STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MANSFIELD EDUCATION ASSOCIATION, Complainant, vs. MANSFIELD SCHOOL DISTRICT, Respondent.	)	CASE 10762-U-93-2499 DECISION 4552 - EDUC PRELIMINARY RULING AND PARTIAL DISMISSAL

On November 3, 1993, the Mansfield Education Association filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Mansfield School District had violated RCW 41.59.140, by its conduct during negotiations for a successor collective bargaining agreement between the parties. That complaint was the subject of a preliminary ruling letter issued on November 10, 1993, in which certain allegations were found to state a cause of action, while others were not. The complainant was given a period of 14 days in which to file and serve an amended complaint with respect to the insufficient allegations, or face dismissal of those allegations.

On November 24, 1993, the complainant filed an amended complaint charging unfair labor practices with the Commission. That amended complaint is presently before the Executive Director for a preliminary ruling pursuant to WAC 391-45-110.[1]

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[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

The Alleged Unfair Labor Practices

Paragraph 1 of the original and amended complaints simply notes the existence of a previous collective bargaining agreement between the parties, and is taken as background to allegations which follow.

Paragraphs 2 and 3 of the statement of facts in the amended complaint are exactly the same as in the original complaint. As noted in the original preliminary ruling letter, these allegations are untimely under RCW 41.59.150, which establishes a six-month "statute of limitations" on the filing of unfair labor practice charges. The allegations relating to conduct occurring prior to May 3, 1993 may only be taken as background to more recent events.

Paragraph 4 of the original statement of facts alleged that the employer's only proposals at a May 4, 1993 bargaining session involved taking away rights and benefits granted to employees by the expiring collective bargaining agreement. The preliminary ruling letter noted that RCW 41.59.020(2) expressly states, "The obligation to bargain does not compel either party to agree to a proposal or to make a concession." Given the statutory proviso, such an allegation, standing by itself, was found insufficient to state a cause of action, inasmuch as proposals to delete existing benefits are not per se unlawful. The complainant has now amended paragraph 4 to allege that the employer's rejection of union proposals at the May 4 bargaining session was without explanation. Good faith bargaining generally requires that explanations be provided for rejection of proposals, in order that the other party may understand the nature of the concerns or problems and be able to address them in a counterproposal. Fort Vancouver Regional Library, Decision 2350-C, 2396-B (PECB, 1988). It thus appears that a violation could be found on the basis of the employer's failure to explain its rejection of union proposals.

Paragraph 5 of the amended complaint remains unchanged from the original complaint, which claimed that the employer refused to schedule bargaining sessions except at intervals of several weeks. That allegation was previously found to state a cause of action with respect to the failure to meet at reasonable times.

Paragraph 6 remains unchanged from the original complaint, which alleged that most of a bargaining session on July 13, 1993 was spent bringing a management official up to speed on what had transpired in the negotiations. The preliminary ruling letter found no cause of action to exist, and that ruling stands.

Paragraph 7 remains unchanged from the original complaint, which alleged that management negotiators came to the bargaining table without authority to respond to union proposals. That allegation was previously found to state a cause of action.

Paragraph 8 also remains unchanged from the original, which alleged that management negotiators offered only take-aways, and did not accept proposals advanced by the union. As noted in the preliminary ruling letter, this paragraph fails to state an independent cause of action if based only on the employer's failure to agree to union proposals.

Paragraph 9 of the original complaint contained two allegations, which were dealt with separately in the preliminary ruling letter. A cause of action was previously found to exist on an allegation that the employer rejected a union proposal for dues deduction. The complainant has now amended Paragraph 9, to allege that the employer claimed that matters involving past practices were a management prerogative, and not subject to negotiation. Such a statement indicates a refusal to bargain concerning mandatory subjects, and states a cause of action.

Paragraph 10 of the original complaint concerned union proposals on the right of employees to union representation. The preliminary ruling letter noted that the union's proposals appeared to go above and beyond the statutory right to representation, so that the employer's rejection of the union's proposals did not appear to state a cause of action. The union has now amended Paragraph 10, to allege that the employer stated that determination of just cause for discipline was a management prerogative and not subject to bargaining. Such a statement would indicate a refusal to bargain on a mandatory subject, and states a cause of action.

Paragraphs 11 through 22 of the original complaint each dealt with the employer's rejection of union proposals on various issues or the employer's proposals to delete existing contract provisions. The preliminary ruling letter pointed out that, in each of those cases, the subject matter appeared to be within the scope of mandatory collective bargaining, so that the "no duty to agree" principles appeared to be applicable. The union has not amended its statement of facts regarding Paragraphs 12, 13, 15, 17, 18, 19, or 21. In the absence of any amendment to those paragraphs, the preliminary rulings previously made will stand.

The union has amended Paragraph 11 of the complaint to add that, in its rejection of the union's proposal, the employer stated that all decisions regarding assignment, transfer and vacancies were to be made by management and were not subject to bargaining. Paragraph 14 has been similarly amended to add a statement that decisions on layoff and recall issues were a management right, and not subject to bargaining. Paragraph 16 of the amended complaint alleges that, in rejecting union proposals regarding use of the 30 minute period before and after school, the employer said that such matters were management's prerogative and not subject to bargaining. Paragraph 20 of the amended complaint claims that the employer made the same statement in its rejection of union proposals with respect to conditions regarding a teacher stipend day at the end of the school

year. Paragraph 22 of the amended complaint alleges that the employer proposed deleting collective bargaining agreement language which had governed supplemental contracts for extracurricular duties, claiming that such matters were the employer's prerogative, and not subject to bargaining. All such "not subject to bargaining" statements are found to state a cause of action.

Paragraph 23 of the amended complaint differs from the original complaint,[2] but does not appear to have changed in substance. The employer is accused of proposing deletion of language which protects employees from reprisals after they participate in grievance proceedings. As noted in the preliminary ruling letter, employees who suffer discrimination in reprisal for pursuit of a grievance have a cause of action for unfair labor practice proceedings, so that any contractual remedies would only be an alternative to statutory proceedings. The preliminary ruling letter found that this allegation did not state a cause of action for a per se violation. In the absence of any amendment to the allegation, that ruling stands.

A new Paragraph 24 has been added, alleging that the employer provided "very few" explanations for its proposals, or for its rejection of union proposals, thus making it difficult for the union to respond. While a party is not required to provide repetitive explanations on a given issue, good faith bargaining requires sufficient effort at communication to enable the other party to understand and respond to concerns. Fort Vancouver Regional Library, supra. The new paragraph 24 is thus found to state a cause of action.

Paragraph 24 of the original complaint has now been renumbered as Paragraph 25, and Paragraph 25 of the original complaint has been

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[2] The amended complaint contains only a partial text of the full proposal submitted with the original complaint. This is taken to be a matter of inadvertent omission.

repeated in the amended complaint as a second Paragraph 25. They concerned bargaining sessions held 20 days apart, in which the employer advanced only limited proposals. The preliminary ruling letter found that those allegations failed to state an independent cause of action. They have not been substantially changed in the amended complaint, so the earlier ruling stands.

Paragraph 26 of the original complaint, which alleged that the employer canceled a scheduled mediation session and requested factfinding, is also unchanged in the amended complaint. As noted in the preliminary ruling letter, either the employer or the exclusive bargaining representative has a statutory right to request "factfinding" if a dispute has not been resolved after 10 days in mediation. It does not appear that the employer's exercise of its statutory right to request factfinding could be the basis for finding an unfair labor practice violation.

Taken together, all of the allegations which have been amended, together with those allegations of the original complaint which were previously found to state a cause of action, have the potential of laying out a course of conduct by the employer which was contrary to the principles of good faith bargaining. The Examiner who hears this matter will be entitled to take all of those allegation together, in evaluating whether a "refusal to bargain" has occurred by the totality of the employer's conduct, as well as by its individual actions.

The Requested Remedies

The union has requested suspension of the factfinding process, and reinstatement of mediation. As noted in the preliminary ruling letter previously issued in this matter, the "process" and "impasse" procedures of Chapter 41.59 RCW appear in separate sections of the statute, and operate in parallel to one another. It has not been the practice of the Executive Director or of the

Commission to refuse either mediation or factfinding services merely because unfair labor practice allegations are pending. The factfinding procedure is designed to produce non-binding recommendations from an impartial outsider, on how the parties ought to resolve their differences. If the parties accept such recommendations, or negotiate an agreement based on the factfinder's recommendations, then the "impasse" procedure will have served its intended purpose with respect to the "substantive" issues, even if "process" issues remain unresolved. If the factfinding procedure does not result in an agreement on the "substantive" issues, the employer will need to bear in mind that any unfair labor practice it may have committed along the way will deprive it of the benefits of "impasse" under Federal Way School District, Decision 232-A (EDUC, 1977). Thus, both the unfair labor practice proceedings and factfinding proceedings may need to run their course before an all-encompassing resolution of the parties' disputes is attained.

NOW, THEREFORE, it is

ORDERED

1. The allegations contained in paragraphs 2 and 3 of the amended complaint are DISMISSED as untimely.

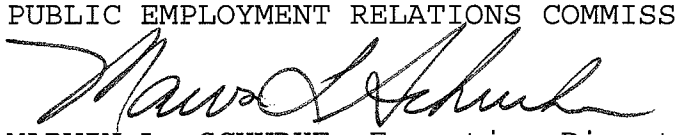
2. The allegations contained in paragraphs 6, 8, 12, 13, 15, 17, 18, 19, 21, 23, both paragraphs numbered as 25, and paragraph 26 of the amended complaint are DISMISSED for failure to state a cause of action.

3. The allegations contained in paragraphs 4, 5, 7, 9, 10, 11, 14, 16, 20, 22, and 24 of the amended complaint are found to state a cause of action for further proceedings, to the extent specified in the text of this order.

4. A cause of action is found to exist for further proceedings on the amended complaint, with respect to the course of conduct exhibited by the employer in negotiations between the parties for a successor collective bargaining agreement since May 3, 1993.

DATED at Olympia, Washington, this 8th day of December, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraphs 1 and/or 2 of this order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.