STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF LYLE,	)	
	)	
Complainant,	)	Case No. 6488-U-86-1275
	)	
vs.	)	DECISION 2736 - PECB
	)	
LYLE SCHOOL DISTRICT NO. 406,	)	
	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW
	)	AND ORDER
	)	

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

W. Robert Garrett, Superintendent of Schools, appeared on behalf of the respondent.

On October 21, 1986, the Public School Employees of Lyle, an affiliate of the Public School Employees of Washington (PSE or union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission alleging that the Lyle School District No. 406 (employer) had violated RCW 41.56.140 (1), (2) and (4) by making unilateral changes in working conditions, by circumventing the exclusive bargaining representative and by retaliating against officers of the union for their activities in representing employees. A hearing was conducted on December 9, 1986, and January 6, 1987, before William A. Lang, Examiner. Post-hearing briefs were filed on February 25, 1987.

FACTS

PSE is the exclusive bargaining representative of all classified employees of the employer, except supervisors and the secretary to the administrator. Tom Jellum, an employee of the school district in the custodian classification, was the President of the local chapter during the period relevant to this case. Doug Lambert was the Vice-President of the PSE chapter and shop steward for the bus drivers. Lambert had been dividing his eight hour day between bus driving (where he was the most senior among the employer's bus drivers) and maintenance assignments.

On February 24, 1986, W. Robert Garrett, Superintendent of the Lyle School District, sent a memorandum to five bus drivers regarding changes in their specific bus routes, one of which he proposed to abolish. In that memorandum, Garrett outlined the reasons behind the changes, including the reduction of the amount of supervision of children and costs to the district. Garrett quoted the sections of the collective bargaining agreement which he believed enabled him to make the changes. He informed employees of their rights to bring these matters to the attention of union representatives. He also related their preferential rights on assignments based on seniority, attaching the seniority roster of bus drivers.

Garrett scheduled a meeting to be held later in the afternoon of February 24, 1986, the purpose of which was to discuss the changes with the employees involved. Herb Hawkins, a PSE field representative, became aware of the situation and traveled to Lyle to attend the meeting. Doug Lambert was not directly affected by the changes, and was not invited to attend that meeting, but felt that he should attend in his capacity as a union official. Lambert met with Hawkins prior to the meeting and inquired about attending. Hawkins believed that Lambert should attend and, together with the bus drivers affected by the reorganization, they walked into the meeting as a group. The evidence indicates that Garrett was upset that Hawkins would come to what he considered to be a preliminary informational meeting on the route changes, but Garrett permitted Hawkins to remain and

participate in the meeting. After considerable discussion, an agreement was reached which resolved the matter. That agreement was reduced to writing on March 4, 1986, and was signed by Garrett and each of the five affected drivers.

The collective bargaining agreement between the parties was to expire on August 31, 1986. On April 21, 1986, Garrett notified the union that the employer desired to meet to discuss "preliminaries" concerning negotiations for a successor agreement. On May 5, 1986, the union advised Garrett that local chapter officers would represent the union in the negotiations for a new contract. The local union officers notified the employer that the PSE field representative would not participate, but would remain on call. Garrett was informed that the employer would be notified if the local union felt that PSE representation was required.

After several negotiation sessions, the union's negotiators asked Garrett to schedule a "mandatory meeting" in accordance with Section 2.3 of the expiring collective bargaining agreement, which provided:

> The District reserves the right to meet with the Association at mutually agreeable times to discuss District policies and/or operations at the option of the District, at least four (4) such meetings per year shall be mandatory. Employees shall attend these meetings at no expense to the District.

The purpose of such a meeting was to report on the proposals and answer questions. On May 22, 1986, Garrett informed the employees, by memo, that he was scheduling a mandatory meeting for Tuesday, May 27, 1986 at 7:00 p.m., to inform them of proposals being negotiated.

On May 27, 1986, Garrett sent a reminder notice to each employee regarding the meeting scheduled for that evening. In that memo Garrett mentioned that PSE had expressed concern that a mandatory meeting at no expense to the district would violate the "Fair Labor Standards Act". Garrett reported that he had contacted the United States Department of Labor, and

had received assurances that the meeting would not violate the law. Garrett expressed regret that the employees were being compelled to attend the meeting, but stated that he knew of no other way to get them together. Indicating confidence that the employees would be better informed, he promised to order donuts as a gesture of good faith.

The meeting took place on May 27, 1986, as scheduled. Among the proposals which generated discussion was the employer's proposal to change the agency shop provision to an open shop.

On June 4, 1986, Garrett wrote to Jellum as President of the union, stating that the employer wanted to clarify certain points made in an earlier conversation between them. Among the points mentioned were the contracting out of all or part of the custodial services or, in the alternative, a reduction in custodian hours coupled with the addition of two hours to Lambert's time on maintenance duties. The expiration of the three-year collective bargaining agreement and the retirement of a custodian were given as reasons for considering this an appropriate time in which to make these changes. Garrett stated, however, that the effect of the proposed increase in maintenance hours would be to require Lambert to choose between driving a bus or performing maintenance duties. Noting that the parties had already had a thorough discussion on these matters, Garrett nevertheless concluded his letter with the invitation that he would "be happy to meet" with Jellum or any other union representative to exchange additional information.

The parties evidently had further discussions on the subcontracting idea and Garrett wrote to Jellum, as President of the union, on June 20, 1986, expressing appreciation on behalf of the school district's board of directors for Jellum's input on the subcontracting matter at a meeting held the previous evening. Garrett stated that the board had approved calling for bids for subcontracting custodial services, and asked for his assistance in preparing bid specifications. Garrett also invited Jellum to attend a board meeting on July 24, 1986, when the bids would be opened.

Also on June 20, 1986, Garrett informed Lambert, by letter, that the board of directors of the school district had approved increasing his maintenance assignment to six hours. The maintenance position hours were tentatively set for 9:30 a.m. to 4:00 p.m. The change in jcb assignment was to be made effective beginning with the 1986-87 school year. Garrett asked Lambert to decide between doing the maintenance duties or bus driving by July 21, 1986. He also noted that additional maintenance time could be necessary from time to time.

On July 9, 1986, Lambert filed a grievance alleging he was denied an opportunity to bump a particular less senior bus driver in order to retain eight hours of employment. He also alleged that the action on his assignment was taken in reprisal for his union activities.

On July 10, 1986, Garrett responded to the grievance, denying any retaliatory motive or knowledge of any activity by Lambert which would cause a desire on the part of the employer to retaliate. In denying the grievance, Garrett offered to discuss it further.

On July 17, 1986, the union informed Garrett that Herb Hawkins would participate in the remaining bargaining sessions.

On July 25, 1986, Garrett informed Lambert that the board of directors had denied his grievance. In that letter, Garrett made the commitment to get Lambert eight hours of maintenance work. Garrett indicated that the employer had no objection to Lambert choosing a straight bus driving assignment and bumping any combination of bus drivers to obtain eight hours of work. He closed with the hope they could resolve the problem and bring harmony to their relationship.

On August 6, 1986, Garrett advised Lambert he could also exercise seniority rights to bump less senior custodians in order to obtain eight hours of work. Garrett mentioned that subcontracting of custodial services was still being considered, and asked for Lambert's decision by August 15th.

On August 14, 1986, Garrett directed a letter to Jellum (seemingly in Jellum's capacity as an individual employee, since no reference to PSE or Jellum's union office appears in the letter) advising him that the employer and union had decided to study the subcontracting of custodial services for a year, and that the hours of work for the custodians in two schools were to be changed.

On August 15, 1986, Garrett invited Hawkins to negotiate on a reduction of the work year for the custodian position vacated by retirement. The employer proposed to reduce the position from a twelve-month assignment to a nine-month assignment. Garrett also stated that Lambert could bid for the position, thus resolving his grievance.

Jellum, acting as an individual, submitted a handwritten note to Garrett on August 22, 1986, requesting a reduction in his hours as custodian at Dallesport School. The proposal was made subject to other events and litigation, and subject to the signing of a permanent letter of agreement at a meeting with Hawkins present.

On August 25, 1986, Arbitrator Alan R. Krebs issued an arbitration award on the grievance filed by Lambert.[1] The issue framed by the parties in that proceeding was:

> Did the District violate Article XIII of the 1983-86 Collective Bargaining Agreement[2] when it reduced the work hours of the grievant?

After reviewing facts consistent with the evidence of record in the instant case and noting that the union had not contended that the employer was

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1 The arbitration proceedings were conducted under the expedited labor arbitration rules of the American Arbitration Association. The hearing had been held on August 19, 1986 and the parties had dispensed with the filing of post-hearing briefs.

2 Article XIII of the agreement dealt with seniority rights of employees.

precluded from increasing the "maintenance" portion of Lambert's duties, the arbitrator stated:

> The union argues that the District may not deviate from its long-established past practice of allowing the Grievant to work in both transportation and maintenance in order to achieve an eight-hour day. However, Section 7.3[3] gives the District the right to assign a work shift of less than eight hours. Also Section 7.5[4] gives the Employer the right to change an employee's shift and workweek, provided that two weeks notice is given. Moreover, Section 15.4[5] permits the District to reduce hours of work, provided that appropriate notice is given. The alleged past practice with regard to the Grievant's work day cannot supersede this clear contract language which permits the District to reduce an assignment to less than eight hours per day.

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3 Section 7.3 of the agreement provided:

> Section 7.3. In the event an employee is assigned to a shift less than the normal work shift previously defined in this Article, the employee shall be given a fifteen (15) minute rest period for each four (4) hours of work.

4 Section 7.5 of the agreement provided:

> Section 7.5. Each employee shall be assigned to a definite and regular shift and workweek, which shall not be changed without prior notice to the employee of two (2) calendar weeks; provided, however, this notice may be waived by the employee. However, in an emergency situation, employees may be reassigned on a temporary basis without prior notice to serve the best interest of the District while in emergency status.

5 Section 15.4 of the agreement provided:

> Section 15.4. Should the District decide to discharge any non-annual employee, or to reduce hours of work, the employee shall be so notified at the earliest possible time. The District shall make every effort to notify employees by June 30th. In the driver classification, routes and hours may be adjusted in accordance with the needs of the District.

The arbitrator went on to review the seniority rights of the grievant and their application in that situation. The arbitrator rejected union arguments that the grievant had a right to select maintenance work historically performed by the transportation supervisor in order to fill out his eight-hour work day, or that the grievant had a right to select a particular bus route when it conflicted with the six hour maintenance assignment designated by the employer. Finally, noting a long-standing practice whereby a route driven by a particular driver is considered to have both morning and afternoon components and that bids are for the whole route, the arbitrator held that the grievant was not entitled to select only a portion of a bus route. The arbitrator denied the grievance.

On September 8, 1986, Garrett authored a letter confirming Lambert's choice of employment as a custodian.

By September 10, 1986, the parties had reached a tentative agreement in their negotiations on a new collective bargaining agreement. The employer believed the tentative agreement included PSE's agreement to drop these unfair labor practice charges. On September 10th, Hawkins asked Garrett to sign-off on the agreement reached in negotiations, taking the position that a refusal by the employer to sign the contract unless the unfair labor practice complaints were dropped was itself an unfair labor practice. Hawkins also protested the assignment of extra trips to substitute drivers rather than the regular drivers.

On October 1, 1986, Hawkins demanded that the hours cut from Jellum's assignment be restored, stating to Garrett that the change would have to be negotiated with PSE even though Jellum had requested a reduction in hours.

On October 7, 1986, Garrett replied to Hawkins, stating that the employer had reduced Jellum's duties to six hours both at Jellum's request and as a result of a study which showed that the job took only six hours to perform. Garrett invited Hawkins to discuss the matter, noting that he had been unsuccessful in reaching Hawkins by telephone.

On Garrett's recommendation, the new three-year collective bargaining agreement was approved by the employer's board of directors on October 18, 1986. The union ratified the agreement on October 21, 1987. The unfair labor practice complaint was not withdrawn.

DISCUSSION

Interference and Discrimination Against Lambert

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, protects the right of public employees to file and pursue grievances. Valley General Hospital, Decision 1194-A (PECB, 1981). Adverse action by an employer against an employee who is engaged in the exercise of protected activities is a violation of RCW 41.56.140(1) and, as such, is within the jurisdiction of the Public Employment Relations Commission. Port of Seattle, Decision 1624 (PECB, 1983). The rights conferred by the statute are independent of any rights secured by a collective bargaining agreement and any decisions reached by arbitrators under collective bargaining agreements. The standard for determining whether the employer's conduct was an unfair labor practice was set forth by the Commission in City of Olympia, Decision 1208-A (PECB, 1982), where the Commission embraced the causation test announced in Wright Line, Inc., 251 NLRB 150 (1980). The use of that test was affirmed in Clallam County vs. Public Employment Relations Commission, 43 Wn.App. 589, 599 (1986). Under those precedents, the complainant is required to make a prima facie showing sufficient to support an inference that the employee's protected conduct was a motivating factor in the employers decision. Once such a showing is made, the employer must come forward with creditable evidence to demonstrate that the same action would have occurred even in absence of protected conduct.

The complainant asserts that Garrett was upset that Lambert attended the February 24, 1986 meeting without having been invited to do so. The record does not support this contention. Lambert himself testified only that

Garrett was upset at Hawkins' presence at the meeting. On direct examination, Lambert declared:

> Question: Why don't you tell the Examiner what happened at the meeting?
>
> Answer: Well, we came in as a group, we kind of gathered around Herb outside and came in as a group and sat down. Mr. Garrett came out of his office and saw Herb, and immediately you could tell he was upset, and he said, "You didn't notify me that you were in the District." Herb said, "Well, I just got here and I'm notifying you now."
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> Q: Did the Superintendent appear angry that Mr. Hawkins was present?
>
> A: Yes, he was visibly angry and upset. ...

Transcript, Page 31, Lines 10-22.

There is no testimony that Garrett was upset at seeing Lambert among the group when the drivers entered the room. Accepting that Garrett may have been surprised, or even upset, at Hawkins' attendance at what the superintendent considered to be a preliminary discussion on changes in bus routes, it is apparent that Garrett was not attempting to circumvent the union. The memorandum specifically notified each driver of his right to union representation. Even Hawkins admitted that meetings of this type can properly occur without the PSE field representative being involved.

A union contention that Garrett stated he had been pushed into a corner and would retaliate is similarly not established by the evidence. Those remarks attributed to Garrett appear from the record to actually have been from statements made by Al Radke, the employer's transportation supervisor. After the meeting, Radke speculated that Garrett "got a little bit put on the spot, personally". Radke denied, however, that Garrett made any threat to retaliate. The fact that the meeting resolved the problem would seem to belie a need to retaliate. It would appear incongruous to work out the situation to the satisfaction of both Garrett and the employees involved, and to then later retaliate against an employee who was not a beneficiary

of the settlement. Finally, the testimony of Lambert and Dolores Eiesland, another bus driver, is not creditable on this point. Those witnesses merely responded "yes" to leading questions asking if each heard Garrett make a threat to retaliate.[6]

Lambert has undoubtedly experienced difficulties due to having make the choice between reduced hours in the maintenance position or reduced hourly wages in the custodian position. It is troublesome that one of the most senior employees lost work, but the record fails to support the union's allegation that these actions were a result of animosity on the part of Garrett or any other employer official. The record in this case shows that Garrett attempted to accommodate Lambert, giving him extra work during the summer months and permitting him to borrow school equipment for personal needs. Lambert was given a choice between the maintenance and bus driving assignments, which had equal rates of pay. He was given assurances of an effort to enlarge the maintenance assignment to eight hours, and his seniority rights among the bus drivers were affirmed. He was ultimately given a choice to move to a custodian assignment. The union has failed to carry its burden establishing a prima facie case.

Unilateral Changes of Assignments

An employer has a duty under the statute to give notice of proposed changes of wages, hours, and working conditions, and has a duty to engage in collective bargaining, upon request, prior to implementing the change. South Kitsap School District, Decision 472 (PECB, 1978). The union argues

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6 The danger of the "leading" question on direct examination is that a friendly or pliant witness may follow the suggestion of an answer imbedded in the question. Where, as in this case, there is no objection, the opposing party is left with damaging testimony on the record. On the other hand, where, as in this case, the matter is contested and crucial to a result, the Examiner is left uncertain as to what words or circumstances, if any, led the witness to agree with the questioner's suggestion that a threat was made. At a minimum, the Examiner has no record from which to make an independent conclusion.

that the unilateral elimination of the bus driver duties from the position held by Lambert and the reduction of a custodial position from 12 months to 9 months both constitute refusal to bargain violations. Neither allegation has merit.

Elimination of Lambert's Bus Driving Assignment - The allegation concerning alteration of the position held by Lambert goes beyond the pleadings, which did not allege that the change was unilaterally made without notice or opportunity to bargain. Counsel for the union did not avail himself of either a motion to amend the pleadings or a motion to conform the pleadings to the evidence. Accordingly, the employer did not have the opportunity to defend against this contention and the Examiner will not consider the argument.[7]

Reduction of Work Year for Custodian Position - With respect to the custodian position vacated by an uncontested retirement, the employer

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7 If the allegation concerning Lambert were to be considered, it would be easily disposed of under "deferral to arbitration" principles. It is the policy of the Commission under Stevens County, Decision 2602 (PECB, 1987) normally to "defer" to contractual dispute resolution machinery where employer conduct at issue in a "unilateral change" unfair labor practice case is arguably protected or prohibited by a collective bargaining agreement and the contract contains provisions for final and binding arbitration of grievances. In this case, the employer has asserted contractually based defenses and the contract contains provisions for final and binding arbitration of grievances, but the "unilateral change" allegations were mixed with "interference", "discrimination" and "circumvention" allegations which are not deferrable. The unfair labor practice and arbitration cases have proceeded independently of one another, but that would not preclude acceptance of the arbitrator's interpretation of the contract as conclusive on the unfair labor practice case. The arbitrator held that the employer had a contractual right to alter the position held by Lambert. Nothing suggests that the arbitration award would fail the tests enunciated in Spielberg Manufacturing Co., 112 NLRB 1080 (1955), Raytheon Co., 140 NLRB 883 (1963) and City of Seattle, Decision 2134 (PECB, 1985). See, also, Clover Park School District, Decision 2560 (PECB, 1986). Deferral would have required dismissal of the allegation.

contends that it had the authority, under Sections 7.3, 7.5, 15.4, and 15.7[8] of the 1983-86 collective bargaining agreement, to reduce hours or abolish positions, but it also gave notice to the union on August 15, 1986 and provided an opportunity for bargaining. Hawkins had been representing the local PSE chapter in collective bargaining on a successor agreement since July 17, 1986 and he was aware of discussions in collective bargaining on the district's need to cut custodial services. Hawkins was also aware of the possibility of contracting out custodial services, and of a tentative agreement to delay the subcontracting decision for a year while the matter was being studied by a committee composed of PSE and employer representatives. There is no evidence, however, that either Hawkins or Nordlof responded to Garrett's offer to discuss the matter. Hawkins admitted that he and Garrett "were in contact numerous times because of this turmoil", but could not remember specifically addressing this matter. Nordlof was also in contact with Garrett during this time period, representing Lambert on the processing of his grievance. The failure of the union to respond constitutes a waiver of its bargaining rights by inaction. City of Yakima, Decision 1124-A (PECB, 1981); Newport School District, Decision 2153 (PECB, 1985). No unfair labor practice was committed in this instance.[9]

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[8] Section 15.7 of the agreement provided:

> Section 15.7. Except in extraordinary cases, the District shall give employees two (2) weeks notice of intention to discharge or layoff.

[9] Interpretation of a collective bargaining agreement may be necessary and appropriate to evaluate "waiver by contract" defenses in an unfair labor practice case, even though the Commission does not remedy contract violations through the unfair labor practice procedures of the statute. City of Walla Walla, Decision 104 (PECB, 1976). There has been no arbitration award on these specific facts. Were it necessary for the Examiner to interpret the collective bargaining agreement as to this allegation, however, the Arbitrator Kreb's interpretation of the same provisions on Lambert's grievance would suggest that the employer's contractually based defenses are well taken.

Circumvention of the Union

A union retains the right to designate its own representatives for collective bargaining, and the employer must deal with the representative so designated. A circumvention of the exclusive bargaining representative, by dealing directly with the employees, is a violation of RCW 41.56.140(4) which carries with it a derivative interference with employee rights under RCW 41.56.140(1) and is, as such, within the jurisdiction of the Public Employment Relations Commission. City of Yakima, Decision 1124 (PECB, 1981) revised 1124-A (PECB, 1981).[10] Two incidents are alleged here.

The "Mandatory Meeting" - The first of two "circumvention" incidents complained of in this case concerns Garrett's call for a "mandatory meeting" and comments attributed to Garrett at that meeting. Specifically, Garrett is alleged to have spoken in favor of doing away with the agency shop, said that the employees did not need a union, and said that the employees could negotiate without Public School Employees negotiators.

The record shows that it was the union's own negotiators who asked Garrett to call the "mandatory meeting" in order to discuss the proposals made in bargaining. Additionally, the characterizations of what was said at the meeting distort the evidence.

It was neither illegal nor unusual for the employer to propose an open shop among its first proposals in bargaining. The open shop proposal was discussed at the "mandatory meeting", but the employer did not press the point. At the next negotiations meeting held by the parties, the union informed Garrett that the membership had voted to retain the agency shop provision, and the employer thereupon withdrew its proposal.

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[10] The complaint filed on July 21, 1986 and the amended complaint filed on October 22, 1986 both allege violations of RCW 41.56-.140(4). To the extent that the complainant has argued "circumvention" conduct as a violation of RCW 41.56.140(2), which prohibits an employer from dominating or giving assistance to a union, its effort is mis-directed.

The allegation that Garrett told the employees they did not need a union is founded on testimony which is not clear or creditable. In response to a question asking if Garrett said anything on whether it was good or not to have a union, Eiesland responded:

> He said that he felt that we didn't need the Union. He wanted to make it open so we could either join, be in it if we wanted to, or make the choice of where it was either open or closed. And he stressed both sides, he gave views on both sides.

Transcript, Page 143, Lines 13 - 19.

The "both sides" nature of that testimony falls short of establishing that Garrett advised employees they did not need a union. There was no threat of reprisal or force or promise of benefit to employees concerning their choice about the union. To the contrary, the record indicates that Garrett was not only sensitive to employee rights to representation, but that he went out of his way to remind them of their rights.

The record clearly shows that the local union officers initially advised Garrett that the PSE field representative would not be involved in the contract negotiations. No circumvention violation is found.

Reduction of Hours at Dallesport School - The second "circumvention" incident complained of concerns the reduction in hours for Tom Jellum, the president of the local PSE chapter.

The context needs to be considered. Jellum had been representing the union in discussions with Garrett and the school district's board of directors on the subject of contracting out custodial services. A reduction of custodian hours was among the alternatives which had been discussed. Jellum himself then initiated the reduction of hours for his own position.

Hawkins was involved in the situation only after July 17, 1986, when the local union officers requested his assistance in the negotiations for a

successor contract. Those negotiations continued until September, 1986, with discussion and letters exchanged until the agreement was signed in late October. Although he may not have been aware of the situation at the outset of his involvement, Hawkins became aware during this period that Jellum had initiated a reduction of the hours of his position at the Dallesport Elementary School. Hawkins then asserted, in his letter to Garrett dated October 1, 1986, that the length of a shift could not be changed by an employee or by the employer without negotiations, thus framing a "unilateral change" issue as well as the "circumvention" problem inherent in this incident.

Garrett's response written to Hawkins on October 7, 1986, did not foreclose discussion of the matter with the union, but reviewed his steps and conversations to work the matter out with Jellum, including Jellum's waiver of a notice period required by the collective bargaining agreement.

Taking the "circumvention" contention first, the record shows that Garrett has some confusion as to his responsibilities concerning dealing with the union. Part of his confusion can be attributed to the wording of the collective bargaining agreement, the preamble of which states that the agreement is between the Lyle School District and the

> Lyle School District, Local Chapter of the Public School Employees of Washington (hereinafter, "Association"), an affiliate of the Public School Employees of Washington State Organization.

The recognition clause of the contract recognizes the "Association" as the exclusive bargaining representative of all employees. Garrett's understanding is that the bargaining relationship is between the employer and the local chapter (i.e., and not the state organization), and that he must deal with the local officers, who may or may not request assistance from the state organization with which the local is affiliated. Garrett has also expressed a preference for dealing with the local officers, and for dealing with the statewide organization's representatives only if the

matter cannot be resolved at the local level. To some degree, the local chapter officers appear to share the superintendent's view, as evidenced by their letter to Garrett on May 5, 1986, informing him at the outset of negotiations on a successor contract that the state representative would not be at the bargaining table.

The record clearly shows that Garrett attempted on a number of occasions to harmonize the labor relations with the employees. The Examiner concludes his efforts were sincere and without malice. The Examiner nevertheless concludes that the employer's approach was in error. The local chapter of PSE and the statewide PSE organization are directly affiliated with one another and are not for the employer to separate. The legitimacy of Hawkins' presence in the school district, and of Hawkins' involvement in local issues, is indicated by the transaction concerning the school bus routes. The danger for an employer in attempting to deal with local officials to the exclusion of the PSE representative is demonstrated by Royal City School District, Decision 1419, 1419-A (PECB, 1982), where information conveyed to a local chapter official (who was not a professional in labor relations) was deemed to be insufficient notice to the organization. In this case, it is clear that, by July 17, 1986, the local PSE chapter officers had notified Garrett that the PSE field representative would participate in subsequent negotiations. Without regard to whatever ambiguities there may have been concerning the allocation of bargaining rights and responsibilities between Public School Employees of Washington and the Lyle chapter of PSE, the employer had a duty after July 17, 1986 to deal with Hawkins as the representative of the employees on any bargainable matters, including changes in wages, hours, and working conditions. Although an official of the local PSE chapter, Jellum appears to have been acting as an individual in receiving information and making his proposal concerning the hours for his position. The "individual", rather than "organizational", nature of Jellum's actions is confirmed by his making the change subject to approval by the union. Even if there was some basis to think that Jellum was acting as an official of the union in the matter, it is clear that the employer invited an allegation of "circumvention of the

union" by continuing to negotiate with Jellum after Hawkins' appearance on the scene. The problem for the union here is that a "circumvention" violation occurs only where the subject matter is a mandatory subject of collective bargaining, so that the "unilateral change" aspect of the incident must also be addressed.

As noted above, the arbitration award issued on August 25, 1986 affirmed the right of the employer to unilaterally initiate and implement a reduction of employee work hours. It follows that the union's bargaining rights on the otherwise mandatory subject of "hours" were waived by contract, and that there was no duty to bargain on the reduction of the custodian hours at Dallesport School. It matters little that the idea originated with Jellum three days earlier, since the decision could have been made and implemented by the employer unilaterally under the 1983-86 collective bargaining agreement. The union could seek to obviate the effects of the arbitration award through negotiations, but there is no indication that the controlling contract language was changed through negotiations for the successor contract, or even that a proposal was made for such a change. Hawkins' October 1, 1986 letter takes a position entirely at odds with the arbitration award, demanding bargaining on the decision to reduce hours. It is noteworthy that Hawkins did not ask for bargaining on any effects of the decision reserved to the employer by the contract.

In the context of the contract and the arbitration award, the reduction of work hours at Dallesport School was not a "unilateral change" in violation of the employer's duty to bargain, and the discussion of that matter with Jellum therefore could not constitute a "circumvention" of the union.

FINDINGS OF FACT

1. Lyle School District No. 406 is school district organized under Title 28A RCW and is a "public employer" within the meaning of RCW 41.56-.030(1). W. Robert Garrett is the Superintendent of Schools.

2. Public School Employees of Lyle, an affiliate of Public School Employees of Washington (PSE), is a bargaining representative within the meaning of RCW 41.56.030(5).

3. PSE is the exclusive bargaining representative of non-supervisory classified employees of Lyle School District. The employer and PSE were parties to a three-year collective bargaining agreement covering the period ending on August 31, 1986.

4. On February 24, 1986, Garrett scheduled a meeting with five bus drivers, who were to be affected by route changes. Herb Hawkins, a field representative for Public School Employees and Doug Lambert, an employee of the Lyle School District and Vice-President of the local Public School Employees chapter, attended the meeting. Garrett was upset at Hawkins' unannounced attendance at the meeting. The matters at issue were resolved, and an agreement was subsequently signed on March 4, 1986.

5. Collective bargaining negotiations on a successor contract began on April 21, 1986. The local negotiating team informed Garrett that the Public School Employees field representative would not be at the bargaining table, but would remain on-call.

6. The negotiators for PSE asked Garrett to schedule a meeting under a "mandatory meeting" provision of the existing collective bargaining agreement, to discuss proposals made in bargaining for a successor agreement. Pursuant to that request and the employer's authority under the existing agreement, Garrett scheduled the meeting for May 27, 1986. At that meeting, Garrett answered questions regarding an "open shop" proposal made by the employer, speaking on both sides of the issue.

7. On June 4, 1986, Garrett informed Tom Jellum, an employee of the Lyle School District and local chapter President of PSE, that the employer

was considering contracting out or reducing custodial services. Garrett also advised Jellum of a need to increase the maintenance duties of Doug Lambert, who had theretofore divided his eight-hour day between maintenance and bus driving. The effect of the increase in the maintenance assignment was to require Lambert to choose between reduced work hours (at six hours) exclusively on maintenance tasks, exercise of seniority rights to obtain exclusively bus driving tasks, or exercise of seniority rights to obtain a custodian assignment at a lower hourly rate of pay. Garrett invited further discussion with the union.

8. On June 20, 1986, Garrett informed Lambert that the employer was increasing the maintenance portion of his dual assignment, as described in paragraph 7 of these Findings of Fact, effective with the start of the 1986-87 school year. On July 9, 1986, Lambert filed a grievance protesting the change.

9. On July 17, 1986, the local chapter negotiating committee informed Garrett that Hawkins would represent the chapter in bargaining for a successor agreement. Discussions in the subsequent negotiations included the contracting out or reduction of custodial services.

10. On August 6, 1986, Garrett informed Lambert that he could bump into a full-time custodial position.

11. On August 14, 1986, Garrett informed Jellum, as an individual, that the union and employer had agreed to postpone any contracting out for custodial services, that a joint committee was being appointed to study that matter, and that the custodian hours at two schools were to be changed.

12. On August 15, 1986, Garrett informed Hawkins and Eric Nordlof, the attorney for Public School Employees who was representing Lambert in the grievance proceedings, that the twelve-month custodian position

theretofore held by Ovadel Roth would be reduced to a nine month position upon Roth's retirement, effective August 31, 1986. Garrett invited negotiations. Public School Employees failed to respond.

13. On August 22, 1986, Jellum requested a reduction in his work hours as custodian at the Dallesport School from eight hours to six hours, subject to approval by the union.

14. On August 25, 1986, Arbitrator Alan R. Krebs issued an arbitration award on the grievance filed by Lambert, denying the grievance. The arbitrator interpreted the collective bargaining agreement to give the employer the right to increase or reduce employee work hours, subject only to notice requirements stated in the contract. There is no claim or evidence that the arbitration award is unworthy of deference under the policies of the Public Employment Relations Commission.

15. On October 1, 1986, Hawkins asserted that the employer was required to negotiate any change in hours of the position held by Jellum.

16. On October 7, 1986, Garrett informed Hawkins that Jellum had waived the notice called for by the collective bargaining agreement. Garrett invited Hawkins to discuss the change. Hawkins failed to respond.

17. The parties reached agreement on a three-year successor collective bargaining agreement, which was ratified in late October, 1986.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.160.

2. The complainant has failed to establish a *prima facie* case showing that the alteration of the position held by Lambert was made in

reprisal for Lambert's activities as an officer of the union, so that the employer has not violated RCW 41.56.140(1).

3. The arbitration award issued by Alan R. Krebs pursuant to final and binding arbitration procedures of the collective bargaining agreement between the parties, as described in paragraph 14 of the foregoing Findings of Fact, is entitled to deference by the Public Employment Relations Commission as conclusive that the union had waived its bargaining rights under RCW 41.56.030(4), by contract, with respect to decisions concerning increases or reductions of employee work hours implemented during the term of the 1983-86 collective bargaining agreement.

4. By reducing the custodian hours at Dallesport School, as described in paragraphs 13, 15, and 16, within the authority conferred by the collective bargaining agreement as described in paragraph 3 of these Conclusions of Law, the respondent has not violated RCW 41.56.140(4) or (1). Under these circumstances, the employer's direct dealings on the matter with employee Tom Jellum were not a circumvention of the union in violation of RCW 41.56.140(4) and (1).

5. By conducting a meeting for all bargaining unit employees at the request of the union to discuss the proposals made in bargaining, as described in paragraph 6 of the foregoing Findings of Fact, the employer did not commit an unfair labor practice under RCW 41.56-.140(4) or (1).

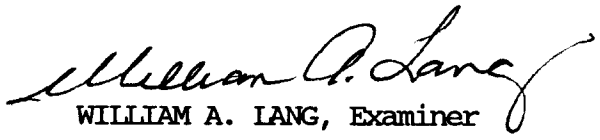
6. By failing to make a timely request for bargaining after having notice of the employer's desire to reduce the work year of a vacant position, as described in paragraph 12 of the foregoing Findings of Fact, the union has waived its bargaining rights under RCW 41.56.030(4) by inaction, and the employer did not commit an unfair labor practice under RCW 41.56.140(4) and (1).

ORDER

It is ordered that the complaint charging unfair labor practices filed in this matter be, and it hereby is, DISMISSED.

DATED at Olympia, Washington, this 24th day of July, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

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