in Pierce County, Decision 1710 (PECB, 1983), an impasse on a single issue did not suspend the obligation to bargain on other unsettled issues. The suspension of the duty to bargain must be of a transient nature to encourage the statutory mandate to bargain in good faith. The implementation of the employer's position on items of importance in this dispute may have caused a

substantial change in the bargaining position of the union. The employer purported to implement an entire contract, including a duration clause, and thereby ran afoul of the law. By its very nature, the employer's action was unlawful because it closed the door to bargaining until a fixed future date. While it is clear from Taft Broadcasting Co., supra, that the employer could only be excused for implementing that which it had proposed to the union prior to impasse, the employer's action constituted a per se breach of the bargaining process comparable to that found in City of Spokane, Decision 1133 (PECB, 1981), where the employer altogether withdrew its proposals from the bargaining table.

Since the employer's attempt to implement an entire contract is found to be illegal, there is no need to discuss whether the implemented proposals were materially different than what was on the table, or whether they were "reasonably comprehended within pre-impasse proposals".

Communications with Employees

On or about February 22, 1983, the district sent a direct mailing to the home of each bargaining unit employee and posted on employee bulletin boards a document which began by saying:

> As you know, we have been trying for several months to negotiate a new contract with your union.

The letter goes on to talk about the district's financial situation and the need to make some operational changes to "save wherever we can". The letter mentions:

> Most of the planned changes have now occurred, and we hope there will not be much need to implement other changes for some time to come. The many changes which took place over

> the past few months did make it difficult to settle a labor contract, but we believe that by now we should have been able to reach such a settlement.
>
> * * *
>
> ...No other changes will result from this action, and we will continue to seek the union's approval of the contract.

In Decision 2079, this letter was found to be non-coercive in nature and substantially factual. It therefore was not found to constitute illegal direct dealings with employees. Decision 2079 held that the collective bargaining agreement between the parties had expired August 31, 1982, and that the employer had lost the benefit of contractual waivers after that date. The quite different holding in this decision on remand, that the contract remained in effect until February, 1983, when employer unlawfully purported to implement an entire, complete contract, causes the employer's letter to employees to be looked at in a different light.

The letter sent to employees says that the district did just that which is found herein to be unlawful. A bargaining unit member reading the letter could reasonably question why he or she should continue to be represented by a union when the district implements changes as it wants and forecloses bargaining for a fixed period into the future. The district's letter does not indicate to employees that impasse only temporarily suspended the duty to bargain, rather than cancelling the duty to bargain. The tone of the letter was that the district was seeking the union's sanction of the district's unilateral actions, not that the district was willing to continue bargaining. By merely asking for the union's "approval" of the unlawfully implemented "contract", the district has illegally undermined the union in the employees' minds.

Coercion, Retaliation and Intimidation Against Union Representatives

Given the parameters of the remand by the Commission in this case, nothing in the factual situation or discussion of the allegations of coercion, retaliation and intimidation against union representatives has been altered from the findings in Decision 2079. The findings of fact and conclusions of law will remain unchanged with respect to these charges.

FINDINGS OF FACT

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

2. The International Union of Operating Engineers, Local 609, is a bargaining representative within the meaning of RCW 41.56.030(3) and is recognized as the exclusive bargaining representive of an appropriate bargaining unit of custodians and gardeners employed by the Seattle School District.

3. The parties had a collective bargaining agreement with a duration of September 1, 1980 through August 31, 1982. The contract included an automatic extension clause. When the parties failed to reach agreement on a new contract prior to August 31, 1982, they acted between themselves as though the automatic extension clause was valid and had operated to continue the contract in effect.

4. On or about September 7, 1982, the district implemented new time allocation standards for cleaning tasks assigned to bargaining unit members. The new standards were implemented

after input from unit members, in accordance with the parties' collective bargaining agreement.

5. On or about September 7, 1982, the district implemented new shift schedules. The new schedules had starting times which fell within the corridors detailed in the parties' collective bargaining agreement.

6. In early September, 1982, the district took steps to transfer four employees from assistant engineer positions (one each from four high schools), and to replace them with four entry level custodian positions, due to the planned implementation of a computerized start/stop monitor for the boilers in those buildings. On or about September 13, 1982, the four assistant engineers were transferred to other buildings. Approximately two weeks later, they were transferred back to their original assignments. No employee lost pay or benefits.

7. In September, 1982, the district implemented a new building classifiction system which, in part, determined custodian pay. On or about March 31, 1983, an arbitrator ruled that the district did not violate the collective bargaining agreement by adopting the building classification plan.

8. On September 7, 1982, the district presented a proposal regarding job descriptions to the union for the first time, and then unilaterally implemented a changed job description and wage downgrading by which certain licensed assistant custodian positions were replaced by lower paid assistant custodian positions. On or about August 4, 1983, an arbitrator ruled that the district violated the collective bargaining agreement by failing to negotiate with the union

concerning material changes in the assistant custodian position description.

9. During and after September, 1982, the district made increased use of part-time employees in bargaining unit positions. On or about November 21, 1983, an arbitrator found that the district did not violate the collective bargaining agreement by employing custodians for work shifts of less than eight hours.

10. Up to February 22, 1983, the parties had extensive good faith bargaining sessions, including mediation, seeking a replacement contract. The issues remaining in dispute were of importance to both sides. Neither side gave any indication of a significant change of its position on each issue.

11. On or about February 22, 1983, the employer announced to the union bargaining team that it was unilaterally implementing an entire contract.

12. On or about February 22, 1983, the employer sent a letter to the home of each member of the bargaining unit, detailing that the employer was implementing the entire, complete contract. The tone of the letter could reasonably have been understood by employees as tending to undermine the union in the minds of unit members.

13. In the autumn of 1982, after giving notice to the union, the district altered its administration of the "leave for union activity" clause of the collective bargaining agreement. On November 10, 1982, the district attempted to establish a pre-condition not contained in the contract's grievance procedure for discussing the grievance filed in response to the altered administration. In January, 1983,

at step three of the grievance procedure, the district reversed itself and reverted to its previous method of granting union activity leave.

CONCLUSIONS OF LAW

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

2. The Seattle School District was not dilatory in getting to the bargaining table in the summer of 1982, and did not thereby violate RCW 41.56.140(4) and (1).

3. The collective bargaining agreement between the Seattle School District and Local 609, which was terminable on August 31, 1982, was in substantial compliance with RCW 41.56.070, and was valid as between the parties until the school district terminated that contract by notice effective on March 3, 1983.

4. The arbitration proceedings on the grievances regarding building reclassification, alteration of job descriptions, and use of part-time employees were all fair and regular. The results reached in the arbitration awards were not repugnant to the policies of Chapter 41.56 RCW.

5. The Seattle School District did not commit an unfair labor practice when, without reaching agreement or a good faith impasse, it reclassified some buildings (thereby affecting the wages of some unit members), since the district was found by an arbitrator to have acted under the authority of the collective bargaining agreement.

6. The Seattle School District did not commit an unfair labor practice when, without reaching agreement or a good faith impasse, it hired part-time employees into the bargaining unit, since the district was found by an arbitrator to have acted under the authority of the collective bargaining agreement.

7. The Seattle School District did not commit an unfair labor practice when, without reaching agreement or a good faith impasse, it altered the time allocation standards for the performance of certain tasks by bargaining unit members, since the district's conduct was within the scope of a waiver of bargaining rights made by the union in the collective bargaining agreement.

8. The Seattle School District did not commit an unfair labor practice when, without reaching agreement or a good faith impasse, it changed the starting time of the work shifts of certain bargaining unit members, since the district's conduct was within the scope of a waiver of bargaining rights made by the union in the collective bargaining agreement.

9. By its unilateral implementation of a wage rate to be paid for the revised job description of "Assistant Custodian", without reaching agreement or good faith impasse, the district refused to bargain in good faith and interfered with the rights of employees in violation of RCW 41.56. 140(4) and (1).

10. By failing to bargain the effects of its decision to install computerized controls on the boilers in four high schools, and consequently transferring four employees, the Seattle School District committed a technical violation of

RCW 41.56.140(4) and (1), but there are no effects or changes to remedy herein due to previous reinstatement actions made by the district.

11. By purporting to implement an entire contract, including a duration clause, the Seattle School District failed and refused to bargain with Local 609 and violated RCW 41.56. 140(4) and (1).

12. By sending a direct mailing to the homes of bargaining unit employees, and by posting notice on employee bulletin boards, where both documents indicated that the district had implemented an entire contract, the Seattle School District committed a technical violation of RCW 41.56.140(1) and (2), but there are no effects or changes to remedy herein due to previous reinstatement actions made by the district.

13. By altering, during bargaining, its method of granting leave for union activity, the Seattle School District violated RCW 41.56.140(4) and (1).

14. By asserting a pre-condition not contained in the collective bargaining agreement for the processing of a grievance, the Seattle School District violated RCW 41.56.140 (1) and (2).

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the Seattle School District, its officers and agents, shall immediately:

1. Cease and desist from:

   a. Refusing to bargain collectively with International Union of Operating Engineers, Local 609;

   b. Unilaterally implementing a wage rate for a revised job description of a bargaining unit position, without giving notice to, and upon request, bargaining collectively with the International Union of Operating Engineers, Local 609;

   c. Refusing to bargain, upon request, concerning the effects on bargaining unit members of the decision to install computerized controls on the boilers in four high schools;

   d. Implementing an entire contract, including a duration clause, even after reaching a good faith impasse;

   e. Sending a direct mailing to the homes of bargaining unit employees and posting notice on employee bulletin boards, where both documents indicate that the district has implemented an entire contract;

   f. Controlling, dominating or interfering with collective bargaining representatives by, without bargaining or reaching a good faith impasse, changing the method of granting leave for union activities;

   g. Attempting to establish pre-conditions not contained in the collective bargaining agreement for processing of grievances;

h. Interfering with, restraining or coercing its employees in any other manner in the free exercise of their rights guaranteed them by the Act.

2. Take the following affirmative action to remedy the unfair labor practice and to effectuate the policies of the Act:

a. Upon request, bargain collectively in good faith with the International Union of Operating Engineers, Local 609, as the exclusive bargaining representative of an appropriate bargaining unit, with respect to wages, hours and working conditions; and specifically with respect to the wage rate to be paid to the revised job description of "Assistant Custodian" and the effects of the decision to install computerized controls on school boilers.

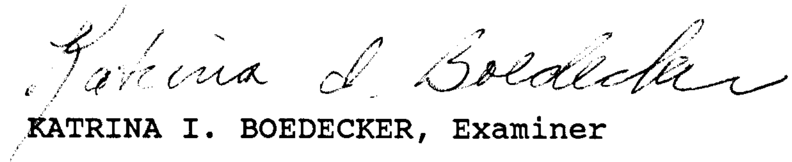
b. Upon request, rescind the collective bargaining agreement purportedly implemented by the district with a duration of September 1, 1982 through August 31, 1983, and bargain in good faith for its replacement;

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

d. Notify the Executive Director of the 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 the preceding paragraph.

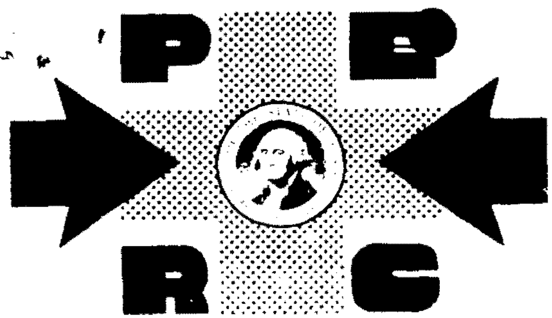
DATED at Olympia, Washington, this 13th day of March, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATRINA I. BOEDECKER, Examiner

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



PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX A

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively with the International Union of Operating Engineers, Local 609.

WE WILL NOT make unilateral changes in wage rates for revised job descriptions of bargaining unit positions.

WE WILL NOT refuse to bargain the effects of the decision to install computerized controls on boilers in schools.

WE WILL NOT implement an entire contract, including a duration clause, even after reaching a good faith impasse.

WE WILL NOT circumvent the union or initiate communications to bargaining unit employees which derogate the union in the eyes of its members.

WE WILL NOT unilaterally change the method of granting leave for union activity.

WE WILL NOT assert pre-conditions not contained in the collective bargaining agreement for processing of grievances.

WE WILL NOT interfere with, restrain or coerce our employees in any other manner in the free exercise of their rights guaranteed them by the Act.

WE WILL, upon request, bargain collectively in good faith with the International Union of Operating Engineers, Local 609, as the exclusive bargaining representative of an appropriate bargaining unit with respect to wages, hours and working conditions, and specifically with respect to the wage rate to be paid to the revised job description of "Assistant Custodian" and the effects of the decision to install computerized controls on school boilers.

WE WILL, upon request, rescind the collective bargaining agreement which we purported to unilaterally implement as of March 3, 1983 with a duration of September 1, 1982 through August 31, 1983, and will bargain collectively in good faith for its replacement.

SEATTLE SCHOOL DISTRICT

BY: ______________________
AUTHORIZED SIGNATURE

DATED: ________________

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

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