STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Complainant, vs. FORT VANCOUVER REGIONAL LIBRARY, Respondent.	CASE NO. 5938-U-85-1103 DECISION 2396-B - PECB
FORT VANCOUVER REGIONAL LIBRARY, Complainant, vs. WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, Respondent.	CASE NO. 6051-U-85-1134 DECISION 2350-C - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Mark S. Lyon, Attorney at Law, appeared on behalf of the Washington Public Employees Association.

Stoel, Rives, Boley, Fraser, and Wyse, by Harry S. Chandler, Attorney at Law, appeared on behalf of the Fort Vancouver Regional Library.

On August 14, 1985, the Washington Public Employees Association (WPEA) filed a complaint with the Public Employment Relations Commission (PERC), alleging that the Fort Vancouver Regional Library (employer) had interfered with employee rights and refused to bargain with the union, in violation of Chapter 41.56 RCW. (Case No. 5938-U-85-1103.) By letter dated October 4, 1985, the Executive Director issued a preliminary ruling under WAC 391-45-110, referring the entire complaint to an Examiner for hearing.

On October 24, 1985, the Fort Vancouver Regional Library filed a complaint with the Commission, alleging that various actions by the WPEA constituted failure to bargain in good faith with the employer, in violation of Chapter 41.56 RCW. (Case No. 6051-U-85-1134.) On December 9, 1985, the Executive Director issued a preliminary ruling in that matter, referring some of the allegations for hearing and dismissing a number of others.[1]

The employer filed an amended complaint on December 11, 1985. On December 24, 1985, it filed a petition for review of the portions of the Executive Director's preliminary ruling dismissing certain allegations of its original complaint. On January 15, 1986, the Executive Director issued an order vacating his previous preliminary ruling and substituting a preliminary ruling on the employer's amended complaint.[2] The Executive Director again assigned certain allegations for hearing and dismissed others. On February 5, 1986, the employer filed a petition for review. On March 24, 1986, the Commission dismissed the petition for review as untimely, and remanded the matter to the Examiner to conduct further proceedings.[3]

On February 19, 1986, the WPEA filed an amended complaint. The Executive Director issued a preliminary ruling on that amended complaint on February 27, 1986, referring some of the allegations for hearing and dismissing others.[4] On March 13, 1986, the WPEA petitioned for review. On July 2, 1986, the Commission issued its decision on the matter, generally affirming the ruling of the Executive Director but assigning certain additional allegations to the Examiner for hearing.[5]

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1 Decision 2350 (PECB, 1985).

2 Decision 2350-A (PECB, 1986).

3 Decision 2350-B (PECB, 1986).

4 Decision 2396 (PECB, 1986).

5 Decision 2396-A (PECB, 1986).

Hearing dates were set and reset on numerous occasions, due to procedural considerations or requests by the parties. The hearing was held on October 21, 22, 23, and 24, 1986, November 17, 18, 19, and 20, 1986, and January 12 and 22, 1987. Final reply briefs were filed in June, 1987.

GENERAL BACKGROUND

The Fort Vancouver Regional Library District is headquartered in Vancouver, Washington, and provides public library services to residents of a 4200 square mile area covering Clark, Skamania, and Klickitat counties. The employer is governed by a board of seven trustees, who are appointed by the commissioners of the three counties and the Vancouver City Council. The trustees serve seven year terms, and are responsible for administering the library, including establishing the budget and setting policies. The employer operates 11 libraries, including the central library in Vancouver, and three bookmobiles.

The library's director is appointed by and reports to the board of trustees. Ruth Watson held that position at all times pertinent hereto. Corrine Venturini held the position of Associate Director for Central Services, and Gordon Conable held the position of Associate Director for Community Services at all times pertinent hereto.

The employer has approximately 80 office-clerical employees. For a number of years, those employees were represented for the purposes of collective bargaining by Office and Professional Employees International Union, Local 11 (OPEIU). In 1984, the office-clerical employees voted to have the WPEA represent them. The bargaining unit was described in Fort Vancouver Regional Library, Decision 2124 (PECB, 1984) as:

> Regular full-time and regular part-time office, clerical, and non-professional employees, excluding supervisors, professional librarians and confidential employees.

The certification was issued on December 27, 1984. The bargaining unit includes employees at all of the employer's library facilities and those working on its bookmobiles.

On January 9, 1985, the employer and the WPEA met for the first time in negotiations. The WPEA was represented at that meeting by Executive Director Eugene L. St. John and Senior Staff Representative James Cameron. The employer's representatives were Conable, who acted as the chief spokesperson, Venturini, and Frank Hurlburt, the employer's labor relations consultant. The parties discussed ground rules for bargaining, but did not produce a written agreement on ground rules. They did discuss whether they would "bargain in the press", and whether the union would attempt to "end-run" the management bargaining team by talking directly with trustees. The parties have differing views of the import of those discussions.

Conable recalled having requested that the union bargain only with the library's designated bargaining team, and having understood that the union would not go to the trustees or to the press unless the parties reached a "full impasse, a major economic impasse". Conable also believed that St. John had agreed that the employer would be given prior notice and a copy of any press release which the union intended to make. Hurlburt's notes reflect that St. John asserted a right to contact the trustees, but Hurlburt's recollection also was that the parties had an agreement that the union would not go to the press or the trustees unless an impasse was reached. Conable recalled the union requesting that management personnel not deal directly with bargaining unit employees on labor relations matters until after a contract had been negotiated.

St. John recalled that he felt no need to have written ground rules, and that neither party was really obligated to negotiate ground rules. St. John acknowledges that the employer requested that the parties agree to keep the negotiations private, and that the WPEA not contact the press or the library's board of trustees. St. John's response was that it was not the WPEA's intent to "end-run" the bargaining process, or to attempt to negotiate

with the board of trustees, but that the union would do whatever was legally in its power to achieve an agreement in the event the process broke down and the parties were at impasse. Cameron did not believe that the parties had reached any specific agreement on ground rules, although both his notes of that meeting and his recollection confirm there was substantial discussion between Conable and St. John about activities outside of bargaining sessions.

Throughout the course of the bilateral negotiations which followed, the employer's bargaining team consisted of the three persons who attended the initial meeting. The WPEA bargaining team included several employees from the bargaining unit,[6] with Cameron as the union's chief spokesperson.[7]

The parties met in negotiations on eight occasions between February 7 and May 23, 1985. Most of those meetings were two to three hours long, with the exception of a 45 minute session on May 9 and six hour meetings on March 14 and 22. Hurlburt routinely kept notes of those sessions, which he provided to the employer's bargaining team and to the WPEA after each meeting. Hurlburt did not claim that his notes were official minutes, but rather described them as an aid to the negotiations and a means by which the parties could review matters shortly after each session and at the close of negotiations. The union indicated that it appreciated being provided with Hurlburt's notes, but informed Hurlburt in writing in May, 1985, that it did not consider his notes to be "official minutes".

The union submitted its initial written proposal in advance of the February 7 meeting, and two meetings were spent reviewing that proposal. The employer's initial written proposal was received by the union on March 9 and was reviewed by the parties at meetings in March, as well as during the meeting on April 4. On March 22, the union submitted a counterproposal on certain issues.

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6 The same persons did not serve as employee representatives for the entire negotiation process.

7 St. John was at the bargaining table for the first meeting, but did not return until mediation commenced, as indicated below.

At the beginning of the April 4 meeting, the employer submitted a document which summarized the negotiations to that date. That document reflects that the parties had, by then, reached agreement on a contract preamble, dues checkoff, non-discrimination language, health and sanitation language, much of the language concerning seniority (including a commitment by the employer to hire first from within the library), the probation period, the definition of a promotion, rest and lunch periods, certain language regarding days off, language concerning holidays (although not which days were to be considered holidays), sick leave, most of the language concerning vacation (although not the rates of accrual), and military leave.

Each party submitted documents to the other at the outset of the April 24 meeting. In addition to the agreements listed in the April 4 document, the employer's proposal of that day reflects that the parties had agreed on language concerning a trial service period after promotion, some layoff/ recall language, much of the language concerning leave without pay, retirement benefits, and separability.

The parties also exchanged proposals at the outset of the meeting on May 9. The union's summary of that date reflects that no further significant agreements had been reached.

Documents that the employer mailed to the union in advance of the May 23 meeting reflect new agreements on only a few more small sections of language. The union submitted no written proposals for that meeting.

The employer filed a mediation request with the Commission on June 26, 1985. William A. Lang of the Commission staff was assigned as mediator. Once mediation was requested, St. John returned as chief spokesman for the union.

The parties met in mediation on July 12, July 19, August 29, and December 5, 1985, and on January 7, 1986. In addition, the mediator had telephone contacts with the parties during that period. No collective bargaining agreement resulted from those mediation efforts.

The employer implemented changed wages, hours and working conditions on January 16, 1986.[8]

POSITIONS OF THE PARTIES

The parties have framed more than 25 separate allegations against one another. The briefs of the parties encompass five documents consisting of 214 pages. While the allegations are discussed separately, below, the Examiner has sought to capture the scope and complexity of the proceedings here by categorizing the arguments into four groups representing the positions of the parties in both cases.

The Union's Allegations Against the Employer

The WPEA alleges, generally, that individual actions by the employer, as well as the employer's entire course of conduct during negotiations and mediation, constitute an unlawful refusal to bargain. It claims that the library showed complete indifference to reaching agreement, and a firm intention (at least on issues of substance) to agree only to a contract of its own making.

The union contends that the library was unprepared to negotiate at the first two bargaining sessions, that it delayed delivering its initial proposal until March, 1985, and that it delayed submitting a final offer in July, 1985, all in an unlawful display of dilatory tactics. In the same vein, it claims that the library refused to schedule meetings on several occasions.[9]

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8 Notice is taken of the docket records of the Commission for Case No. 5874-M-85-2418, which indicate that the mediation case was closed on November 25, 1987, upon notification that the parties had reached and ratified a collective bargaining agreement.

9 The union alleges for the first time in its brief that many of the negotiation sessions were abbreviated in length due to the library's failure to prepare. Although the employer responded in its brief, no such allegation is found in the complaint or any amendment thereof, and no ruling is made herein.

It claims that the library engaged in such behavior in an effort to blunt criticism of the employer's own bargaining tactics, and as a mechanism to save money while wearing down the union.

The union alleges that the library refused to provide explanations for its economic proposals on several occasions; that it subsequently made "ability to pay" claims which it refused to substantiate; and that, on several occasions, the library provided misleading data in support of its assertions. The union contends that the employer's fluid bargaining positions and its failure to make specific proposals caused difficult and lengthy negotiations, and were inconsistent with good faith bargaining.

The union argues that the library unlawfully refused to bargain about a number of issues simply because it believed that certain items were best dealt with outside of the collective bargaining agreement. It claims that the library's refusal to consider various union proposals which dealt with mandatory subjects of bargaining was a per se refusal to bargain.

The union alleges that the employer's tactic of using "economic packages", and its unwillingness to accept any economic package except of its own making, were unlawful.

The union further argues that the employer acted in bad faith by advancing harsh and unreasonable proposals which were a substantial retrenchment from the previous contract between the employer and the OPEIU, by insisting on a broad management rights clause while refusing to include a number of subjects in the contract, and by holding to a narrow grievance arbitration provision indicative of an objective to deprive the union of the ability to properly represent employees. Further, the union claims that Conable's testimony indicates that the employer was interested in discouraging employees from exercising their rights through the grievance procedure.

The union claims that testimony by both Conable and Hurlburt establishes that the employer had a "start from scratch" attitude in bargaining, and that, by

July, 1985, the employer was more interested in preserving its position for possible implementation than it was in reaching an agreement through accommodation. The WPEA claims that such an attitude, based solely on a change in exclusive bargaining representative, is inherently coercive.

The union claims that the employer's implementation of changed conditions in January, 1986, was unlawful, because of the library's bad faith during negotiations. The union dismisses as absurd the employer's claim that an impasse was reached because the WPEA refused to budge from a number of its economic and "infringement on management's rights" positions, claiming that the WPEA had made major concessions in almost every area by December, 1985.

The union objected at hearing to the admission of evidence concerning any negotiations after the January 16 implementation of changes, contending that any change of tactics made by the employer subsequent to the unilateral implementation of changes would not justify prior unlawful actions.

Employer Response to Union Allegations

The library defends that the union's case is not supported by the evidence. It argues that the bulk of the union's case is nothing more than an effort to obtain a ruling that the library should have given more at the bargaining table. The employer claims that the union's allegations are based upon three erroneous and irrelevant assumptions: First, that the OPEIU contract established a floor upon which the WPEA could only improve; second, that a showing that the union conceded more in negotiations than the library would somehow establish good faith by the union; and third, that the union's view of an appropriate wage level for bargaining unit employees is or should be determinative of what concessions the employer was obligated to make. The employer repeatedly asserts that the WPEA is merely complaining about a lack of agreement by the library to the WPEA's proposals.

The employer asserts that the record is devoid of evidence that it held any animus toward its employees for changing bargaining representatives. The

employer defends that delays at the outset of bargaining were attributable to the length of the WPEA's initial proposal, to the WPEA's failure to mail a copy of its initial proposal to Hurlburt, and to a traffic accident which kept the employee members of the WPEA's bargaining team from the first meeting. It claims that the delay in forwarding the library's proposal after the July 19 meeting was unintentional, and of no consequence. The employer claims that any failure by the library to meet was based either on scheduling problems, last minute requests from the union, or the mediator's determination of when meetings should occur. Rather than being caused by the library's lack of preparedness or by any desire on the part of the employer to stretch out negotiations, the employer contends that the length of bargaining sessions was primarily affected by the WPEA's habit of presenting major counterproposals, or "bombshells", at the outset of meetings.

The employer argues that its proposals and its bargaining conduct must be viewed in light of the union's conduct, including the union's opening proposal asking for significant economic and language changes, and the union's unwillingness or inability to prioritize its needs. While the Executive Director ruled that many of the union's actions did not violate the statute, the employer nevertheless contends that union tactics which it describes as "negotiations through the papers, attempts to end-run the bargaining team, and nickel-and-dime harassment" had an adverse impact on the bargaining process, and are relevant in evaluating the library's conduct. The employer thus contends that the fundamental reason for the lack of agreement was the WPEA's conduct and circumvention of bargaining, rather than any actions by the employer.

The employer asserts that it had legitimate concerns which it wished to pursue in bargaining, and that it was no more bound to the predecessor agreement than was the union. Dismissing the union's position as misconstruing the basic concept of good faith bargaining, the employer urges that it was not reasonable to expect the employer to make substantial movement in certain of its positions until the WPEA lowered its expectations to a more reasonable level.

The library claims that it provided cost information to the union when it understood such information to have been requested. It admits to a delay in providing information after the January 7, 1986 mediation session, but defends that the delay occurred because the library thought the request was moot after the WPEA declared impasse. It denies that it presented confusing or misleading figures in support of its proposals. It asserts that proposals were thoroughly explained when explanations were requested, and that there was no intent on the part of the employer to deceive the union or to frustrate bargaining.

The library claims that no evidence exists to support the WPEA's claim that the employer moved and renumbered proposals to frustrate negotiations.

The employer claims that its change of position concerning sick leave after several bargaining sessions was an attempt to reach an agreement, rather than bad faith bargaining.

Finally, the employer asserts that it was free to implement its final offer in January, 1986, because the parties had reached impasse after good faith bargaining by the library.

The employer made an offer of proof at the hearing, proposing to show that the parties met and negotiated at various times after the unilateral implementation of changed conditions, that the parties had reached a tentative agreement at a time prior to the close of the hearing, and that said tentative agreement was not ratified by the union membership. The employer asked the Examiner to reserve ruling on that offer of proof, pending submission of post-hearing briefs.

The Employer's Allegations Against the Union

The employer asserts that the WPEA committed unfair labor practices in violation of the statute, by adopting a calculated strategy of bypassing the library's negotiators and attempting to bargain directly with the library's

administrator and trustees. The library argues that St. John's contacts with the board of trustees crossed the line between lobbying and bargaining, citing the frequency of the contacts, the scope of matters that St. John sought to discuss with the board members, and St. John's repeated disparagement of the employer's bargaining team in his contacts with the board.

Noting the negative impact of the actions on the negotiations, the employer argues that the late delivery to Conable of two union-issued documents very important to the bargaining process in the fall of 1985 cannot be characterized as accidental, and was a circumvention of the bargaining process.

The employer also contends that the union violated the statute by mounting campaigns to remove Conable and Watson from their employment. The library argues that the WPEA's linking of the library team's job security to their bargaining proposals is not consistent with good faith bargaining, since the threat to seek removal of those representatives from their positions directly interferes with the library's right to choose its bargaining representatives.

The Union's Response to the Employer's Allegations

The union defends that it was the library, rather that itself, which refused to deal with the other party's bargaining team. The union claims that it consistently attempted to meet with the employer's appointed negotiators, and that contacts made with individual trustees were solely for the purpose of arranging for the union's appearance at public meetings or to communicate dissatisfaction with the method of bargaining engaged in by employer representatives. The union denies that it requested meetings to discuss any of its proposals, and asserts that no such meetings took place.

The union argues that its calls for replacement of the library's bargaining team constitute protected free speech, and that the library's charges merely reflect that the union sought to bring public and political pressure to bear on the library in order to settle the contract in the context of the library's refusal to bargain. The union asserts that nothing in the record

supports an allegation that St. John sought during his telephone calls with members of the board of trustees to have library administrators removed, and that any criticism of Conable by St. John was not so offensive or defamatory as to lose free speech protection. The union claims that criticism of an employer representative is not, in and of itself, an unfair labor practice. Additionally, the WPEA contends that its letters of March 13 and June 20, 1985 cannot be deemed to constitute improper threats to the employment of members of the employer's bargaining team, because the union has no relationship with either the team members or the board which could give those letters coercive effect.

With regard to the employer's allegations of circumvention of the library bargaining team, the union claims it had no intent to deliver proposals to the trustees prior to their delivery to the bargaining team. It alleges that the late delivery of the union's September 9 letter to Conable is clearly the fault of the post office and that its October 3 proposal was mailed to Conable on the same date as it was mailed to the trustees. Further, the union notes that, on both occasions, St. John's attempts to follow up were made to Conable, and not to the trustees.

The union vehemently disagrees that the conduct of its representatives away from the bargaining table provided any legitimate rationale for the library's behavior at the bargaining table. Countering the library's claim based upon the discussion of ground rules, the union argues that no firm agreement existed between the parties that the union would not go to the public or the trustees with its concerns. The union claims, further, that even if such an agreement had existed, the union gave the library ample notice of its intent to "go public". The union claims that the library's real position was that any public or political activity during bargaining which was disagreeable to the library justified hardening the library's bargaining position or stopping bargaining, no matter how ready the union was to reach agreement at the table. It argues that such a position is untenable.

DISCUSSION

The allegations made by the WPEA are discussed first. Certain specific incidents are taken roughly in their chronological order, followed by more general allegations leading up to the unilateral implementation. The allegations made by the employer are then discussed.

Employer's Preparedness to Negotiate on 2/7/85 and 2/21/85

The allegations in paragraph 1.a. of the union's amended complaint are that the employer was unprepared "to negotiate or make concessions" at the negotiation sessions held on February 7 and 21, 1985. These allegations are before the Examiner pursuant to the Commission's ruling of July 2, 1986.

At their initial meeting on January 9, 1985, the parties agreed to meet at the WPEA's headquarters in Olympia on February 7. The union mailed its initial proposal, a document about 50 pages in length, to the library about two weeks in advance of that meeting, but did not mail a copy to Hurlburt. On the morning of February 7, after WPEA representative Cameron and the management team had been at the meeting site for some time, word was received that the employee members of the WPEA's bargaining team had been involved in an automobile accident en route to the meeting and were unable to attend. The parties had planned to spend the meeting discussing the union proposal, and they proceeded with that task. The meeting lasted approximately two and one-half hours. Both Hurlburt and Conable testified that explanations were hampered by the absence of the WPEA's employee representatives. Certain of the union's proposals, and particularly the salary grid, were confusing to management, and Cameron agreed to provide further explanation of the grid at the next meeting. Since Hurlburt had not seen the union proposal before, he spent much of the meeting reading the document. Submission of the library's proposal was discussed, but no specific date was mentioned.

The February 21 meeting was held in Vancouver, with the full bargaining teams for both parties present. Cameron asked that the employer point out areas of

the union proposal which might be acceptable to the employer. Conable indicated that the library was preparing its counterproposal, and he felt it appropriate for the employer's responses to wait until its proposal was submitted. The remainder of the meeting was spent in further discussion of the WPEA proposal.

The parties to a collective bargaining relationship are required to meet at reasonable times and places, to be prepared at such meetings to discuss proposals with an intent to reach agreement, and to provide explanations for their proposals. Morton General Hospital, Decision 2217 (PECB, 1985). General Electric Company, 150 NLRB 192 (1964), aff. 418 F.2d 736 (2nd Cir., 1969), cert. den., 397 U.S. 965 (1970). Federal Way School District, Decision 232-A (EDUC, 1977). City of Snohomish, Decision 1661-A (PECB, 1984). Nothing in the statute requires that a party make a concession at any particular time. See RCW 41.56.030(4). Under the circumstances of this case, the Examiner does not find it unreasonable that the parties took two meetings to discuss the union proposal. The length of that proposal, the fact that it involved major changes from the library's agreement with the previous exclusive bargaining representative, and the unanticipated absence of WPEA bargaining unit members from one of the meetings, all operated to prolong the period for explanation of the union's proposal. While the library might have provided a copy of the union's proposal to Hurlburt in advance of the February 7 meeting, it is possible that library officials in Vancouver assumed that the union had sent a copy of its proposal directly to Hurlburt. In any event, Hurlburt's reading the proposal at the February 7 meeting does not appear to have significantly impacted the bargaining process. The library might also have been more forthcoming at the second meeting in response to the union's queries. Another employer spokesperson may have been willing to comment more freely on the union's proposal at that time,[10] but the Examiner will not fault Conable's conduct at this early stage of the bargaining process, and does not find that the library's conduct at the February meetings was unlawful.

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[10] The record and the Examiner's own observations reveal Conable to be very conservative in making comments to the union.

Now that a full record has been made, it is additionally clear that the complaint was, in fact, untimely under RCW 41.56.160 as to the February 7 meeting. Port of Seattle, Decision 2796-A (PECB, 1988).

Employer's Refusal to Grant Paid Release Time for Union Bargainers

Paragraph 5.a. of the union's amended complaint (when taken together with introductory material in paragraph 5) alleges that the employer refused to meet at reasonable times and places, and that it did so in retaliation against its employees for exercising their free speech rights:

> Throughout negotiations the Library has refused to meet with its employees on evenings or weekends or to provide paid release time for members of the union negotiating team and instead have (sic) required employees on the union negotiating team to use their paid vacation.

During the discussion of "ground rules" at the initial meeting on January 9, 1985, the union requested that the library grant paid release time to employee members of the WPEA's bargaining team when they attended negotiation sessions.[11] The employer refused the request, unless it could bill the union for the employees' time. Conable stated that granting paid release time to employee negotiators had never been the practice in the relationship between the library and the OPEIU, and that the library had billed the OPEIU for the cost of allowing employee negotiators to attend bargaining sessions during their scheduled work time. The WPEA declined to pay for the employees' time. Conable told the union that employees could use vacation leave for negotiation sessions, and he offered flexibility in arranging employee schedules so that negotiations could occur on employees' time off.

As an alternative to paid release time, the WPEA requested that negotiations take place after working hours or on weekends. Conable told the WPEA that management did not want lengthy bargaining sessions, and that the library

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11 According to the WPEA, paid release time provisions are included in virtually all of its collective bargaining agreements.

bargaining team wished to meet only during daytime hours on Monday through Friday. Hurlburt stated that he would not be available for any evening or weekend meetings. Conable testified that the OPEIU and the library had some all-night bargaining sessions, but found them to be counterproductive and therefore agreed not to have evening or weekend bargaining meetings. Conable testified at the hearing, but may not have earlier set forth, that the employer believed that evening and weekend bargaining was not reasonable, because the library is open seven days a week, until 9:00 pm on weekdays and 6:00 pm on weekends.

The union next requested that release time be one of the first items to be negotiated. The library stated that the costs for employee negotiators could perhaps come out of an economic settlement. The union's initial contract proposal provided, at Article 7, Section 3:

> All collective bargaining for this and subsequent Agreements between the Union and Employer shall be conducted during working hours, unless the parties otherwise agree. In order to facilitate the bargaining process, the Employer shall allow up to three (3) unit employees to participate in such negotiations without loss of pay or benefits (excluding overtime which shall not be provided). Travel expenses shall be Employer provided for such negotiations.

The release time proposal was discussed at the February 21 meeting when, according to Hurlburt's notes, Cameron requested that the employer provide a letter authorizing paid release time for employee negotiators. Conable reiterated the library's position that it would not pay those expenses. Cameron again took the position that the parties would instead need to meet on evenings or weekends. Hurlburt's notes then indicate:

> Hurlburt pointed out that if negotiations were scheduled by the union at those times there would be no one representing the employer. It is the intention of the employer to negotiate during normal business hours and the employer will make a serious effort to negotiate a workable labor agreement with the union.

The matter of release time was apparently not discussed again until May 9, when the union reiterated its release time proposal as part of a comprehensive counterproposal.[12] In a May 15 counterproposal which was discussed on May 23, the library asked that the union drop its release time language. The union indicated its continued interest in the release time issue at the July 12 mediation session. The record does not show that the release time issue was discussed to any extent thereafter, although the union maintained its position in its October 3 proposal, and the employer continued to reject it.

Payment of wages to employees for time spent in negotiations is a mandatory subject of bargaining under the National Labor Relations Act. Axelson, Inc., 234 NLRB 414 (1978), enf. 599 F.2d 91 (5th Cir., 1979). An employer's refusal to meet with union representatives outside of working hours, while simultaneously refusing to allow members of the bargaining team leave without pay to participate in negotiations, was held to be an unlawful interference with the union's selection of its bargaining representatives in Indiana and Michigan Electric Company, 229 NLRB 576 (1977), enf. 599 F.2d 185 (7th Cir., 1979), cert. den., 100 U.S. 663 (1980). In that decision, the Board held:

> We do not suggest that an employer is compelled to yield to a union's request for negotiations outside normal business hours. It is free to insist on bargaining during the working day, if it prefers, as the Respondent did here. If it makes this choice, however, it cannot at the same time refuse to allow unpaid time off to union representatives on the bargaining committee ... Alternatively, the Employer is free to acquiesce in the Union's request to bargain during nonworking hours ...

In Borg-Warner Controls, 198 NLRB 726 (1972), the Board found a violation where, among other things, the employer decided prior to the onset of negotiations that it would not hold negotiation meetings during working hours, and then limited bargaining sessions to one per week, while refusing to consider any alternatives. The NLRB said:

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[12] By this time, the union had done some rearranging of its proposals and the proposal for release time was now found in Article 22. However, the language of the two proposals is identical.

> Such conduct patently indicates an unusual reluctance to accommodate to the required bargaining relationship and is wholly inconsistent with a genuine desire to reach a mutual accommodation in the absence of other circumstances which are made fully known to the other party to the negotiations.

The Board found that the employer's refusal to make its negotiators available during working hours in that case was an example of rigidity supportive of the finding of a violation.

While the library was consistently unwilling in the instant case to provide paid release time to employee negotiators, even the union's notes from the January 9 meeting show that Conable offered flexibility to minimize the effect on employees. The library was willing for the employees to use their vacation leave time for negotiations, was willing to release them from work without pay, indicated a willingness to have the WPEA reimburse the employer for paid leaves granted, and even indicated willingness to consider the employee release time issue in an economic settlement. It is difficult to discern how the employer's offer to rearrange the work schedules of employee negotiators (i.e., so that they could negotiate on their time off, rather than lose pay or be required to use vacation time) would have placed the employees in a significantly different circumstance than the union's position that negotiations should occur during evenings or on weekends. Although the library's positions were unpalatable to the union, the Examiner does not find that the library's actions on the release time issue were unlawful.

The library's steadfast refusal to consider meeting at any time other than that which it had selected prior to the onset of negotiations is, however, found by the Examiner to be indicative of a rigidity which, coupled with other circumstances, could demonstrate a failure to bargain in good faith.

Employer's Change of Sick Leave Proposal in May of 1985

In paragraph 7.c. of its amended complaint, the union claims that the employer engaged in bad faith, with the intent to frustrate agreement, by

proposing a 50% reduction in sick leave accrual after the parties had been in bargaining for 5 months.

The WPEA's initial proposal concerning sick leave called for continuation of essentially the same benefits as were contained in the contract between the employer and the OPEIU. The employer's initial proposal generally reflected the sick leave administrative practices and accrual rate had been provided under the OPEIU agreement, but deleted a one-day "personal time off" benefit which had been provided to employees who had not used any sick leave during a twelve month period.[13] The employer's summary dated April 4, 1985, noted "as negotiated" (the parties' term for a tentative agreement) for all but one sentence of the leave provision. On April 24, 1985, the parties reached a tentative agreement to continue providing the 12 days of sick leave per year for full-time employees, as was specified in the OPEIU contract.

On May 9, the employer put forth a new proposal calling for a 50% reduction in sick leave accrual, but leaving the sick leave administration language essentially the same as agreed upon by the parties. The employer maintained that proposal, and did not formally modify its position from then until January, 1986,[14] when it implemented the sick leave accrual rate proposed in its May 9 package.

Neither St. John, Cameron, nor Conable testified to any specific arrangements made by the parties during the January 9, 1985 meeting as to how "tentative agreements" would be handled. Hurlburt testified that the parties agreed during the course of that meeting that items agreed upon would be noted as

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13 Cameron testified that Conable claimed no one was ever eligible to use that day, because people were "always sick".

14 The parties discussed sick leave during other mediation sessions. On December 5, the employer indicated some willingness to modify its proposal on sick leave accrual (in connection with the union's proposal that the parties return to the OPEIU contract with the exception of wages), but no agreement was reached. The employer was, in fact, the author of a so-called "mediator's proposal" made on January 7 which included a modified sick leave accrual rate.

"tentatively agreed to", but that there was no agreement that the parties would sign off on tentative agreements. He testified that, in his experience, tentative agreements were frequently changed, and that "The only thing that really counts is when you get down to the point of ratification ... and that becomes the final package."

Withdrawal from tentative agreements reached in bargaining may be an indicator of bad faith, Arrow Sash and Door Company, 281 NLRB 149 (1986), but does not constitute a per se refusal to bargain, Reliable Tool and Machine, 268 NLRB 101 (1983). Where an employer sets forth reasons for withdrawing from tentative agreements, and those reasons are not so illogical as to warrant an inference that the withdrawal indicates intent not to reach agreement, it is quite possible to arrive at a conclusion there is no unfair labor practice violation. Hickinbotham Bros. Ltd., 254 NLRB 96 (1981); Merrell M. Williams, 279 NLRB 82 (1986). Whether the Examiner agrees with or finds those reasons persuasive is irrelevant to the formation of a bad faith finding.

The cover sheet to the employer's initial proposal included the following proviso:

> The Employer wishes to stress that the economic package reflected in this proposal is an integrated one -- that any change in the benefits portion of the proposal, for example, will result in a corresponding adjustment in the wage scale being proposed.

Conable testified that the employer's goals for a new agreement included containment of expenses, recognition of the fact that all benefits were a cost to the employer, and containment or reduction of the use of compensated leave time. The employer's initial proposal had called for a significant reduction in the accrual rate and administration of the vacation benefit, while the union's initial proposal called for vacations essentially the same as the existing practice.

By April 24th, the employer had modified its position regarding the language of the vacation article, and the union had proposed a two-tier system under which the rate of vacation accrual for current employees would remain the same, but new employees would accrue vacation at a lower rate. The employer's May 9 proposal increased vacation accrual rates from those contained in the employer's previous offer.[15] Conable testified:

> Well, we indicated at the beginning of negotiations, the outset of negotiations, that our economic proposal was an integrated proposal. And we took that to mean that there was some possibility that adjustments in aspects of the economic package would have effects on other portions of our economic package proposal. And when we made that [May 9th] proposal, we in effect were making a proposal which we understood to be more generous than the proposal that had previously been on the table. And we thought, in terms of our understanding of the resistance to our initial proposal about vacation leave, that in fact the proposal we were making might be more acceptable than the one we had originally made.

Conable considered the May 9 proposal to be more generous because all vacation accrued would be used by the employee, whereas the same is not necessarily true of sick leave.

Cameron understood that the employer had, from the outset, considered economic items as a package. Cameron apparently believed, however, that sick leave was no longer part of a "package" after the parties had reached "tentative agreement" on the issue. Nothing in the record indicates words or conduct by the employer which supported such an assumption. Cameron recalled that the employer's explanation of its new sick leave proposal included the "economic package" rationale, as well as a concern by the employer that there was an excessive amount of sick leave being used. According to Cameron, when the union suggested that the employer use existing mechanisms for controlling sick leave use, the employer had no response.

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15 The accrual rates proposed at that time were still less than the accrual rates previously in effect.

The Examiner finds that the employer's rationale for its change of position on sick leave is not so inherently illogical or inconsistent to warrant finding a violation. While the employer may not have properly evaluated the union's position on the leave issues, and may not have correctly anticipated the union's reaction to the change of its position, the Examiner concludes that the record does not support a finding that the employer was acting in bad faith when it withdrew from the tentative agreement on sick leave.

The Employer's Conduct at the July 19, 1985 Mediation Session

The union claims in allegations 7.d. and 7.e. of its amended complaint that the library's actions on July 19 constitute bad faith, with the intent to frustrate negotiations and avoid agreement, by:

> ... summariz[ing] past economic proposals offered to WPEA previously as a bona fide "counter proposal" when in fact the real intention of the Library was to avoid substantive negotiations.
>
> ... after the parties had reached tentative agreement earlier in the day on proposed contract articles 7 and 9, the employer then resubmitted those same articles to WPEA as being contingent on the union's acceptance of a "package"...

A negotiations session scheduled for June 4 was rescheduled at the request of the union. At about that time, the library began giving serious consideration to requesting mediation, and Conable called St. John to ask that the union join in a mediation request. St. John told Conable he felt mediation was premature, so the library proceeded to request mediation on its own. The first mediation session occurred on July 12. A second mediation session was convened at approximately 8:30 a.m. on July 19, and the parties exchanged a number of written proposals during that day.

St. John testified that the parties reached agreement early in the afternoon on the bulk of Article 7 (hours of work and scheduling of employees). At the same time, the parties agreed to reserve Section 3B of that article

(premium pay for Sunday work) for discussion with economic matters. With regard to Article 9 (employee discipline and dismissal), St. John recalled the parties exchanging proposals probably sometime around mid-afternoon, when the employer made a proposal which the union was at first inclined to reject. The union, however, counterproposed that it would accept the employer's proposal on Article 9, if the employer would agree to the union's proposal on Article 2, Section 7A (having to do with the duties and numbers of shop stewards, and authorization for them to conduct some union business on employer time). Upon his return from the employer's caucus, the mediator told the union that the employer would not accept that offer. St. John then told the mediator that he believed the parties were at impasse on both Articles 2 and 9. Neither Conable nor Hurlburt testified in contradiction to St. John's recitation concerning Articles 2, 7 or 9.

The union proposed, at about 3:00 p.m. on July 19, that it would accept the employer's language on Article 15 (management rights), if the employer would address some of the union's needs on subcontracting (Article 5, Section 13), position classification (Article 17), employee rights (Article 18), and employee participation on committees (Article 19). The union indicated that if those needs could not be addressed, it would want its own proposed management rights language. The library responded, through the mediator, that the union should accept the employer's May 15 proposals on a number of topics,[16] while at the same time dropping the union's proposals on Article 5, 17, 18, and 19. The union refused to accept that proposal.

Later in the afternoon, the library made a "proposal" on economic matters which contained only minor changes from its April 24 and May 9 proposals.

Contrary to the allegations, the Examiner concludes that the record does not support a finding that agreement was reached on Article 9. No violation will be found with regard to that component of the allegation.

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16 These included Article 2 (union security and shop stewards), Article 5 (posting of position openings), Article 6 (wages), Article 15 (management rights), Article 16 (grievance procedure), and Article 17 (strike and lockout language), as well as the Article 7 and Article 9 language discussed earlier in the day.

The record does reflect that the parties had reached agreement on July 19 on most components of Article 7. The employer appears to have later conditioned agreement on Article 7 upon acceptance of an entire package, and its actions in that regard had a significant detrimental impact on the process. The union had just indicated some flexibility in bargaining, having informed the employer of a willingness to yield on management rights language proposed by the library if union concerns in several other areas could be addressed to some unspecified degree. Although stated in terms suggestive of the give-and-take trade-offs that occur in bargaining, the employer's counterproposal actually called upon the union to accede to the employer's position on the same key points put forth by the union as a basis for compromise, as well as for union concessions on several other key items. It is difficult to discern how that proposal by the management, made at that time, could possibly have been calculated as a good faith effort to reach agreement. The Examiner concludes that the employer's actions violated RCW 41.56.140(4).[17]

Although the union alleges that the library characterized its July 19 economic proposal as a "counterproposal", or as one which contained new material, the record does not support a finding that the union was misled by the employer. St. John may have assumed the July 19 economic proposal would contain new concessions, but there is no clear evidence that anything beyond his own hopes and assumptions should have led him to that conclusion. St. John's own testimony does not reflect that the mediator characterized the proposal as new material. Testimony from management representatives does not characterize it as new material. Hurlburt's notes for that mediation session characterize the proposal only as management's "last and final" offer. St. John's frustration at that juncture, however understandable, is not a basis for finding a violation by the employer on this allegation. It is not per se unlawful for a party to resubmit proposals, or to submit a proposal containing only minor changes, regardless of the expectation of the other party.

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17 The Examiner finds a violation of the process, and makes no judgment regarding the content of the proposals of either party.

However, the employer's resubmission of the same or substantially similar proposals can, and will, be considered in the evaluation of its overall good faith.

Delay in Providing the Union with a Promised "Final Offer"

In allegation 1.b. of its amended complaint, the WPEA claims that the library agreed to make its July 19 "last and final offer" available in written form "within the week" for vote by the union membership. The union claims that it did not receive that offer until August 16, 1985, and it accuses the employer of engaging in dilatory tactics.

According to St. John, the union bargaining team became very frustrated by late afternoon on July 19 with a perceived lack of progress in the negotiations. Union leaders were beginning to feel that the library management "simply didn't understand the frame of mind of our members." The union therefore prepared a statement which it sent, through the mediator, to the management team, suggesting that unless significant improvements were made in the library's offer that day, the contract proposals then on the table should be submitted to a vote of the union's membership. The union bargaining team made it clear that it would recommend rejection of the contract as then proposed.

According to St. John, the mediator returned with concurrence by management that the package should be voted. Additionally, the mediator indicated that the package was on the management's word processor, and that the employer had offered to put the package together in contract form. St. John testified that the mediator told the union that the package could be mailed to the union "by the end of the following week." The union left with the impression that the package would be forwarded in that sort of time frame.

Conable acknowledged in testimony that he offered to assemble the various proposals and agreements discussed in negotiations into a single document,

but his recollection of the time frame for production of such a document was as follows:

> I don't think that there was a solid time deadline set. We had some discussion about how long it ought to take. I indicated that it seemed to me it would take me about a week to put it together. But there wasn't any sense that that was a -- there wasn't a date agreed to that it would be delivered. And my understanding at the time was that I was giving an estimate of how long I thought it would take under reasonable circumstances to put the pieces together.

On July 23, Conable read an article in The Oregonian, a Portland, Oregon, newspaper, in which St. John was reported to have said that the library employees would meet the following Thursday, and would be urged to vote against the management proposal. Conable concluded from reading that article that the union was planning to proceed with a vote ahead of the previously indicated schedule. Implied in Conable's conclusion about the vote was his assumption that the union was going to proceed with a vote even without a composite contract provided by the management, but Conable nevertheless proceeded to put together a composite document.

Conable acknowledged that it took longer than anticipated to prepare the composite, and he attributed the delay to several factors:

First, he had underestimated the difficulty of putting the proposal together, both because of some problems with the format of the various proposals on the word processor, and also because Hurlburt's notes for the July 19 meeting were uncharacteristically brief and did not provide the detail which Conable had expected;

Second, a good deal of press inquiry had been generated by the union's appearance at the July 22 library board meeting, and handling of those inquiries had placed unexpected demands on Conable's time;

Third, Conable had to spend some time on responsibilities relating to a move of the employer's branch library at Goldendale into new facilities, for which "a time table that had been somewhat fluid, ... suddenly got very solid very fast"; and

Finally, Conable's wife suffered a miscarriage during this time, and he took a week off from work in the early part of August because of that.

None of the circumstances contributing to Conable's delay in providing the written composite were reported to the union. When St. John did not receive the proposal within what he believed was the agreed upon time, he contacted the mediator by telephone and wrote a letter to the mediator on August 5. St. John's letter noted copies to Conable and library trustees.

When Conable returned to work on Monday, August 12, he found a telephone message indicating that the mediator had called on the previous Friday regarding the status of the proposal. Conable returned the mediator's call, and mailed the proposal to the union two days later.

Delay in supplying requested information necessary to the bargaining process is an unfair labor practice. Crane Company, 244 NLRB 103 (1979); KDFW-TV, 274 NLRB 1014 (1985); Fairfield Publishing Company, 275 NLRB 7 (1985), and cases cited therein.

The fact of when the union received the employer's offer in contract form is not in dispute. Allowing that Conable was only giving an estimate of the time which might be involved in preparing a composite document, it is clear that both parties believed at the end of the day on July 19th that copies of such a document would be available about one week later.

Conable's reliance on newspaper accounts of the union's activities had a detrimental effect on the bargaining process here, as elsewhere. By this point in the process, Conable was very disturbed at the union's approach, and particularly at the union's willingness to contact the press and the members of the library's board of trustees. Conable's feelings may have made him predisposed to believe that the union would change the date and procedure for its vote on the contract without telling him. A simple telephone inquiry to the union could have clarified the matter. If Conable was reluctant to talk directly with St. John at that juncture, a call to the mediator would have

clarified whether the document was still expected. Conable did neither, and so stands before this forum on his own assumptions alone.

Apart from Conable's mistaken inferences from the newspaper report, the employer's reasons for its delay in forwarding the promised proposal are not, on their face, without merit. Certainly the personal events in Conable's life provided a valid reason for his time being spent elsewhere. Unfortunately, neither Conable nor anyone else on the management side made any effort to contact either the mediator or the union to communicate that the preparation of the promised material was taking longer than anticipated. Had the employer done so, the delay would not have become such a problem. Bargaining in good faith requires communication and attention to the process at critical times. Morton General Hospital, supra. In this instance, the library's failure to communicate adversely affected the bargaining process. The Examiner concludes that, by those actions, the library committed an unfair labor practice.

The Employer's Behavior Between August 19, 1985 and January 7, 1986

August 19, 1985, is a watershed date in this series of events, because the union's amended complaint was timely on certain of its new allegations only as to conduct occurring on and after August 19, 1985.

In allegation 4.b. of its amended complaint, the union charges:

> Throughout negotiations and mediation, the Library bargaining team indicated to the union that they expected WPEA to make counter proposals rather than making counter proposals of substance themselves. During mediation, the Library repeatedly rejected WPEA's proposals and called for another proposal without indicating what other compromise proposal the union might make. This occurred at mediation sessions on August 29, 1985, December 5, 1985, and January 7, 1986.

In the portions of paragraph 5.b. that were assigned to the Examiner for hearing, the union alleges that the library refused, from August 29, 1985

forward, to meet with the union or to respond to communications from the union's representatives, insisting instead that the parties communicate only through the mediator. It alleges, further, that the employer refused to meet in mediation between August 29 and December 5, 1985, despite repeated demands from the union and counterproposals presented by the union on September 9, September 25 and October 3, 1985.

In allegation 6.a. of its amended complaint, the union alleges that the employer refused to explain the basis of its wage proposal and its cost calculations, despite a request from the union on August 29, 1985.

In allegation 6.c., the union claims that it requested that the library cost out a proposal made on December 5, 1985, but that the information was never provided.

In allegation 6.d., the union claims that it reiterated its December 5 request for information, in writing, at a mediation session held on January 7, 1986, but that it never received a response to that request.

The portion of allegation 7.b. which is before the Examiner alleges that the employer put forth misleading and confusing figures in support of its proposals on August 29, 1985 and December 5, 1985, with the intent to frustrate negotiations and avoid agreement.

Allegation 7.f. asserts that the employer misrepresented the effect of its January 7, 1986 wage proposal.

The Employer's Response to Political Pressure -

While it was determined at the end of the July 19 mediation session that the union would submit the employer's "last and final offer" to a vote, that offer was delayed, as noted above, and the union sought to schedule another mediation session before a vote was taken. The employer had planned dedication ceremonies for a new library facility at Goldendale for August 17, and the union wanted another mediation session to be held prior to that date.

The union had written letters to a number of the political and public figures who had been invited to the dedication, informing them of the union's intent to picket the library at the dedication. Conable testified that the employer believed the union was trying to push the library to make concessions in negotiations in order to avoid a potentially embarrassing situation. The library could not reach Hurlburt to schedule a meeting, and did not want to meet without him. The employer also did not wish to meet prior to the employee vote on its offer.

The employees voted on the employer's offer on an unspecified date, rejecting it. The record does not indicate whether the union followed through with its plan to picket at the library dedication.

On August 22, the union mailed letters to various elected officials in the library's service area, asking them to contact Watson and the library's board of trustees to urge them "to come to the table to responsibly settle this labor dispute." Conable became aware of the letters in telephone conversations with some of the recipients. He also received a number of calls from the press and members of the bargaining unit at this time.[18] Conable testified that the letters influenced the employer's subsequent bargaining position, as follows:

> ... the way that all of these tactics have influenced our bargaining position ... it added to the deterioration of our trust level in relation to WPEA ... we understood all of these activities to be an invitation to people who have nothing to do with the negotiation, to enter into the negotiation. Which we took as a sign of bad faith ...

The union either sent or delivered a letter to Conable dated August 28, informing him of the rejection of the employer's proposal by the WPEA membership. The union also sent letters to the trustees dated August 28, reporting on the status of bargaining from "a perspective you may not be getting from the management team", and urging them to help in settling the labor dispute.

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[18] This type of activity continued into the autumn.

The August 29, 1985 Mediation Session -

The parties convened for their third mediation session on August 29 at approximately 9:30 a.m.

The mediator met with the union in caucus at the outset of that session, and the union spent some time discussing issues with the mediator. According to St. John, the union expressed frustration that it "... didn't really know what their [management's] problems were." The union told the mediator it would be willing to make concessions on some economic items in an attempt to save the employer some money, if that would help in reaching a settlement.

St. John recalled that when the mediator returned from meeting with the employer, he told the union that the employer was concerned that there was an excessive amount of leave available to employees. The employer was unwilling to move from its position on the rights of shop stewards. It was willing to "grandfather" current employees with respect to current levels of family medical benefits.[19] St. John also recalled the mediator reporting that the employer believed that the salary schedule it currently had on the table would increase the employer's costs by about 20%.

St. John testified that the union did some "costing out" of its own at that point, and then told the mediator it believed the employer's wage package only cost about 6.1%.[20] The union requested substantiation from the employer of its costs and, at the same time, gave the mediator a proposal on the pay step system to be transmitted to the employer. The essence of the union's wage proposal at that time was to accept the employer's pay plan concept, but to begin the training step at step C of the old system (rather than step A, as the employer proposed) and to place the "scale" step at step F rather than

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19 St. John testified, however, that he did not view the comments on grandfathering as a proposal from the employer.

20 On cross-examination, St. John testified that the 6.1% figure referred to the union's estimate of the cost to the employer of the proposed wage scale system and wage increases, not the cost of the entire economic package.

step D of the old system. The union indicated its willingness to compromise on elements of the insurance plans.

Hurlburt's notes from that session reflect that the discrepancies between the parties concerning the cost of the employer's wage proposal were discussed with the mediator:

> The mediator pointed out that the union feels their concept of the employer pay proposal differs since the union calculates it to be 6.1% whereas the employer contends it is 10% averaged over the two-year contract period. Conable explained that there are thirty persons in steps "E" and "F" who would be frozen. However, fifteen in step "E" and thirteen in step "F" would go to scale in the second year. These persons would get a 2% increase. Those at step "A" would get a 20% increase over the life of the contract.

Hurlburt's notes do not reflect a union request for cost information, and Conable did not recall a request for cost information during this mediation session.[21] He testified that Hurlburt's notes for the August 29 meeting were an abbreviated version of the discussion of economics with the mediator and, while not inaccurate, did not reflect the depth of that discussion.

According to St. John, the mediator reported upon returning from meeting with the employer that the union's pay step proposal was not acceptable to the employer, that the employer's 20% figure was the difference between step A and step D, and that the employer "didn't have any other information." The mediator is also quoted as having told the union that the employer was seeking another proposal from the union. At that point, the union representatives became upset. St. John testified:

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21 Conable recalled that the union had requested wage rate, classification and pay step information from the employer at the outset of negotiations, and that the employer had provided that information. He believed that the union therefore had the raw data necessary to cost out any future proposals.

> [The mediator] said that they were telling him that since the union has rejected their proposal, we should now come up with a counterproposal, to counter their last offer. And that was very upsetting to us, because we had just given them, you know, basically a proposal to accept their pay plan.

There is no testimony from either Hurlburt or Conable regarding an employer request for a counterproposal from the union at that meeting. Hurlburt's notes are also silent with regard to any request for a union counterproposal.

The record reflects that no written proposals were exchanged during the mediation session. The mediator suggested that he develop a "mediator's proposal" to try to break the stalemate, and he recessed the meeting at about 3:00 p.m. Conable testified that his understanding at the end of that mediation session was that the mediator would develop a proposal after discussion and input from both sides, and that the mediator would make a decision about calling another session. Conable noted in testimony that the employer's assessment at that time was that the parties were close to impasse, and "we could not see at that moment that the union was making any movement or any serious attempt to negotiate." St. John simply testified that the mediator recessed the parties with the decision that he would develop a mediator's proposal, and that no further meetings were scheduled.

Hurlburt's notes reflect that the union's ongoing press releases and other public activities concerning the negotiations were discussed by the employer with the mediator during the August 29 mediation session. The employer believed that those activities were a violation of the initial agreement of the parties. When Conable and Venturini returned to the library after the mediation session, they learned that Cameron had sent letters to supervisors of bargaining unit employees, questioning certain of their actions concerning scheduling of employees and comments allegedly made to unit employees. Conable testified that those letters were a major departure from the way the library did business with the prior union, and that the library regarded those letters as further indication "that the union was committed to making an issue out of routine management practices...." Conable testified that

those letters affected the employer's perception as to how it would need to deal with the WPEA.

The Union's Proposal for Interest Arbitration -
On September 9, the union wrote to Conable proposing that the parties select an arbitrator to issue a binding settlement of the unresolved contractual issues. Copies of that letter were directed to the library's trustees, but the letter noted that the union would not publicize that proposal until September 20, or until the union received notice of rejection of the offer by the library.[22]

Conable did not receive the letter until September 19, but became aware of it on September 13, through conversation with the chairperson of the library board. Conable testified to having told the mediator, during a telephone call some time between September 13 and 19, that the library would not participate in interest arbitration, and to having requested the mediator to so inform the union. At that time, Conable believed that the parties were in the posture of waiting for the mediator's proposal, and he therefore viewed the union's letter as an attempt to "end-run" the bargaining process and the bargaining team.

St. John testified to having talked to the mediator around September 17, when he was told, apparently in reference to the union's September 9 letter, that the employer would not accept proposals directly from the union.

St. John placed telephone calls to Conable on September 23, and at least twice on September 24, but did not reach Conable. St. John left messages for Conable to call him. In the last of those messages, St. John left word that he would issue the arbitration information unless he heard from Conable by early that afternoon. Conable did not return St. John's calls. According to St. John, he was told by the mediator on September 25 that Conable would not return his calls, and that the employer would only communicate with the union

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[22] Other events surrounding this letter are detailed in discussion of allegation 6.h. of the library's complaint against the union.

through the mediator. St. John testified, further, that the mediator also told him on September 25 that the library would not agree to the union's arbitration proposal.

The Mediator's Proposal -

On or about September 17, St. John sent the mediator some information on Vancouver area wage rates. St. John assumed that the mediator would forward the information to the library.

St. John testified that the mediator came to the union office for a meeting on September 24 or 25, when discussion centered around the economic aspects of the dispute. The mediator was preparing his mediator's proposal at that time, and he questioned St. John about the union's needs in a number of areas. St. John assumed that the mediator was going to conduct the same sort of discussion with the employer.

The mediator called Conable on September 25, 1985, telling him that a "mediator's proposal" had been prepared. Conable recalled being told that the proposal had been developed in consultation with St. John, and that the economics were "essentially" the library's economic package. The possibility of scheduling a mediation session for October 2 was discussed, but Conable wanted to see the proposal in writing before he agreed to a meeting.

Also on September 25, the local newspaper in Vancouver carried a story concerning the negotiations which indicated, in part:

> The union representing Fort Vancouver Regional Library employees plans to offer another contract proposal in an effort to end a lengthy stalemate ... Eugene St. John, director of the Washington State (sic) Public Employees Association, said the offer will be presented to library directors and a state mediator next week. The 80 employees represented by the union decided at a Tuesday evening meeting to offer the contract proposal.

Conable interpreted the newspaper article as referring to the mediator's proposal, and to the mediation session which he had just discussed with the

mediator. Conable was upset, and he called the mediator. The mediator assured Conable that any press release had been made without his knowledge.

St. John received the mediator's proposal on September 26. He advised the mediator that the union was willing to meet, and was informed that the library wanted to wait until it had seen the mediator's proposal. A mediation session was tentatively scheduled for October 2.

Conable received the mediator's proposal on September 27 and was upset about numerous aspects of its contents.[23] Conable felt that the economic portions of the mediator's proposal were possibly even more costly than the union's latest proposal, and he contacted the mediator. After some discussion, the mediator said that he would meet with management alone on October 2, rather than conducting a mediation session with both parties present. St. John and the mediator had several conversations on September 27 centering around the mediator's proposal and the possibility of meeting. At some point during those calls, after he had talked to Conable, the mediator told St. John that they would not be able to meet in mediation as tentatively scheduled. St. John's testimony quotes the mediator as having said that Conable believed the mediator's proposal would provide an average increase of 14%, with many employees receiving 20% over two years.

The employer's actions throughout this period were influenced by a number of actions by the union away from the bargaining table. During September and continuing into October, the union mailed or distributed a wide variety of letters and leaflets throughout the community, as well as to labor and

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23 The mediator's proposal consisted of two pages and addressed only some of the issues in dispute, implying that others were to be dropped. The mediator used the employer's wage table, but suggested more favorable provisions than the employer for progression through the wage table and experience bonuses. The mediator's proposal called for 6 percent wage increases in the second and third years of a three-year agreement. The mediator also proposed a combined vacation/sick leave accrual system, employee participation in payment of dependent insurance premiums, full agency shop, and union representation at all grievance levels.

political leaders. Petitions seeking the removal of the library trustees were circulated, and letters enclosing such petitions were sent to county commissioners and city council members in the area, asking them to hold public hearings about removal of the library trustees. The leadership of the Clark County Democratic Party was invited to attend an information session to "promote a process leading to settlement." Labor organizations were asked to intervene in the dispute. Supporters were asked to attend meetings, send contributions to the union, call trustees, and write letters to their local newspapers. The program which provides senior citizen volunteers to the library was asked to withhold its services. Conable testified that the employer believed that the union had a plan to attack the management and its bargaining team, rather than a plan to engage in constructive negotiations, and that the union was violating the ground rules understandings of the parties. Conable testified:

> We saw in all of these letters an attempt to engage in bargaining with anyone except the bargaining team that was charged by the library to negotiate with WPEA. And that perception and that understanding colored the way that we perceived the progress of the negotiations, and affected the choices that we made in terms of how we conducted ourselves during this period of time ... We recognized an ongoing obligation to negotiate and were committed to good faith negotiations, and were attempting to resolve the labor contract. Nothing in these letters suggested to us that there was any compelling reason for us to make additional concessions ... We believed that the union was seeking great restrictions on management rights, and in fact a contract under their proposals would have provided them a mechanism to greatly interfere with normal management and operations of the library, if we agreed to these proposals. These letters and this activity tended to confirm that our assessment of the intent underlying the union's proposal was accurate.

When the employer met with the mediator on October 2, the employer discussed its problems with both the contents of the mediator's proposal and the process which led to its development. The mediator offered to withdraw from the case, but the employer told him it did not feel that was necessary. During that meeting, according to Conable, the mediator told the employer

that he saw no point at that time in scheduling further mediation, and that he would confer with the library later regarding scheduling any meetings.

The Union's October 3 Counterproposal -

St. John testified that the union was feeling at about this time that, "something has got to break, here, and we wanted to meet, we wanted to get a settlement." On October 3, the union issued a document which it characterized as a "major" counterproposal.[24] The proposal was forwarded under cover of a letter to Conable, requesting that an acceptance or a request for more time be made by the employer by October 8. That letter advised that the employees "would resume our activities to get a fair contract" if the union did not receive some sort of response.

St. John hand-delivered the proposal to the mediator on October 4, informing him that the union wanted to meet, and was "pretty soft" on the October 8 deadline for acceptance set forth in the union proposal. St. John testified that the mediator told him that he should not have put a deadline on the proposal. According to St. John, the mediator was "glad" that the union had

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24 The union's proposal consisted of five pages, and set forth "concepts" which would require further negotiations to finalize. The document also included a seven page review of the positions of the parties up to that time. Like the mediator's proposal, the union called for a three year contract and started from the employer's "scale" pay plan concept as a basis for its economic provisions. Also like the mediator's proposal, the union called for features of the wage system that were somewhat more favorable to employees than had been proposed by the employer. The union also proposed six percent wage increases in 1985 and 1986. The union did not accept the employer's offer on insurance coverages, but proposed some compromises. The union acknowledged that the library's vacation benefits exceeded prevailing practice in the area, and proposed trimming the existing vacation accrual rate conditioned on the library requiring such a cut of all its employees. The union proposed that existing practice for sick leave be maintained, and continued to propose Sunday overtime, but dropped its request for an additional holiday. The union accepted the library's language regarding working out of class, and retained its proposal requiring the employer to pay employee wages in the event the employer decided to close the library due to inclement weather. The union accepted employer positions on certain other issues and re-asserted its own or compromise positions on others.

brought the proposal to him, stating that the library would not accept proposals except through the mediator. That same day, the mediator called Conable and told him that he was forwarding the union's proposal.

The employer's response to the union's October 3 proposal was again influenced by what it perceived to be union misconduct.[25] Conable testified that members of the library board of trustees received the proposal from the union on October 5. Conable received a copy of the proposal from the mediator on October 7, but it was October 10 before he received the copy sent to him by the union.

Around October 8 or 9, according to Conable, St. John called and asked whether the employer was going to accept the union's October 3 proposal. Conable replied that, at that point, the employer would not. Conable did not recall any discussion of the substance of the proposal in that conversation, nor did he recall St. John requesting a meeting at that time. Conable did testify that if there was any discussion of a meeting, he would have told St. John to arrange it with the mediator, as it was his belief that St. John was attempting to end-run the mediation process. According to St. John, the employer made no direct response to the union concerning the October 3 proposal.

St. John testified that he talked to the mediator on October 9 and was told that the library team did not want to meet, and that the employer had told the mediator that the WPEA had the library's last and final offer. St. John testified that he was very concerned, and asked the mediator whether the library would lock out the union's members or implement its offer. At that time, according to St. John, the mediator said he did not think the employer would implement.

On October 10, Conable received a letter from the union dated September 25, 1985, wherein the union invited Conable (and others, including Watson and

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25 Issues regarding delivery of this proposal are detailed in discussion of allegation 6.j. of the library's amended complaint.

the trustees) to a hearing to be held October 4 at WPEA headquarters in Olympia, for the purpose of considering placing Conable and the others on WPEA's "unfair to labor" list.[26]

Efforts to Re-Start the Process -

St. John felt that he "... had to do something, I just couldn't keep going on, you know, without taking some positive steps." St. John called Hurlburt on October 10, and they discussed the status of the negotiations. St. John told Hurlburt the union wanted to meet and would be willing to meet in a "mini-team" format if that would work. Hurlburt replied that the library was very upset at some of the union's tactics in the press and with the board of trustees. St. John responded that the union felt that it was being stiff-armed, that the library would not meet or give the union any proposals, and that left the union with no choice other than to try to exert some pressure. Hurlburt believed that St. John was seeking some method to get the parties together again, but he also believed that St. John had told him that he wanted their discussion to be "off-the-record", so he did not tell anyone else about the conversation.

Around October 10, Conable called the mediator to relate his concern that "mail games" were being played by the union, because Conable's mail from the union was arriving significantly later than the same documents addressed to other library officials. The mediator said he would talk to the union. St. John testified that either Hurlburt or the mediator talked to him about the problem. On October 11, the union wrote to Conable, giving assurance that it did not intend any delays of mail it addressed to him. Copies of that correspondence were not directed to the trustees.

The parties had no further direct communication until the latter part of October, when St. John sent a letter to Conable, Watson, and the trustees, warning them not to take action against WPEA members participating in union "patron nights" at the library. That letter indicated the union's willing-

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26 There is no record that Conable responded to that letter.

ness to get back to the bargaining table. In response, Conable wrote to the mediator on October 24 saying, among other things, that if St. John wished to meet, he should contact the mediator and request a meeting.[27]

On October 31, St. John sent another letter requesting a meeting. Cameron called Conable during the early part of November to ask whether the library intended to meet. At that time, Conable told him they were considering what response would be appropriate.

St. John apparently called the mediator on or about November 12 to request a meeting, and confirmed that request in writing to the mediator the following day. On or about November 12, the mediator called Conable and told him that St. John wanted to meet. Conable agreed to meet, and a mediation session was set for December 5. Conable testified that the library had not requested prior meetings, but neither had it rejected any suggestions for meetings at an earlier time. He reiterated his understanding that the scheduling of another meeting was to be in the hands of the mediator. Conable recalled the December 5 date as being the first time that all the parties were available.

The December 5 Mediation Session -

The mediator met first with the employer in caucus, and the union's public relations activities were the first subject of discussion. The union's October 3 proposal was then reviewed point-by-point. Hurlburt's notes reflect that a detailed response to that proposal was discussed (in which the employer was to agree to a number of areas of the union proposal, while holding to its position on a number of others), but the employer made no written proposals at that time.

The mediator next met privately with the union caucus. According to St. John, the mediator discussed the employer's response to the union's October 3 proposal. St. John summarized the employer's position as:

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27 St. John testified that he obtained a copy of Conable's October 24 letter from the mediator. A WPEA date stamp on the letter shows receipt on November 1.

> ... for the most part it was no change. And basically, we went through about every area, and in summary, where we had conceded in the proposal, for the most part they had accepted our concessions, but where we were asking for something, in general they did not agree. And they would be the pay plan, the pay step plan, the insurance benefits, the vacations, sick leave, and on and on.

The union's representatives were again "very frustrated", feeling they had been unable to find out why the library had rejected the proposal, and what the union needed to do to get a proposal from the employer. The union asked the mediator what it could do to meet the library's needs.

St. John testified that the mediator reported that the library believed the union's October 3 proposal would cost 24% over a three year period, and that the pay step plan by itself would cost anywhere from 5% to 18%. The union thought those figures were "outrageous", and gave the mediator a typewritten list of questions about the bargaining process to deliver to the library team. The union also asked the mediator to get information as to how the employer was coming up with its numbers.

St. John testified that the mediator returned from the employer's caucus with word that the management said that it had made its last and final offer; that certain matters could be "fine-tuned"; but that where the employer believed further concessions were necessary, it would not issue another proposal. The mediator indicated, however, that the employer did not believe the parties were at impasse. The union did not believe the "fine-tuning" would work. It then proposed to the mediator that the parties use the language of the OPEIU contract, but make the pay step plan automatic. The union also proposed a three-year agreement retroactive to December 26, 1984, with a wage freeze for the first year and 6% increases each of the next two years. The mediator took that proposal to the employer.

The employer responded by proposing that the new contract include the issues which had been agreed to by the parties during negotiations, with the language of the old contract being used where no changes had been agreed

upon. The union agreed. The employer suggested certain other minor changes, which were also acceptable to the union. According to St. John, the mediator indicated that the employer would have to do some costing out of the union's proposed step plan and wage increases.

The union indicated through the mediator some areas in which it might have flexibility, including perhaps asking less than 6% if retroactivity was included, and deferring implementation of the step plan and the dental plan to save the employer some money. The mediator went to the management caucus, and returned with the statement that the employer would need time to compute the cost of the union proposal.

The mediator then took St. John with him to the employer caucus, where St. John and Conable discussed the parties' positions. As with other issues, the parties have differing views of what transpired.

With regard to costing out the proposal, St. John's recollection was that Conable said he would compute the cost of the union proposal as fast as possible. St. John also recalled agreement that Conable would not delay the costing in order to delay an implementation date for a wage increase, and that Conable would supply the figures to all parties before the next mediation session if they were available.

Hurlburt's notes and the recollection of both Hurlburt and Conable were otherwise. Conable recalled the library stating that it would need time to cost out the union proposal, but did not remember any discussion about the employer providing cost data to the union. He assumed that the union already had the data available by which to cost out the impact of any proposals based on the information which the employer had supplied to the union in September. Conable testified that he had not understood the mediator to ask him to provide cost data to the union. Conable understood discussion of supplying information in advance of the January 7 mediation session to relate to an employer counterproposal, if one was appropriate, or to "fine-tuning" that might be necessary to reach agreement at such a meeting. Conable testified,

further, that the employer viewed the union's new proposal as emphasizing people at the top of the pay ranges, in contrast to previous union rhetoric which seemed to focus on people on the lower end of the pay scale. The employer viewed that as a signal and was, according to Conable, considering departing from its prior economic proposal so as to provide for some kind of progression through the wage ranges for all unit employees. Hurlburt did not recall either that the union requested cost data or that the employer had promised to provide it. He simply recalled that the employer needed to cost out the union proposal, because it was quite complex.

The parties agreed to postpone the unfair labor practice hearings which were at that time scheduled for later in December. St. John also offered to defer until February 1 a request which the WPEA had pending before the Vancouver area labor council, to place the library on an "unfair to labor" list.[28]

St. John confirmed the union's proposal of December 5 to the employer by letter on December 6. That letter did not include a request for cost information.

St. John recalled that he and Conable talked by phone on more than one occasion between December 6 and January 7, but they apparently did not discuss the employer providing cost data regarding the union's wage proposal. Conable recalled only one conversation with either the mediator or St. John, but recalled no discussion of a request for cost data.

The January 7, 1986 Mediation Session -

The mediation session on January 7 began at approximately 1:00 p.m. The union had not received any cost information from the employer.

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28 St. John did in fact write to the labor council requesting that they hold the hearing on the "unfair" listing as scheduled, but delay placing the library on the unfair list until February 1, 1986. St. John did not provide the library with copies of that correspondence. Shortly thereafter, both parties received notification from the labor council that the library had been placed on the unfair list effective the date of the labor council's action. St. John did not contact the library about that action.

The mediator met first with the employer's representatives. The union's December proposal was discussed, as were the employer's revenue expectations. Essentially, the employer believed that the union's proposal was still too costly. Conable had calculated that the cost of the first year of the union's proposal was $125,000 in excess of the library budget that had been adopted in December.[29] Conable testified that the library had never taken the position that it was unable to afford what the union was proposing, but rather that its position was based on what was reflected in the competitive labor market, and he recalled a discussion to that effect in the employer caucus at the January 7 meeting.[30] Under cross-examination as to what sort of an economic proposal would have been acceptable to the employer, Conable testified that the proposal the employer had on the table was acceptable.

Hurlburt's notes reflect that the mediator attempted at several points during the January 7 discussion to obtain a counterproposal from the employer. The employer's notes reflect that both Hurlburt and Venturini queried the mediator about a statement attributed to him in a press report, to the effect that the employer would be making a counterproposal at the meeting. Both of those employer representatives were claiming no expectation that such would be the case. Hurlburt's notes reflect that the employer did not view the union proposal as "abandoning" or conceding anything by picking up parts of the old contract. The notes report Conable saying that the union economic proposal had not changed, and Conable testified that he meant that the cost of the WPEA economic proposal had not significantly changed, although it was in different form. The notes go on:

> Conable went on to say that when the employer representatives prepared their economic proposal, they tried to come in with a realistic proposal which the District could fit into their budget and hold with it. It has

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29 He testified, however, that the budget could have been revised if necessary.

30 Conable also testified, however, to being concerned at that time about the potential of revenue problems in 1987, because of data which he had just received from the Department of Revenue.

> been hard bargaining but that is the risk you take when you come in with what is your bottom line. The union merely took their outlandishly high original proposal and dropped back a little bit.

The employer took the position that it had a last and final offer on the table, and that the union's December proposal was unacceptable.

The mediator told the union that the employer would not accept the December 5 proposal, and that the employer's earlier proposal was its last and final offer. St. John testified that the mediator told the union of the employer's claim that the union proposal was $125,000 over the budget, and that the best that the employer could do was to provide for maintenance of benefits and automatic steps in the pay plan, with no across-the-board increases. St. John also recalled the mediator saying that the employer had brought up the possibility of layoffs being necessary in 1987. The union caucus was upset, since they believed that the employer was planning to hire more librarians and buy a bookmobile.[31] The union then asked the mediator to request several things of the employer: (1) To put its negotiation position in writing; (2) to provide to the union information as to the basis for any proposed layoffs, or an explanation of any financial difficulties, and (3) to provide information to the union concerning salary increases that had been provided to management employees of the library.

According to St. John, the mediator returned in about 20 minutes with a report that the employer wanted a few minutes to put together a proposal. St. John testified that the mediator reported at that time that the employer would not maintain the step plan with benefits intact, and that the employer wanted the employees to pay some costs in the medical area. The mediator is quoted as having told the union he did not believe that the employer would disclose the salaries of management employees of the library. St. John became very angry and upset at what he perceived to be a "fluid" employer position, and asked to see the employer position, in writing.

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[31] Conable testified that the library planned to hire some librarians into positions which had remained unfilled during the prior year.

The mediator returned with a typed proposal on which had been handwritten "1/7/86 Mediator Proposal". The employer's notes reflect that the employer was reluctant to present the proposal as its offer, since it wanted the July 19 offer to be the one which was implemented if impasse was declared. According to those notes, the mediator offered to present the employer's proposal as a "mediator proposal" to alleviate that concern. The proposal provided that the language of the prior contract between the library and OPEIU was to be in effect for all areas other than those changes agreed upon by the parties prior to mediation. The proposal included a pay plan with automatic increases. Beginning July 1, 1985, employees were to receive a 2% increase for each 1040 hours of work completed. Leave time would not be counted in determining pay increments. A 2% wage increase was proposed for all employees, effective January 1, 1986. Pay for work out-of-class was proposed at the first step of the pay range for the higher classification or 4% over the employee's regular rate, whichever was greater. Pay for employees promoted to a higher level was proposed at the first step of the higher level or a 4% increase, whichever was greater. Pay for employees working on Sunday was proposed at their regular pay plus 50 cents per hour. Sick leave accrual was proposed at the rate of one hour of sick leave for every 30 hours actually worked (excluding any leave time), and vacation accrual was proposed at one hour of vacation leave for every 24 hours actually worked. The employer proposed to continue making insurance premium payments at 1985 rates, with the cost of any premium increases to be evenly split between the employer and employee. Conable testified that the "mediator's proposal" put forth by the library exceeded the cost of the library's prior proposal, as well as the library's budget.

The union's bargainers spent some time receiving explanation of and reviewing the new proposal. St. John testified that the proposed pay range used the rates from the lower end of the wage scale contained in the OPEIU agreement, and added 10% to 12% to the upper end of that scale to create a range of pay through which employees would progress at 2% increments. The union caucus thus reasoned that people hired at the end of 1987 would enter employment at wage rates which had been in effect in 1984. The union believed that was

unfair, and so proposed that the employer raise the base wage by 2% every six months during the life of the contract. The union asked for clarification regarding the insurance proposal. The union gave the mediator a written request, to be conveyed to the employer, for cost figures on the union's December 5 proposal, cost figures for the latest employer proposal, and for a statement as to whether the library was claiming an inability to pay for the December 5 union proposal.

The mediator returned with a report that the employer would not increase the base wage every six months, and that it would not consider flexibility in the sick leave or medical insurance areas. According to St. John, the mediator told the union that the employer would study the union's request for information, but would not reply that day. The union then decided that the offer was "just not good enough", and declared that the parties were at an impasse.

Conable testified that the employer thought that the union's declaration of an impasse made its request for cost data moot.[32]

Summation on the August through January allegations -

"Take It Or Leave It" Proposals -

In allegation 4.b., the union claims that the library engaged in a "take it or leave it" approach to bargaining, by repeatedly expecting the union to make counterproposals, while refusing to itself counterpropose.

Failure of a party to offer a counterproposal is not necessarily an indication of bad faith. McCourt v. California Sports, Inc., 600 F.2d 1193 (6th Cir., 1979). The mandate of the statute is not that a party make a counterproposal, but that parties enter the process with the objective of reaching agreement if possible. To that end, parties are expected to explain their

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32 On February 27, 1986, St. John submitted a request to Conable for a variety of detailed cost information concerning both bargaining unit employees and exempt employees of the library. The employer responded with the information, which included individualized data sheets for each unit employee, as well as a variety of other data.

positions or their reasons for the rejection of the positions of the other party, so that their rationale may be properly understood and new proposals formulated. City of Snohomish, supra; Federal Way School District, supra.

The employer offered evidence that it had not requested a counterproposal from the union at the August 29 mediation session, but it is a reasonable conclusion from the employer's rejection of the union's wage proposal, and from its failure to offer any proposals of its own, that the employer expected the union to make the next move. The record does not reflect that the employer provided any guidance to the union as to modifications of the union proposal which might make it acceptable to the employer. Although it was made clear that the union proposal was too costly, the union was left with the need to guess how to fashion a counterproposal which might be acceptable to the employer. The initial response to the union's October 3 proposal made by the employer at the December 5 mediation session was not in written form. Although the employer had indicated certain subjects on which it would consider making a counterproposal,[33] it for the most part offered no guidance to the union as to how to fashion an acceptable counterproposal concerning even those areas. St. John testified that the mediator reported to the union on December 5 that the employer was taking the position that it would not make counterproposals in the areas where it believed that further concessions were necessary. With the employer's rejection of the union proposal on January 7 because of its "cost", there is no indication in either the notes from that meeting or in Conable's testimony that the employer provided any information as to what, other than the proposal the employer then had on the table, would be acceptable in terms of cost.

Had the employer provided extensive explanation and guidance to the union earlier in the negotiations process, such conduct could be considered in mitigation of its conduct during the complained-of time period. The employer's concerns regarding certain of the union's proposals were clear,

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[33] The employer's response concerning specific articles of the proposed agreement is delineated in discussion of allegations 2, 3, and 4.a., following.

but the Examiner does not find that such was the case concerning the majority of the topics on the bargaining table. The employer consistently failed to communicate its rationale for rejection of union proposals, or explained its rejections in terms of "management's rights" or "we don't want it in the agreement". Its unwillingness, even at the hearing in this matter, to indicate that an economic proposal other than the one it had on the table might be acceptable, must be said to have had a deleterious effect on the bargaining process. This approach by the employer was not in keeping the employer's good faith obligation.

Refusal to Meet and Refusal to Communicate Except Through Mediator

The WPEA claims in its allegation 5.b. that the employer refused to negotiate with union representatives, refused communications except through the mediator, and refused to meet in mediation between August 29 and December 5 despite repeated requests from the union and proposals submitted by the union during that time.

It is elementary that good faith bargaining requires contact between the parties. One party cannot continually refuse to meet for in-person negotiations when the other party requests such meetings. Insistence upon communicating through the mail or by telephone does not comport with the good faith obligation. Fountain Lodge, Inc., 269 NLRB 674 (1984), and cases cited therein. In Imperial Tile Company, 227 NLRB 1751 (1977), the NLRB affirmed a finding of a violation where a respondent which had initially met several times with a union ceased to meet at all for a period of time. An employer which refused to meet with the union despite efforts by the union and a mediator to schedule meetings was in violation of the statute in United States Gypsum Company, 259 NLRB 1105 (1982), enf. 701 F.2d 169 (4th Cir., 1982). See, also, Interstate Paper Supply Co., 251 NLRB 1423 (1980). On the other hand, where a one-month hiatus in bargaining was caused by the mediator's reluctance to schedule what might be a fruitless meeting, the employer was not found guilty of a violation. Embossing Printers, 268 NLRB 710 (1984), enf. 742 F.2d 1456 (6th Cir., 1984).

It is clear from the record that both parties were aware at the end of the August 29 mediation session that the mediator had recessed matters pending his development of a proposal to attempt to break the stalemate. The employer reacted by waiting for the mediator's proposal, and by waiting for the mediator to schedule any further meetings, while the union continued its activist approach.

The record is clear that, while the mediator tentatively scheduled a mediation session for October 2, he was also instrumental in converting that meeting into a private meeting between the mediator and the employer. The Examiner does not assess the employer with fault for the cancellation of the mediation session tentatively scheduled for October 2. Other actions on the part of the employer during this period are not so blameless.

It is clear that the union authored numerous letters and proposals and made several requests to meet during this period. The employer may well have believed that the union's September 9 letter suggesting interest arbitration was an attempt to "end-run the process", but it manifested its view by apparently refusing to engage in direct communications with the union during this critical period in bargaining. Such conduct can hardly be described as indicative of a good faith effort on the part of the employer to communicate through collective bargaining. The mediator sent the union's October 3 proposal directly to the employer, even though the union had already sent a copy to the employer, and all responses by Conable to correspondence from St. John were directed to the mediator. The record reflects only two direct contacts between the employer and the union. One of those was a telephone call placed by St. John to Conable, during which Conable stated that the employer would not accept the union's October 3 proposal. The second was St. John's telephone call made to Hurlburt in an attempt to get the parties together to meet. The Examiner also notes that despite the mediator's proposal, despite the union's October 3 proposal, despite St. John's call to Hurlburt in early October, despite St. John's letter to Conable in late October, and despite Cameron's call to Conable in November, Conable did not actually agree to a meeting until the mediator called him in mid-November.

It is difficult to understand how the union's attempts to meet with the employer during this period could be viewed as an inappropriate circumvention. After all, the parties to the collective bargaining process were, and are, the employer and the union. The mediator was available to attempt to facilitate, but the obligation of the parties was to negotiate with each other, rather than with the mediator. The Examiner finds that the employer's failure and refusal to communicate with the union and its refusal to meet were a violation of its duty to bargain.

Refusal to Explain Wage Proposals -

Bargaining in good faith requires the parties to the collective bargaining process to explain and to provide reasons for their proposals, or for their rejection of the other party's proposals. Federal Way School District, supra; City of Snohomish, supra; International Telephone and Telegraph Corp. v. NLRB, 382 F.2d 366 (3rd Cir., 1967); Anacortes School District, Decision 2544 (EDUC, 1986); Soule Glass and Glazing Co. v. NLRB, 652 F.2d 1055 (1st Cir., 1981). The reason for such a requirement is elementary: Adequate information concerning proposals is necessary in order to effect the type of communications necessary for good faith bargaining. The party receiving a proposal must itself fulfill the obligation to make a sincere effort to understand the position of the other, to breach differences and, if possible, to reach an agreement. Although information about numerous subjects has been found to be germane, information concerning wages is presumptively relevant to the bargaining process. San Diego Newspaper Guild v. NLRB, 548 F.2d 863 (9th Circ., 1977). NLRB v. Associated General Contractors, 633 F.2d 776 (9th Circ., 1980), cert. den. 452 U.S. 915 (1981).

The August 29 Mediation Session -

Paragraph 6.a. of the union's complaint alleges that the employer did not provide an explanation or calculations in support of the employer's claim that its wage proposal constituted a 20% increase in costs over the life of the agreement. The union alleges that a request for that information was made during the August 29 mediation session.

Testimony and documentary evidence from both sides makes it clear that the union questioned the employer's cost calculations during the course of the August 29 mediation session, and that the mediator conveyed the union's concerns to the employer. Conable's testimony and Hurlburt's notes make it clear that the employer spent a good deal of time explaining the impact of its proposal to the mediator. This was an admittedly complicated task, given that the employer's proposal completely restructured the existing wage system. After that explanation, the mediator conveyed information from the employer to the union, apparently at least with regard to the 20% figure being questioned. Whether additional cost explanation was provided by the mediator to the union caucus is an unanswered question in this record.

Both employer representatives testified that they had not understood an information request to have been made. The union made no follow up inquiries or requests for information. Evidence elsewhere in the record indicates that where the employer understood an information request to have been made, it provided the information, and did so reasonably promptly even given requests requiring a good deal of time to compile. The Examiner finds no intent by the employer to delay or obstruct the process here, nor any real deleterious effect on the bargaining process. No violation is found on this incident.

The December 5 Incident -

In allegation 6.c., a claim is made that the employer agreed to provide figures detailing the employer's calculation of the cost of the union's December 5 wage proposal, but that the employer never provided such figures.

The discussion at issue occurred in a face-to-face meeting between the parties. St. John recalled an agreement that the employer would provide calculations on or before January 7. Hurlburt and Conable recalled no such agreement, or even a request by the union. The Examiner finds no evident reason to discredit the testimony of either side.

There was, in fact, a disagreement concerning the cost of the proposal. When the parties met on January 7, the employer told the mediator that the

union's request was $125,000 over the employer's budget, and the mediator conveyed that information to the union.

The complainant has the burden of proof on this issue. Given that the evidence elsewhere in the record indicates that the employer did respond to requests for information when it understood such requests to have been made, the Examiner finds that the complainant did not carry its burden of proof on allegation 6.c.

The January 7 Incident -

Allegation 6.d. concerns a failure of the employer to respond to a request for information made by the union at the January 7 mediation session.

There is no question that both parties understood that a request for information had been made on January 7. Neither is there any question that the employer did not respond to that request.

The employer defends that it thought the request moot because of the union's declaration of "impasse". That defense is without merit. The existence or non-existence of an "impasse" is a legal determination to be made by the Commission, not a matter controlled by the statements of parties in the heat of negotiations. When such a determination is to be made, it is hampered by the "inherently vague and fluid ... standard" applicable to the concept of "impasse".[34] The existence of a legally cognizable "impasse" is conditioned on there having been good faith bargaining on the part of the party claiming benefit from the impasse, Federal Way School District, supra, so that the several "refusal to bargain" violations found against the employer in this case preclude it from the successful assertion of an "impasse" defense here. Further, an "impasse" at most suspends, and never terminates, the duty to bargain. The employer may not take action disparaging to the collective bargaining process, or action amounting to a withdrawal of recognition of the

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34 NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342, 352 (1958) [Mr. Justice Harlan, concurring and dissenting in part.]; Pierce County, Decision 1710 (PECB, 1983).

union's representative status, yet what the library did here, at the least, was fail to deliver information that was relevant to the bargaining process unless the underlying wage issue were to have been withdrawn or resolved. A violation must be found.

The fact that the employer provided information to the union in response to a subsequent request does not moot or excuse its improper assessment of its obligations following the January 7 meeting.

Putting Forth Confusing and Misleading Figures -

The August 29 Incident -

The portion of allegation 7.b. which is timely claims that the library put forth misleading and confusing figures in support of its proposals on August 29 and December 5, 1985, with the intent to frustrate negotiations and avoid agreement. Good faith bargaining requires that statements made during the course of bargaining be supported, on request, by available proof as to their accuracy. International Telephone and Telegraph Corp. v. NLRB, supra. NLRB v. Truitt Mfg. Company, 351 U.S. 149 (1956).

As noted in relation to allegation 6.a., above, the parties' August 29 discussion regarding costs centered around the employer's estimate that its proposed wage package would cost 20% over the life of the agreement. There was extensive discussion of that figure in the employer's caucus when the mediator raised the cost issue pursuant to the union's concerns, and the mediator subsequently reported to the union that the 20% was the difference between steps A and D of the old agreement, which were equivalent to the training and scale rates of the employer proposal.

The August 29 discussion was by no means the first discussion of the wage issue during the negotiations, and was not to be the last such discussion. The record indicates an earlier exchange wherein the employer told the union it believed that employees moving from the training rate to the scale rate would receive a 20% increase over the life of the agreement. On another occasion, the employer claimed its proposal cost 10% over the life of the

contract, and that figure also appears in the employer's notes from the August 29 mediation session. The employer's explanation of its figures appears to have been consistent throughout.

The Examiner hesitates to comment upon the veracity of the calculations of either party, given the complexity of their respective proposals, but notes that the parties openly discussed the employer's methodology (and the union's exceptions to it) for calculating the cost of wage increases for bargaining unit employees. The Examiner does not find the allegation concerning the August 29 incident to be sustainable on the record made.

The December 5 Incident -

The second part of allegation 7.b. concerns misleading and confusing figures put forth by the employer in support of its proposals on December 5.

The bulk of the December 5 meeting was spent in discussion of the union's October 3 proposal and the union's December 5 proposal. The union clearly questioned the employer's analysis of the cost impact of the union proposals, but this allegation does not speak to the union's proposals. The Examiner finds no evidence of record to support the allegation with respect to employer proposals.

Misrepresenting Effect of Proposal -

In allegation 7.f., a claim is made that the employer claimed (through the mediator) that the January 7 "mediator's proposal" provided for a 2% pay increase for employees every six months, while in fact a significant number of bargaining unit employees could not receive such increases during the life of the proposed agreement.

The so-called "mediator's proposal" of January 7 was a two page, typewritten document with certain handwritten amendments added by the mediator. Three of the paragraphs included notation that wage increases would be based on hours of work completed by the employee. A separate, one sentence paragraph noted that leave time would not be counted toward earning increments. That

wage system clearly involved a significant change in concept from prior proposals and from the system then in effect in the library. There is no evidence of record that either the mediator or the employer represented the proposal otherwise, or even that St. John or the union caucus understood it otherwise.[35] The Examiner does not find the allegation sustainable on the record made.

Reprisals Against Employees for Changing Representation

Paragraph 2 of the union's complaint alleges that the library advanced a number of "take-away" proposals in retaliation for the employees having changed their union representation, with the intent of undermining or breaking the union. The amended complaint lists eight such subjects: Elimination of a six-step pay plan, elimination or reduction of sick leave benefits, reduction of vacation benefits, elimination of certain overtime incentives, elimination of family medical benefits, elimination of shop steward rights and release time, elimination of certain pay increases given upon promotion, and elimination of certain union security provisions. The facts concerning each of those subjects are reviewed in the materials which follow, prior to a collective discussion of their merit.

Elimination of a Six Step Pay Plan -

The 1983-84 contract between the library and the OPEIU contained a six step pay plan and a separate pay rate for the "page" classification.[36] That pay plan was a change from the pay plan in effect in prior contracts. It provided for approximately 4% between steps. In 1983, bargaining unit employees received step increases on specific dates, and a minimum 2% general wage adjustment. About a 4% increase in rates was effected in 1984. With

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35 St. John's testimony was simply that the new pay system as presented in that proposal was a "system of two percent pay increases based upon the number of hours worked, in approximately six-month increments."

36 The rates of pay were in Appendix A of the document. Language regarding pay was contained in Article 18 of that agreement.

certain exceptions, employees due to receive step increases in that year received them on June 26, 1984. All future step increases were to be subject to negotiation.

Article 11 of the WPEA's initial proposal specified a six step salary grid with 5% between steps and five percent separations between classifications. Automatic step increases were called for at established time intervals.[37] A longevity pay plan was proposed for implementation on December 26, 1984, with benefits ranging from 2% of base pay for 5 years of service up to 10% of base pay for 25 or more years of service. Similar to the OPEIU contract, the WPEA's proposal contained language to the effect that no employee would suffer a wage or benefit reduction.

The letter covering transmittal of the library's initial proposal contained the following in addition to emphasizing that the employer desired to deal with economic items as a "package":

> The Employer's attached contract proposal is intended to be a complete counter to the WPEA proposal ... The Employer recognizes the importance that the Union has placed upon wage rates in its proposal. In response, the Employer proposes to achieve improvements in wage rates by shifting costs from insured benefits and compensated time off the job. Historically the membership of this work unit has placed great importance on these benefits and the combination of wages and these benefits reflected this emphasis. This counter reflects the new emphasis.

Article 6 of the library's initial proposal set forth a pay plan which included steps entitled "training", "promotion", and "scale", together with an experience bonus, as follows:

* For the page classification, the library proposed a training rate approximately 2% greater than had been provided in the OPEIU agreement for an entry level page in 1984. The scale rate proposed for pages was approximately 6% higher than the highest 1984 rate for pages.

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37 The union also proposed that certain classifications receive additional pay increases effective December 26, 1984, over and above the salary grid and general wage increases.

* For the Assistant I through Assistant V classifications, the training rate proposed by the library was the same as the first step rate for apparently comparable classifications in the 1984 pay plan. The promotion rate[38] proposed for those classifications was approximately 15% greater than the proposed training rate, falling in all cases between the fourth and fifth steps (steps D and E) of the 1984 pay grid. The scale rates[39] for the Assistant I through V classifications were, in all cases, about 4.3% higher than the promotion rates proposed for those classifications, but were approximately 2% less than the highest rate on the 1984 pay grid.

* Ten year bonus rates were proposed for the Assistant III, IV and V classifications, but only for time spent in those classifications. The rates proposed were approximately 5% greater than the scale rates for those classifications, and were about 3% greater than the top step under the OPEIU agreement.

* The twenty year bonus rate applied only to the Assistant V classification, and was 5% greater than the ten year bonus rate for that classification.

The library's proposal omitted "maintenance of benefits" language contained in the OPEIU agreement.

Conable testified, at length, about the library's financial picture and its revenue sources. To summarize, he noted that the library's levy rate had reached $0.49 per $1000 of assessed valuation by 1985, which was only one cent below the legal maximum rate. The library anticipated that the levy rate would reach the legal maximum in 1986. If assessed valuation in the library's service area were to decline, or new construction were to falter, the library's revenues would be adversely affected. He testified that the library had been attempting to move to a "scale" pay concept since 1980, as it desired to have one primary pay rate for each classification in the

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38 Meaning the rate which employees would receive if they promoted into the classification from another position with the library.

39 Employees in these classifications would normally move to the scale rate after 24 months in the classification.

bargaining unit. The library's bargaining team believed that the 1985 negotiations might constitute their best chance to move to such a system for two reasons: First, the majority of the employees in the bargaining unit were then at the lower end of the salary grid; and second, the inflation rate had stabilized, possibly making it easier for those employees at the top of the salary range to "mark time" until the scale rate reached them.[40]

Conable stated that the library's bargaining objectives did not change as a result of the certification of the WPEA, although the form of the proposal was somewhat different. It was his perception that the WPEA placed a greater emphasis than the OPEIU on people at the lower end of the pay scale. He testified that the library's proposal was structured in response to his perception of the WPEA's emphasis.

The economic proposals were discussed at the February and March meetings, where explanations were provided by each side regarding their proposed systems. Conable testified that the employer's representatives had costed out the employer's proposal on an employee-by-employee basis, and that they "did the best we could" to cost out the WPEA proposal on the same basis. His recollection was that the union's opening proposal had a cost increase of approximately 40%. St. John testified that he believed the union's opening economic package was in the range of 30% to 40%. The employer's notes of the March 14 meeting indicate that Conable told the union that the employer believed its proposal would provide 2% for all employees, and that more than half of the bargaining unit employees would receive up to a 20% increase over the term of the contract.

There was discussion of the pay plan at the April 4 meeting, when each party came to the meeting expecting the other to present a new economic proposal. Both parties held to their economic proposals, with the union believing that its proposals "... reflected the true state of the economic needs." At that

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40 On the employer's plan, those over scale would be "frozen" at their wage rate until the scale caught up to them or they became eligible to move to one of the bonus levels.

time, according to Cameron, the employer told the union that it believed its proposal was a 10% increase in employer costs over the duration of the proposed contract, while the WPEA proposal would increase costs by 42%.

The parties delivered new economic proposals to one another immediately in advance of the April 24 negotiation session. The only change in the employer's proposal at that time was to convert all elements of the pay plan to hourly rates, and that was done in reaction to a decision of the Supreme Court of the United States[41] which made the Fair Labor Standards Act applicable to units of local government. The union's new proposal called for retention of the salary schedule format contained in the OPEIU agreement. The union proposed automatic step increases on successful completion of a trial service period and on the anniversary date of employment.

On May 9, the union reiterated its proposal concerning step increases. The union accepted the employer's language regarding hourly compensation, and proposed a method of converting the monthly wage rates for computing the compensation of employees working less than full-time. The union continued to propose the OPEIU salary schedule format. The employer did not change its wage proposal on May 9, but provided the union with two documents, one detailing employee turnover in the bargaining unit, and the other comparing area cost of living increases with increases received by bargaining unit employees. The parties had significant disagreement over the employer's wage increase figures, with the union believing it inappropriate for the employer to calculate increases received on promotion as part of those figures.

At the August 29 mediation session, the union indicated acceptance of the concept of the employer's new wage system, but proposed a training wage approximately 8% higher than proposed by the employer, and a scale rate about 2% higher than proposed by the employer. The employer rejected that proposal, as well as the proposal developed thereafter by the mediator.

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41 Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985).

The next proposal by the union was contained in its October 3 document framed as an outline of "concepts." The union continued to indicate acceptance of the employer's wage plan format. It proposed a training wage at the same rate as the entry level of the OPEIU agreement, a promotion rate at step D of that agreement (slightly less than the employer's proposal), and a scale rate at step E of the OPEIU agreement (also slightly less than the employer's proposal). It also proposed that the three lower level classifications move to the scale wage in one year, rather than in two years. The union proposed experience bonuses of 5% over scale for Assistants I and II, basing that experience on five years of library service, and proposed ten year bonuses of 5% for Assistants III, IV, and V. Employees who completed twenty years of service were to receive an additional 10%.

The employer held to its prior proposal at the December 5 mediation session, after which the union proposed returning to the OPEIU wage plan, but with automatic pay steps.

On January 7, the employer initially rejected the union's December 5 proposal and held to its own wage proposal. Later in the meeting, the mediator brought a "mediator's proposal" from the employer, which included a pay plan with automatic step increases driven by the number of hours actually worked by employees (rather than also including time spent on paid leaves). That proposal included an increase of at least 4% for employees who promoted from one classification to another.

Elimination or Reduction of Sick Leave Benefits -

A detailed discussion of negotiations concerning sick leave is presented in connection with union allegation 7.c., at pages 19 through 23, above. As noted there, the parties reached a tentative agreement on sick leave on April 24, 1985, providing for accrual of sick leave at the same rate as was provided in the library's prior contract with the OPEIU.

On May 9, the employer put forth and explained a new proposal, which included a 50% reduction in the sick leave accrual rate coupled with an improvement from the vacation benefits previously proposed by the employer. The employer

maintained that as its official proposal from that time on,[42] and it implemented the sick leave accrual rate proposed in the May 9 package.

Reduction of Vacation Benefits -

The collective bargaining agreement between the employer and the OPEIU provided, at Article 7, that employees would begin accruing vacation after completion of their probationary periods. Accrual rates ranged from 16 days per year for employees with one year of service to 28 days per year for employees with 15 or more years of service. Sick leave and holiday benefits were available, when appropriate, within a scheduled vacation period. Cashout of unused vacation was available.

Article 10 of the WPEA's initial proposal included no change of vacation accrual rates or of the provisions regarding sick leave and holidays during vacation periods, but no provision for cashout. Vacation scheduling was handled differently from the OPEIU contract.

According to Conable, the employer believed that layoffs and service disruption would result unless the employer curtailed compensated leaves that had grown "to levels that were counterproductive and unsupportable." Article 11 of the employer's initial proposal thus restricted vacation eligibility to employees working on a regular basis for 20 or more hours per week and reduced accrual rates from existing practice. Under the employer's proposal, employees with one year of service would earn only five days of vacation, and the maximum vacation was reduced to 20 days for employees with 21 or more years of service. The employer's initial proposal continued the same sick leave, holiday and cashout provisions of the OPEIU agreement, but called for a change of vacation scheduling to a first-come, first-served basis.

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42 The parties did discuss sick leave during the course of mediation sessions, and the employer indicated some willingness to modify its proposal on sick leave accrual in connection with the union's proposal that the parties return to the OPEIU contract with the exception of wages. The January 7 "mediator's proposal", which in fact was authored by the employer, also included modification of the sick leave accrual rate.

By April 4, the parties had agreed on certain vacation language, including cashout, but had not agreed on accrual rates. On April 24, the union proposed a two-tier system of vacation accrual, reducing the accrual rate for new employees from the rates under the OPEIU agreement.

The union's proposal of May 9 retained its two-tier proposal on vacation accrual rates. On May 9, the employer revised its proposed vacation accrual rate to provide approximately 11 days annually at the low end of the scale, and about 26 days annually after 21 years.[43] The employer maintained that as its official proposal from that time on, although various alternatives were discussed. In connection with its October 3 proposal, the union acknowledged that the library's vacation benefits exceeded prevailing practice in the market area and proposed a reduction of vacation accrual rates for all employees. The January 7 "mediator's proposal" drafted by the library provided that employees would earn one hour of vacation leave for each 24 hours actually worked, representing a substantial departure from all past methods of computing vacation accrual. The vacation accrual rate implemented by the employer was the one proposed in its May 9 package.

Elimination of certain overtime incentives -

The OPEIU contract had provided for pay at the time-and-one-half rate for authorized work in excess of eight hours per day, for all work on Sundays, and for work on a seventh day in one week. There were some provisions for compensatory time off in lieu of premium pay.

The WPEA's initial proposal included the same time-and-one-half premiums as the OPEIU contract, and added premium pay provisions for work outside the hours between 8:00 a.m. and 6:00 p.m., for callback situations, and for employees assigned to open or close a library facility outside of regular shift hours.

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43 This was done, as noted above, in conjunction with a change in the employer's position on sick leave accrual.

The employer's initial proposal retained most of the premium pay provisions of the OPEIU contract regarding hours of work and overtime, but eliminated the premium pay for Sunday work.

The matter was discussed at the March 14 meeting, when the employer noted that Sunday operation was important to the public, and that the library had people scheduled to work "this way". Cameron testified that the employer explained that it was proposing elimination of Sunday overtime pay because employees knew when they were hired that they would have to work Sundays.

Cameron testified that between the March 14 and May 9 meetings, there was only cursory discussion of the Sunday overtime issue. The employer's proposal remained the same through May 9, except for the elimination of the compensatory time option in reaction to the decision in Garcia, supra. The union's May 9 proposal appeared to drop the callback provisions and the request for overtime pay for opening and closing the library, but essentially retained the other provisions. On December 5, the employer stated it would consider negotiating a pay differential for Sunday work, but that it believed the union proposal to be too costly. The union held to the Sunday work premium which had been provided under the OPEIU agreement. The January 7 "mediator's proposal" included a $0.50 per hour premium for Sunday work. The implemented conditions did not include any premium for Sunday work.

Elimination of Family Medical Benefits -

The contract between the employer and the OPEIU had provided for employer payment of certain medical, dental and optical insurance premiums. Employees working 30 or more hours per week were eligible for medical and dental coverage for both the employee and his or her dependents, as well as for optical insurance for the employee. Employees working less than 30 hours per week were eligible for employee-only medical coverage. The contract had a maintenance of benefits clause, but gave the employer the option to select an insurance plan and carrier which would not significantly alter benefits.

The WPEA's opening proposal, Article 10, echoed the prior contract's provisions regarding benefits and their maintenance, but proposed a number of improvements to the employer-provided coverages and extended full benefits eligibility to all employees working 10 or more hours per week.

Consistent with what Conable described as an ongoing effort "for the last couple of negotiations" to get a cap on insurance premium costs and to have employee participation in premium payments, the employer's initial proposal (Article 13) called for several changes in its benefit package. Employees working 20 or more hours weekly were to be eligible for medical and optical insurance, while dental coverage required 30 or more hours of work per week. The employer would pay for employee-only medical and optical insurance, and full family dental insurance. It would "grandfather" dependent benefits at the 1985 rates for employees currently receiving those benefits. Extended benefits were to be made available to employees not previously enrolled, but those employees would pay the entire premium. The employer's proposal gave it the exclusive right to select an insurance carrier, without the proviso concerning alteration of the schedule of benefits.

The employer's notes of the bargaining sessions show that the parties discussed insurance benefits several times. On March 14, Conable discussed the employer's rationale for its proposal on dependent coverage, including the cost of that coverage for what the employer believed to be a relatively small proportion of bargaining unit employees. The employer maintained its proposal on April 4, when it clearly discussed the impact of its proposal.

On April 24, the union proposed that medical coverage be maintained as provided in the OPEIU agreement. The union's October 3 proposal rejected any reduction of medical insurance benefits, but proposed elimination of "double coverage", as long as the library took that step for all employees. It proposed deferral of dental coverage until an employee had one year of employment with the library.

On December 5, the employer indicated that it would consider a "counter-proposal" regarding insurance if there was movement by the union. The union then proposed a return to the practices of the OPEIU agreement. The "mediator's proposal" of January 7 called for employer payment of insurance premiums at the 1985 rates, and an even split of any premium increases during the contract duration between the employer and employee.

Elimination of Shop Steward Rights and Release Time -
Article 22 of the OPEIU agreement had provided that authorized union representatives would have the right to investigate grievances or working conditions at reasonable hours, without interfering with work, and after first securing permission from the employer. The union was to provide the employer with the names of its paid representatives and stewards. No specific reference was made to the numbers or duties of shop stewards.

In an article entitled "agreement administration", originally numbered Article 7, the WPEA proposed that its staff have access to bargaining unit employees at all times, with notification to the employer where such notice was "practical". It also proposed that time be granted for union staff to address employees at certain employer gatherings. It called for recognition of job representative (steward) positions at each branch and for two such positions for the main library, delineated their duties, and provided that employees designated as stewards have reasonable work time available to perform their duties.

The employer's initial proposal was essentially the language of the OPEIU agreement, but with no reference to shop stewards.

The employer's notes reflect that the parties discussed access and the duties of stewards on March 14, and at that time the employer asked the union to make another proposal. On March 22, the union renumbered its proposals on staff access and stewards to Article 2, in accordance with the employer's numbering, and modified its proposals. In particular, the union proposed the possibility of a problem-solving meeting in the event the employer believed any steward was abusing time privileges.

On April 4, the employer proposed exactly the same language as in the OPEIU agreement. The employer's problems with the WPEA proposal seem to have centered on WPEA staff having open access to library facilities, the number of stewards and stewards conducting union business on work time.

Cameron testified that the union tried to impress on management, during discussions on April 24, its need for language which would enable the union to properly represent the employees. On May 9, the union reiterated its March 22 proposal concerning job representatives and access, adding "Weingarten language"[44] to this section. Cameron testified that the union again advised the employer of the language that it felt it had to have in order to properly represent employees.

On May 23, the employer reiterated its prior proposal regarding paid union representatives. The employer proposed that the number of recognized stewards be limited to two at the main library and one for each additional 15 union members. It accepted some of the union's language regarding duties of stewards, but still required stewards to perform their duties on their own time and added language stipulating that no union business would be carried out on the employer's premises or time, using the employer's equipment, or at the employer's expense, except as provided for in the contract. The parties discussed, without resolution, the amount of time the union believed might be necessary for stewards to perform their duties. The employer's notes for that session reflect that the employer "does not want to pay the union's costs in administering their contract for their members," and that the employer was concerned "by the different position taken by this union as compared to the former one."

During the July 12 mediation session, the union indicated its acceptance of a requirement for its paid union staff to have permission from the employer to secure access, if the employer would add a proviso that permission would not

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44 Referring to the right of employees to union representation during pre-disciplinary investigative interviews. See, Okanogan County, Decision 2252-A (PECB, 1986).

be unreasonably withheld. It proposed reducing its proposed number of stewards to a maximum of five, and agreed to the employer's language restricting use of library equipment, time, and money for the conduct of union business. It retained its proposal that stewards be able to carry out their duties during work hours. In its October 3 proposal, the union accepted the employer's language requiring permission for union representatives desiring access to the library, and the employer's language regarding use of the its premises or equipment for union business. It proposed that stewards be allowed reasonable work time to investigate grievances.

On December 5, the employer agreed to the areas in which the union had accepted its language, and indicated that it was willing to make a proposal regarding release time for stewards. The union's counter of that date would have returned the parties to the provisions of the OPEIU agreement, as would the "mediator's" proposal put forth by the employer on January 7.

Elimination of Certain Pay Increases Given to Employees on Promotion - The OPEIU agreement had provided that, on promotion, employees would receive the next higher pay step in the range to which they were promoted.

The union's initial proposal provided that employees would receive a minimum 5% pay increase on promotion.

The employer's initial proposal specified, in the context of an entirely new wage structure, that employees promoting from a "training" step would get the training rate of the new classification, those promoting from the "promotion" or "scale" rate would receive the promotion rate, and those promoting from a "bonus" level would receive the scale rate of the new classification.

On May 9, the union proposed that an employee promoted to a higher classification receive the promotion rate of that classification, a minimum of one higher increment. In its October 3 proposal, the union accepted the concept of the employer's scale system. The union then proposed a return to the provisions of the OPEIU contract regarding promotion during the December 5 meeting.

The January 7 "mediator's proposal" indicated the employer would assent to a minimum 4% increase to employees on promotion.

Elimination of Certain Union Security Provisions -
The OPEIU agreement included an agency shop requirement for all employees working a regular schedule of ten hours or more weekly, as well as dues checkoff on written authorization of the employee.

The WPEA's initial proposal on union security and dues checkoff (Article 6) was the same as that contained in the OPEIU agreement, with the addition of language protecting an employee's right of non-association for religious reasons.

The employer initially proposed an open shop (Article 2), with dues deduction language similar to that contained in the OPEIU contract.

By April 4, the parties had agreed on the dues deduction language. In advance of the May 23 meeting, the employer proposed that all bargaining unit employees who had passed probation be required to become members of the union, with the right of nonassociation for religious reasons, thus narrowing the dispute to the obligations of probationary employees.

Cameron testified that the union security issue was discussed "piecemeal" during the course of negotiations. In its October 3 proposal, the union agreed to the employer's language. While the employer indicated its acceptance of the union's October 3 position during the December 5 meeting, agreement on this subject collapsed with the disagreement of the parties on various other issues.

In the January 7 "mediator's proposal", the employer agreed to full agency shop.

Summation on the "Break the Union" Allegations -
In this allegation, the union first contends that the library advanced the complained-of proposals in retaliation for its employees seeking a change in

representation. Any employer retaliation against employees for organizing, or for changing representatives, is an illegal interference with employee rights under RCW 41.56.140(1). The record in this matter does not, however, support a finding that the library held animus toward this union, or toward its employees for having selected the WPEA. There is no evidence of remarks made or actions taken by the employer during the organizing or election process which might support the allegation of animus based simply on a change of representatives. The WPEA was certified on December 27, 1984, and the initial meeting of the parties was held quite promptly thereafter. The parties' initial meeting appears to have been cordial, although certainly not without differences in positions on the issues discussed.

The union next alleges that the employer's intent in advancing the complained-of proposals was to break the union or to undermine its ability to represent unit employees. In evaluating the employer's conduct in such circumstances, the Examiner must walk a fine line. As noted by the court in NLRB v. Tomco Communications, Inc., 567 F.2d 871 (9th Cir., 1978),

> The right to union representation under the Act does not imply the right to a better deal. The proper role of the [National Labor Relations] Board is to watch over the process, not guarantee the results, of collective bargaining.

The federal courts have held that the NLRB may not sit in judgment on the substantive terms of collective bargaining agreements. NLRB v. American National Insurance Company, 343 U.S. 395 (1952). However, the NLRB, the courts, and the Public Employment Relations Commission have all noted the necessity of taking some cognizance of the reasonableness and content of positions taken by a party at the bargaining table in evaluating that party's good faith. City of Snohomish, supra; NLRB v. Mar-Len Cabinets, 659 F.2d 995 (9th Cir., 1981); A-1 King Size Sandwiches, 732 F.2d 872 (11th Cir., 1984); NLRB v. Cable Vision, 660 F.2d 1 (1st Cir., 1981); NLRB v. Wright Motors, 603 F.2d 604 (7th Cir., 1979). The Commission has also held that determination of a party's good faith will rest upon an evaluation of whether that party conducted bargaining with an open mind and a sincere desire to reach

agreement. Federal Way School District, supra; City of Snohomish, supra; and cases cited in both decisions. The Commission has found that an employer's "bargaining from scratch" position was not in keeping with its good faith obligation. Shelton School District, Decision 579-A (EDUC, 1984).

In the instant case, the union may have had understandable concern about the number of proposals advanced by the employer which the union perceived to be reductions from the provisions of the prior contract. The union may have formed a belief, based on that perception, that it was the employer's intent to undermine the union's ability to represent the employees.

The record is very clear that the employer's initial proposal was developed as a counterproposal, in response to the union's initial proposal. The employer's two principal witnesses offered somewhat different testimony as to the content of the library's initial proposal to the WPEA. Conable testified that the employer's proposal differed in form, but not in content, from that which the employer would have prepared for the OPEIU. He testified in detail regarding the employer's attempts to attain the "scale" wage system and to contain benefit costs. Hurlburt testified that the employer's proposal was different from that which it would have submitted to the OPEIU, as he believed would be normal practice for initial dealings with any new union. Hurlburt testified of his belief that a great deal of the difficulty in the negotiations came from the WPEA's desire to attain "too much, too fast." Hurlburt's testimony lends some credence to the union's claim.

Certainly, there is no question that a number of the proposals complained of here were reductions from the OPEIU contract. It is clear from Conable's credible testimony, however, that the employer had well thought out rationale for advancing its economic proposals. Some of those employer goals dated back to the negotiation of prior contracts, and so could not have been particularly directed at the WPEA. Those facts, when coupled with the lack of evidence of retaliatory motive for advancing those proposals, undermines the union's claims as they relate to the reasons for advancing the economic proposals complained of here.

The only two "non-economic" areas complained of here are union security and shop steward rights. The evidence does not support a finding that the employer's position on shop stewards was a "take-away". By April 4, the employer was proposing the exact language of the OPEIU agreement. It later made a number of additional concessions toward the WPEA's position in this area. Similarly, while the union security issue was, standing alone, certainly initially a "take-away" from the OPEIU agreement, the evidence establishes that the employer modified its position during the course of bargaining and does not support a finding of an independent violation here.

Advancing Predictably Unacceptable Proposals Without Explanation

In allegation 3 of its amended complaint, the union claims that the employer advanced proposals which were predictably unacceptable, and insisted to impasse on those proposals without concession or reasonable explanation.

The statute specifically does not compel concessions by either party to the collective bargaining process as a requirement of good faith bargaining. RCW 41.56.030(4). The Commission has noted, however:

> Both this Commission and the federal tribunals have found that although there is no requirement that a party make concessions, a party is not entitled to reduce collective bargaining to an exercise in futility ... a balance must be struck between the obligation of the parties to bargain in good faith and the requirement that the parties not be forced to make concessions.

City of Snohomish, supra.

Parties to the collective bargaining process are required to explain and provide reasons for their proposals. Failure to do so may constitute evidence of bad faith and the intent to frustrate agreement. Mar-Len Cabinets, supra. City of Snohomish, supra. Concealing or failing to explain the intent of proposals is a violation of the good faith bargaining obligation. Columbia Basin Irrigation Council, Decision 1404 (PECB, 1982); Royal School District, Decision 1419 (PECB, 1982). Similarly, asserting only

"philosophical" reasons for the rejection of proposals and responses which involve only a promise to "consider" or "study" proposals have been found to fall short of meeting the good faith bargaining obligation. NLRB v. Cable Vision, Inc., 660 F.2d 1 (1st Cir., 1981); NLRB v. Hospitality Motor Inn, 667 F.2d 562 (6th Cir., 1982), and citations therein.

Advancing proposals which are predictably unacceptable is not per se unlawful. City of Snohomish, supra; NLRB v. Fitzgerald Mills, 313 F.2d 260 (2nd Cir., 1963). In Pease Co. v. NLRB, 666 F.2d 1044 (6th Cir., 1981), the court denied enforcement of an NLRB order, noting that the proper standard:

> ... is not whether the Company made proposals which were acceptable to the Union, but rather, whether the Company desired to reach ultimate agreement, to enter into a collective bargaining contract.

Proposals advanced with the objective of forcing a breakdown in negotiations are indicative of bad faith. Mar-Len Cabinets, supra. Proposals and a party's rigidity must thus be evaluated in the context of overall actions. In NLRB v. Herman Sausage, 275 F.2d 229 (5th Cir., 1960), the court noted that if an employer's insistence on an unacceptable proposal "... is genuinely and sincerely held ... it may be maintained forever though it produce a stalemate." But the employer may not use its right to refuse concessions "... as a cloak ... to conceal a purposeful strategy to make bargaining futile or fail."

The union claims the employer acted in an unlawful manner with respect to its proposals on 14 different bargaining topics. Among those, facts concerning the union membership, union stewards, pay step plan, Sunday overtime, sick leave, vacation, and insurance benefits subjects are discussed in detail, above. Other topics at issue are described in the paragraphs which follow.

Rates of Pay / General Wage Increases -
The WPEA's initial proposal called for 10% general increases of wages to be made effective on December 26, 1984 and on December 26, 1985. The union also

proposed that certain classifications and positions receive additional pay increases effective December 26, 1984, over and above the increases provided by changes in the pay step plan and the proposed 10% general increases. The union proposed, further, that the parties jointly conduct a labor market salary survey, and that the results of such a survey be implemented on December 26, 1985.[45]

The employer's initial proposal gave all employees on or above the second step of the old pay plan (except those over scale) a 2% wage increase upon ratification of the contract. The employer proposed a wage increase of approximately 3% to go into effect 12 months after contract ratification.[46]

The union's proposal of April 24 called for a general increase of 8% effective February 1, 1985, and another 8% effective February 1, 1986. The union reiterated its proposal on May 9 concerning a joint salary survey in 1985, although it now made clear that the results were to be negotiated, rather than automatically implemented.

The next change of wage proposal by the union came on October 3, when the union proposed that the pay schedule be "frozen" for 1984 and that general wage increases of 6% be provided for each of the two succeeding years.

On January 7, the "mediator's proposal" included a 2% general wage increase effective January 1, 1986. As noted above, the union countered by proposing that the employer increase the base wage rate by 2% every six months for the duration of the contract.

Hours of Work -

Article 4 of the OPEIU agreement included a statement of the employer's intent to maintain a regular and constant work schedule to minimize disrup-

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45 Although the union's proposal appears to have called for automatic implementation of the survey results, Cameron testified that the union's intent was to negotiate new rates based upon the results of the survey.

46 The employer's proposal represented the new rates to be a 3% increase. It appears that the proposed training rate for pages provided a greater increase than represented by the employer.

tion of an employee's personal time. It provided for an eight hour workday, excluding a one hour scheduled lunch period, and a five day work week, with the possibility of other schedules being established by mutual agreement between the employer and the union.

The WPEA's initial proposal, at Article 16, retained the "regular and constant schedule" language. It provided for a normal workday of eight hours, with a scheduled lunch period of either thirty minutes or one hour, and included the possibility of other schedules being established by mutual agreement. The normal work day was to be between 8:00 a.m. and 6:00 p.m., with work outside those hours being paid at a 50 cent per hour premium. Employees were to be allowed two consecutive days off. If changes were made to an employee's work schedule without seven days advance notice, the employer was required to pay the employee at the overtime rate for any work which fell outside of the prior schedule. Callback pay with a two hour minimum was proposed.

The employer's initial proposal, at Article 6, essentially reiterated the language of the OPEIU agreement with the exception of eliminating the reference to maintaining a regular and constant work schedule.

As of April 4, the parties had reached agreement on two sections of this article, but the employer was holding to its proposal concerning other areas. The employer eliminated the option of compensatory time off in its April 24 proposal, in response to the Garcia decision.

The union's May 9 proposal, renumbered as Article 6, dropped a number of sections, but retained the "regular and constant schedule" language, the "seven day notice of schedule changes" requirement, and the "two consecutive days off" language.

The parties discussed the "maintenance of a regular and constant work schedule" issue at their meeting on May 23, at which time the employer noted that it believed it was the employer's right to schedule under the management

rights clause, and that employees were all told of the library's scheduling needs at the time of hire.

At the July 12 mediation session, the mediator told St. John that the employer would agree to language regarding maintenance of a regular and constant work schedule. The union continued to propose retention of the "maintenance of a regular and constant work schedule" language on October 3, but softened its position to call for "reasonable efforts" by the employer to allow employees to have two consecutive days off, where work operations would not be impaired.

On December 5, the employer rejected the "reasonable efforts" in scheduling language. Both the union's counterproposal of that date and the "mediator's" January 7 proposal would have returned the parties to the language of the OPEIU agreement on this subject.

Employee Discipline and Dismissal -
The OPEIU agreement provided for a just cause standard for discipline. Disciplinary steps included oral notification, written notification, and termination. The contract listed six criteria for consideration in administering discipline, and also provided a list of certain actions by employees which could result in immediate termination.

The WPEA's initial proposal concerning employee discipline, numbered Article 4, was similar to the OPEIU contract in a number of respects: The "just cause" standard; criteria by which standards for discipline would be determined; and the reasons for immediate discharge. The WPEA proposal added suspension as a disciplinary step, a right to union representation at all levels, criteria regarding personnel files, and a variety of other matters such as not being supervised by a relative, and counseling for emotional or substance abuse problems.

The employer's initial proposal (labeled Article 9) was almost identical to the language of the OPEIU agreement. Conable testified that the employer did

not include a suspension step in its proposal, because it had never before been proposed and because the library viewed suspension as a punitive action in a process which should be aimed at achieving correction of problems. On April 4, the employer proposed adding a "progressive discipline" sentence to its prior proposal. The employer's notes show that the parties discussed the discipline language on that day, and that the employer said it would not change its position concerning suspension.

On May 9,[47] the union indicated acceptance of the employer's "just cause" and "progressive discipline" language, as well as employer language on oral notification to the employee of a problem. It added language to the employer's "written notification" section, including a proviso that an employee should have an opportunity to overcome his/her problems. The union continued to propose a suspension step in the disciplinary process. It asked for notice to employees and the union of the charges against an employee, and for an opportunity for the employee to meet with the library director to explain the case in the event of proposed suspension or termination. The union moved its proposals concerning "personnel files", "personnel policies", "employees' off-duty activities", and "withdrawal of resignation" essentially intact to Article 18, "employee rights".

On May 23, the employer included in its proposal notification to an employee about to be disciplined of the right to union representation. It modified its oral warning proposal to note that such a warning would not become part of the employee's file, modified its written warning proposal to note that the warning would be placed in the employee's personnel file, and made minor language changes to other areas of its proposal. In discussion of this topic on that day, Conable put forth as rationale for the employer's position a claim that the library complied with all legal requirements.

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[47] The discipline language was intended as part of the union's May 9 counterproposal, but was inadvertently omitted from the package. It was sent to the employer, by mail, on May 16, after that omission was discovered.

In its October 3 proposal, the union agreed to the employer's language on discipline. At the outset of the December 5 mediation session, the employer accepted that agreement. In the context of the employer's overall reaction to the union's October 3 proposal, the union counterproposed a return to the language of the OPEIU agreement. The "mediator's proposal" of January 7 would have also returned the parties to the discipline language of the OPEIU agreement.

Military Leave -
The OPEIU agreement provided that up to 15 days of military leave with pay could be granted to employees.

The WPEA's initial proposal was identical to the language of the OPEIU contract, and the employer's opening proposal retained the OPEIU contract language regarding military leave. It is thus somewhat of a mystery why these parties continued to list military leave as a disputed issue or to mention it in their exchanges of proposals as late as December 5. In fact, it appears that they had reached agreement on military leave and reinstatement on return from leave by April 24. The union's May 9 proposal showed agreement between the parties on military leave, but the employer's May 23 proposal does not reflect agreement on military leave, even though the language proposed by the parties on military leave appears to have been identical by that point.

Jury Duty Leave -
Leave for jury duty was allowed under the OPEIU contract, with the employer paying the difference between the employee's regular pay and the jury pay. The WPEA's initial proposal was identical to the language of the OPEIU contract. The library's initial proposal limited jury duty leave to employees who had passed probation.

The parties discussed their differences on jury leave on March 22, when the employer voiced a concern that an extended period of jury service for a

probationary employee might allow that employee to complete probation without having served sufficient actual work hours to be properly evaluated.

The employer's May 9 proposal omitted any reference to compensation for time spent on jury duty. Conable testified that the employer believed it would have to release even probationary employees for jury service, but proposed paying wages only if an employee had completed probation.

The union's May 9 proposal indicated there was agreement between the parties on jury duty leave, but the employer's May 23 proposal does not reflect agreement on the issue.

Leave Without Pay for Continuing Education -
The OPEIU agreement provided that time off or reimbursement for tuition costs should be granted to employees, whenever possible, in order for them to attend courses beneficial to the employer.

Again, the WPEA's initial proposal contained identical language. The library's initial proposal reduced the commitment to a possibility of leave for the purpose of continuing education.

The parties discussed the continuing education leave language during at least the April 4 meeting. The union's April 24 proposal contained a slight modification of the continuing education language. The union's May 9 proposal showed agreement between the parties on the matter, but it was back on the bargaining table by October 3, when the union purported to hold to its proposal on time off for continuing education.

On December 5, the employer rejected the union's proposal on continuing education leave. The union's counter later that day would have returned the parties to the language of the OPEIU agreement, as would the "mediator's proposal" of January 7.

Management Rights -

The OPEIU contract vested authority in the employer "subject to the terms of this agreement".

Article 3, the WPEA's initial proposal on management rights, was in an "including, but not limited to" format, listing management prerogatives and providing that the exercise of management rights would be consistent with the terms of the contract, would be fair and equitable, and would be subject to the grievance procedure. It also provided for opening negotiations when statutory changes resulted in new employer rights.

The employer's initial proposal on management rights (Article 15) duplicated the OPEIU agreement, with the exception of replacing the phrase "subject to the terms of this agreement" with a phrase vesting management with exclusive rights "except as modified by" terms of the contract.[48]

The parties discussed management rights on April 4. The employer's notes for that date show that the employer's rationale for its proposal was that "... it is right out of the old contract and has worked satisfactorily." There is testimony, however, of an exchange in which Hurlburt asked whether the union would accept certain language on the subject, Cameron replied affirmatively, and Conable then replied that the employer was not prepared to change its proposal.

The union countered on May 9 with language similar to the employer's proposal, except that a commitment was added that management rights must be exercised in a fair and equitable manner.

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48 The entirety of the employer's management rights clause read:

> The management of the Library and the direction of the work force is vested exclusively in the Employer except as modified by the terms of this Agreement. All matters not specifically or expressly covered or treated by the language of this Agreement shall be administered by the Employer in accordance with such policy or procedure as the Employer from time to time may determine.

On July 19, the parties had the fruitless exchange, already described above, in which the union indicated a willingness to accept the employer's management rights language if the employer would address some of the union's concerns regarding subcontracting language, position classification, employee rights issues, and employee participation on various committees. The employer countered by proposing that the union accept the employer's management rights language while dropping the union proposals on all of the areas of concern which had been indicated.

In its October 3 proposal, the union offered to drop the "fair and equitable" language from its management rights proposal if the employer would drop its zipper clause proposal. The employer rejected that position on December 5. Both the union's counter of that day and the "mediator's" January 7 proposal would have returned the parties to the management rights language of the OPEIU agreement.

Grievance Procedure -

The OPEIU agreement defined a grievance as a dispute or complaint arising out of the interpretation of the contract. The grievance procedure included three steps prior to arbitration, consisting of an informal meeting with the immediate supervisor, a written grievance to the department head, and a written grievance to the library director. The expenses of the arbitrator, selected from a list provided by the Federal Mediation and Conciliation Service, were to be borne equally by both parties.

The WPEA's initial proposal (Article 8) provided the same time limits and levels as the grievance procedure in the OPEIU contract. Its proposal expanded the definition of a grievance to include a dispute regarding the employer's personnel policies, rules, and regulations, as well as a dispute arising out of the collective bargaining agreement, and provided that paid union staff, as well as an employee or steward, could file a grievance. Grievance hearings were to occur on work time, with no loss of pay to participating employees. The union proposed that the parties would go to the Commission for an arbitrator if they were unable to select one by agreement.

The employer's initial proposal (Article 16) used the format and much of the wording of the OPEIU contract, but reduced the time limit for initial filing of a grievance from 20 to 10 days, provided that the step two hearing would be with the associate director rather than the department head, and provided that the expenses of the arbitrator would be borne by the losing party. Conable testified that the employer proposed the change in the arbitration language because of its belief, based on the WPEA's proposals on the definition of a grievance and on management rights, that the union:

> ... intended to greatly escalate the number of grievances which they were going to file. And we thought that the potential for large numbers of arbitrations, some of them perhaps frivolous, was there. And we hoped by this language to discourage frivolous arbitration.

Conable testified that the employer also saw such a potential in the union's proposals that employees be informed of appeal rights if the employer was investigating or considering taking action against an employee, that operating policies be administered fairly and uniformly, and that employees actively engaged in counseling not be subject to disciplinary action. Conable also saw some dangers in the union's access language and the number of stewards it proposed to have recognized, saying,

> ... we thought the clear intent here was to ... give approximately 20 percent of the bargaining unit license to wander at will through the organization, finding grievances, making them up ...

It is clear that the employer was cautious about the union's desire to be able to grieve subjects which Conable described as things "... which had traditionally been considered management rights in our organization, covered under the management rights clause." Conable testified that it was not the employer's intent to avoid dealing with employee complaints, but that the employer believed much of the union's language would subject matters which could be readily resolved informally into a litigious process.

According to Cameron, the parties had their first major discussion of the grievance procedure on April 4, but the employer provided no explanation for shortening the time limits, claimed that there was no need for the union to be involved at the early steps of the grievance procedure because the library had only four grievances over the last ten years, and explained that one party should pay for arbitration if it was found that party had been in the wrong. Cameron recalled the library claiming that it would take care of violations of its operating procedures, and that therefore there was no need for the expanded grievance definition sought by WPEA. The employer's notes of that day show that the library's rationale regarding union involvement at those early steps was that they preferred to solve the matters "in house".

On May 9, the union modified its proposal to reflect the employer's numbering and format, as well as much of the employer language, and suggested a compromise time limit of 15 days at step one of the procedure.

In its May 15 proposal, discussed on May 23, the employer agreed to some of the union's language, but continued to insist that arbitration expenses be borne by the losing party.

In its October 3 proposal, the union accepted the employer's proposal that the losing party pay the costs of arbitration, but retained its own grievance definition. In its response to that proposal on December 5, the employer accepted the union's concessions, but continued to reject the union's proposed grievance definition.

Both the union's December 5 counter and the January 7 "mediator's proposal" would have returned the parties to the language of the OPEIU agreement.

Negotiation of Mid-term Changes - Termination and Renewal of Contract - The agreement between the OPEIU and the employer provided for a party to give 60 days notice prior to the end of the contract if it desired to modify the agreement. It also contained language providing that the written document constituted the entire agreement between the parties.

The WPEA's initial proposal for an article called "terms of agreement" called for mid-term amendments by mutual agreement, and 60 days notice prior to contract expiration if a party desired to negotiate a new agreement.

The employer's initial proposal included the same "entire agreement" language as the OPEIU contract, and also used the language of the OPEIU agreement with regard to negotiating a new agreement. The employer's proposal eliminated language which provided that a strike which occurred after contract expiration would not violate the contract.

The parties discussed the union's desire for "mid-term amendment" language on April 4. The employer added to its "entire agreement" proposal on April 24, in response to the union's concerns, to provide that any agreement reached would supersede the prior contract.

On May 9, the union countered the "entire agreement" language with a proposal which included only the employer's "supersedes" language, added the language of the OPEIU agreement with regard to negotiating a new contract, and modified its proposed "mid-term amendment" language to require negotiation of changes, but not agreement on those changes. The union also renumbered its proposed article to conform to the employer's numbering system.

Cameron testified that the parties discussed the mid-term bargaining language at a later meeting, and that Conable said, "... well, we think you've got a case, but we just don't want it in the agreement."

The duty to give notice and bargain concerning changes occurring during the life of the contract remained on the bargaining table into the mediation process. In response to union concern expressed during the July 12 mediation session that the employer should acknowledge its duty to bargain, even if only in some sort of side note outside the contract, the mediator brought Hurlburt's prior negotiation notes to the union caucus to show that Hurlburt had noted the employer's legal obligations concerning midterm bargaining. The employer apparently made those notes available in the hope that they

would satisfy the union's request, and would eliminate the need to have language in the contract, or a side memo.

The union's October 3 proposal indicated agreement to the employer's language on termination and renewal of the contract, and that the union was dropping its proposed mid-term amendments language.

Both the union's December 5 proposal and the January 7 "mediator's proposal" would have reinstituted the language of the OPEIU agreement.

Summary - Advancing Predictably Unacceptable Proposals -
It is clear from the recitation of the bargaining history concerning the issues complained of in this allegation that many of them were unacceptable to the union, and that the employer did indeed refuse concessions on many of the issues. The question is, however, whether the employer's behavior concerning those topics was in keeping with its good faith obligation. Less than exemplary behavior on isolated issues will not warrant finding violations here, but where a pattern of pretextual explanations is established, or where a pattern destructive of the statutory obligation or of employee or bargaining representative rights is found, the employer will be found guilty of a violation.

With respect to the shop steward and union representative issues, the Examiner finds that, given the employer's experience, it had no reason to believe that its initial proposal would be completely unacceptable. The parties had numerous discussions on these issues. The employer provided explanations for its proposals, and several times identified its concerns about the union's proposals. In fact, it appears to the Examiner that this was an area in which the employer made some very real efforts to understand and address union concerns, not only with discussion, but with counter-proposals. The one troublesome aspect of the discussion of these issues is the employer's "them v. us" comment concerning the access issue (i.e., that it did not wish to pay the union costs of administering its contract for its members), particularly when coupled with like comments made in connection

with such subjects as release time pay for employee negotiators and the grievance procedure, as it tends to indicate a closed mind and a rejection of the mutuality of the collective bargaining process.

Union security is often a controversial issue in collective bargaining. The statute makes union security a subject for bargaining, rather than a right of the exclusive bargaining representative or a matter to be determined by vote of the employees, and so leaves some room for disagreement. It is clear here that the employer's initial union security position was a retrenchment from the practice with the OPEIU, offered without much rationale. Although the employer made concessions from its opening position on union security, the record is not clear that it was forthcoming at the bargaining table with any rationale for its position. Conable testified at hearing that the employer wanted employees to have a choice regarding union membership, but it is not clear from this record why the employer adopted that position with this union when the language of the OPEIU agreement had provided for an agency shop. Further, although it may have been obvious from the employer's position, it is not at all clear from this record that the employer's philosophy was communicated to the union at the bargaining table. By itself, such a position may be deemed to have been simply a strategic bargaining choice on the employer's part. When coupled with other examples of less than exemplary behavior, such a position could be indicative of bad faith.

Except to the extent that authorship of the January 7 "mediator's proposal" is attributed to the employer, the employer did not modify its opening position on the pay scale system, rates of pay, or insurance benefits during the entire course of negotiations. The parties had numerous discussions on these subjects, however, and the employer explained the rationale for its proposals, its beliefs concerning the cost of those proposals, and provided the union with several data sheets.

The employer's explanations concerning Sunday premium pay, scheduling, and hours of work (i.e., that it needed to schedule employees to work on Sundays, and employees knew that when they were hired) do not explain why the employer

felt it necessary to change prior practice, since the same conditions had presumably existed previously with Sunday premiums and the "regular and constant schedules" language in effect. The employer was not precluded from attempting to change its practices in these areas, but the Examiner finds that the reasons given on this record have a pretextual appearance.

The parties discussed the discipline issue several times, and the employer made some changes to its proposal in response to union concerns. The record is not entirely clear as to whether the rationale set forth by the employer's witnesses at hearing (i.e., that it viewed suspension as punitive, rather than as remedial) were communicated to the union during the negotiations. More troublesome is the employer's alternative claim to have opposed a suspension step in its disciplinary procedure because it was not included in the prior agreement, and the employer's statements to the union that it "complied with legal requirements" and "won't change" its proposal. Those statements must be considered in the context of evidence introduced later in the record, which indicates that the employer did, in fact, suspend some employees as part of a disciplinary proceeding after it had implemented working conditions which did not include any provision for "suspension". Notwithstanding the bargaining history and the rationale put forth by the employer in response to the union's proposal to legitimize suspensions, Conable testified that the suspensions appeared appropriate to the employer under the circumstances, and that he did not read the posted conditions as prohibiting suspension. The Examiner is led to the conclusion that this employer resisted any language in the collective bargaining agreement because it simply desired to retain unilateral control of working conditions, rather than to work in a partnership with the union, as the bargaining obligation requires.

The employer's position on sick leave and vacation, and its concerns about compensated "non-productive" time, have been fully discussed, above. The Examiner understands that the union did not like or agree with the employer's rationale. However, as noted in discussion of allegation 7.c., above, the employer's rationale regarding sick leave was not so unreasonable as to

warrant suspicion of being pretextual. The union itself admitted by October 3 that the employer's vacation practices were generous in comparison with other employers.

The progress of the jury duty, military leave, and continuing education leave language through negotiations is confusing, at best. Discussion of proposals and their rationale appears to have been limited, but it is difficult to form any conclusion from the record presented that a violation was committed with respect to this language.

The management rights and grievance procedure issues are considered together in this analysis, because the employer's stated rationale for resisting the union's proposals, as well as for making some of its own proposals, was its substantial concern that the union was attempting to erode management's rights and to make numerous issues subject to the grievance procedure "which had typically been considered management's rights in our organization." The employer started, not unexpectedly, from existing management rights language which it regarded as workable. The parties discussed these issues several times. The employer's rationale is amply revealed by a number of Conable's comments at hearing, as well as by explanations provided during negotiations. That an employer may desire to retain as many rights as possible, or not to broaden the definition of a grievance, is not in itself unlawful. Neither is it unlawful for an employer to exhibit some concern about the potential for frivolous arbitrations. However, the employer's comments on subjects such as shop stewards roaming through the organization making up grievances, its catalog of areas it considered an encroachment on its rights, and its attempts to exclude the union from the grievance process so as to keep matters "in house", reflect a rejection of the rights and obligations of the exclusive bargaining representative to represent the employees.

The employer's recognition of its legal obligation to bargain mid-term changes, coupled with its refusal (without real explanation) to include such language in the agreement, is also disturbing when taken in conjunction with its explanations in other areas outlined above.

Considered together, the employer's behavior concerning several of these areas forms a pattern not in keeping with its obligation to bargain in good faith.

Refusal to Explain Rejection of Proposals

In allegation 4.a. of its amended complaint, the union claims that it offered a number of proposals to which the employer refused to respond in the form of counterproposals or acceptance, while offering no reasonable explanation for those actions. Allegation 4.a. is timely only with regard to behavior occurring after August 19, 1985.

Article 17 Classification of Positions -
This article began life as Article 12 of the union's proposal, where it outlined a system by which the library would be expected to classify its positions. It included specifications for the content of written position and classification descriptions, procedures to be used when occupied positions were reallocated, and provision for the parties to meet to review the classification system within ninety days after signing a collective bargaining agreement. Employees performing the duties of a higher level classification for two hours or more were to be paid at the level of the higher classification, or one increment step, whichever was greater. Employees assigned to train others were to be paid as if classified 10% higher than the class of the employee being trained. The employer's initial proposal provided, in Article 6, that an employee working in a higher classification for eight hours or more would receive the rate of pay for the higher classification for the time worked. That proposal was similar to language found in the OPEIU agreement, although the OPEIU agreement had provided for employees to receive one increment step if that was higher than the pay of the higher classification. On May 23, the employer proposed that the union drop this article, which by then was Article 17. The employer's notes for that day indicate the union had asked why the employer had not counterproposed or accepted the union's proposal on this article, and that the employer had replied that the subject was within management's rights.

The activity during the period for which the complaint is timely is limited. The union maintained its position on classification in its October 3 proposal. In its reply to that proposal on December 5, the employer stated that it had plans to review and update its classification system, and that it would be willing to discuss any new job description with the union. The employer stated it was willing to discuss any strong objections to the results of the update in future negotiations. The union's proposal to return to much of the language of the OPEIU agreement, and the "mediator's proposal" to the same effect, would presumably have eliminated any reference to position classification (other than pay for work out of class) from an agreement, since the OPEIU contract had contained no such language.

Article 18 Employee Rights -

Much of this article was contained in the union's original proposal as part of Article 4. In its original form, the proposal included requirements for access to and the content of employee personnel files. The proposal included a proviso that an employee's off-duty activities could not be a cause for adverse action, unless such activities were clearly detrimental to the employee's work. It provided that the employer maintain and make available to employees copies of personnel policies and procedures, and required that those policies be administered fairly and applied uniformly. It outlined standards for withdrawal of letters of resignation. Materials originally proposed by the union in Article 22 and later renumbered as Section 6 of this article called for employees to have lockers at their work stations and for a private staff break room to be provided at each work location, as well as including provisions regarding the work hours of employees on jury duty and standards regarding the use of an employee's personal vehicle for library business. The employer's notes show that lockers were discussed at both February meetings, along with concerns about elevators and air circulation. According to Cameron, the lockers and break rooms were discussed briefly at negotiation sessions held in April. On May 23, the employer proposed that the union drop these subjects. Cameron testified that the employer did not wish to discuss much of this article, that there had been some discussion on some areas, "... but there was no give or take or proposals or counterpropo-

sals or why they did not like it." The employer's notes for May 23 reflect that the parties discussed the employer's personnel manual, employees' rights to see their personnel files, and the employer's proposal regarding use of its equipment for union business on that date. The employer's notes of that day also reflect that Cameron asked at that time why the employer had not counterproposed or accepted the union language on this article. According to the notes, the employer responded that it followed state law regarding personnel files, and that it did not believe that its position "took anything away" from employees. Conable testified that the employer believed a number of the subjects dealt with in the union's proposal for this article were either already matters of employer policy and therefore need not be included in the labor agreement, or simply would be better dealt with outside of the agreement. In addition, providing a break room at certain branch libraries would, in the employer's opinion, have required a capital outlay to construct such a space.[49]

As part of its October 3 proposal, the union agreed to drop this article if the employer accepted the union's grievance definition. In its response on December 5, the employer continued to reject the union's proposed grievance definition, although presumably it would have accepted the union's dropping of the employee rights article without conditions. The union's proposal of later that day and the "mediator's" proposal of January 7 would have returned the parties to any language on this subject contained in the OPEIU agreement.

Article 19 Employee Participation -

This article began as components of Article 7 of the union's proposal, and included language establishing a permanent labor-management committee to meet on work time to discuss matters which might lead to improved relations between the parties, as well as language establishing safety and training committees. The OPEIU agreement did not provide for any such committees.

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[49] The employer's notes of the February 7 negotiation session show that Conable inquired at that time whether the union proposal would require renovation of facilities which contained no staff rooms, and was informed by Cameron that it would not.

The employer did not propose any such committees, and the parties apparently had little discussion and exchanged no written proposals on the subject during March and April. On May 9, the union renumbered its original proposal as Article 19 and the employer stated it did not believe it appropriate for employees to be conducting union business on work time. The parties had some subsequent discussion of the issue, but did not reach agreement.

In its October 3 package, the union agreed to drop the article. The employer accepted that on December 5, but the parties were unable to agree to a package. The union's proposal later on December 5 and the "mediator's proposal" of January 7 would presumably have omitted any reference to such committees from the parties' labor agreement.

Article 1 - Recognition - Right to Union Representation -
The union alleged that the employer failed to respond to a section of this article which concerned the right of employees to union representation at all levels. The provision giving employees the right to union representation on any matter affecting their conditions of employment was in Article 4 of the union's original proposal, employee rights and discipline. Apparently no additional written proposals were submitted on that subject until May 9, when the union moved that sentence intact to Article 1, Section 5. On May 23, the employer proposed that the union drop that section. According to Cameron, the only rationale given by the employer for opposing that section was that the employer wanted union representatives to meet with administrative personnel and not with supervisors. During the July 12 mediation session, the union told the employer through the mediator that it would drop that section. The Examiner finds no record of further proposals on this section during the period for which the complaint is timely.

Article 1 - Recognition - Retention of Benefits -
The union also accuses the employer of failing to respond to a union proposal that employees would not suffer a reduction in wages or benefits as a result of the collective bargaining agreement. The union's original "retention of benefits" proposal was in Article 11, rates of pay, and provided that no

employee would suffer a reduction of wages or benefit level. Virtually identical language was contained in Article 18 of the OPEIU agreement. Apparently, no further written proposals were submitted on this subject until May 9, when the union moved its proposal to Article 1, Section 6. During the July 12 mediation session, the union told the employer through the mediator that it would drop that section if the employer would drop the "zipper clause" in its Article 19. The employer would not accept that proposal.

With respect to the period for which the complaint is timely, it appears that the union held to its "retention of benefits" language in its October 3 proposal. The union's December 5 proposal and the "mediator's proposal" of January 7 would have included the language on this subject from the OPEIU agreement.

Article 5 - Hiring and Promotion -

Most of the disputed sections of this article originated as parts of Article 14 of the union's initial proposal. That proposal would enable employees to transfer to another position or classification at the same level, upon the employee's request and the employer's agreement. That language was virtually identical to the language of the OPEIU agreement. The WPEA's proposal also included language to the effect that an employee would not be required to take a test if the transfer was to a position with similar duties; language requiring that tests for all positions be job related and uniformly administered; language requiring that, whenever possible, vacant positions be filled with permanent employees; language requiring that not less than 75% of all positions be filled on a full-time basis and not more than 10% of part-time employees work in positions averaging less than ten hours of employment per week; and language requiring that transfers of employees to positions beyond a 20 mile commuting distance be prohibited, unless agreed to by the employee. It is clear from the record that Hurlburt expressed the opinion at the February 7 meeting that this article dealt with manning issues and would be unacceptable to any employer. The employer's initial proposal included language in Article 8 on employee transfers, providing that an employee could apply for and receive a transfer to a different position within the same

classification at the employer's discretion. The employee would be paid at the same rate, but could be returned to the former position if performance during a three month probation period proved unsatisfactory.[50] The employer's notes reflect that the lateral transfer language was discussed on March 14 and March 22. On March 22, the union countered the employer's transfer proposal by proposing deletion of the probation requirement. According to Cameron, the employer withdrew its transfer language on March 22, without explanation, and did not discuss the matter thereafter. On May 9, the union moved the language of Article 14 to Article 5. Section 13 of Article 5 then appeared, prohibiting contracting of work which had historically been performed by the bargaining unit. On May 23, the employer proposed that the union drop all of these matters from its proposal. According to Cameron, the employer had never responded to the subcontracting language or the prohibition of transfers beyond 20 miles prior to that date. With regard to the use of part-time and temporary employees, the employer had responded only with "... a catchall implication ... that, yes, those are considered part of management's rights and shouldn't be in the agreement." This was one of the subjects which the union attempted to pair off against "management rights" language on July 19.

The evidence indicates that the union dropped all but its proposed restrictions on the use of temporary employees in its October 3 proposal. The employer countered on December 5 with an indication that it would be willing to include language on lateral transfer in the contract if the union would drop all its other proposals in this article. The union's December 5 counter and the "mediator's" January 7 proposal would have returned the parties to the language of the OPEIU agreement.

Article 6 - Rates of Pay - Appendix A Retroactivity of Salary -

As noted in the discussion of allegation 2, above, the union's original proposal called for implementation of its proposed pay plan effective on

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50 The OPEIU agreement had provided for a probation period of 60 working days following transfer.

December 26, 1984,[51] and payment of step increases under that plan on each employee's anniversary date. The union proposed a market survey as the basis for an increase of pay rates to be made effective December 26, 1985. The employer's initial proposal was structured quite differently from the union's wage proposal, and provided for the new structure to become effective on the date of contract ratification. On April 24, the union reiterated its proposal on annual step increases, and provided that an employee would receive a step increase on successful completion of a probation period. On April 24, the employer added language to its proposal providing for hourly rate compensation, and delineating how that would be calculated. On May 9, the union continued its proposal that hourly rates be calculated on the basis of 174 hours per month, but it proposed language regarding the basis for payment which was almost identical to the employer's April 24 language. The union held to some of its proposals during the weeks which followed, but modified others. The employer essentially continued with its prior proposals, and Cameron recalled no explanation from the employer regarding its unwillingness to agree to retroactivity of wage increases. The method for hourly calculation was discussed, but in the context of changed circumstances brought on by the applicability of the federal Fair Labor Standards Act. The employer proposed that the union accept its language on Article 6 on July 19, but the union rejected that package.

Moving into the area for which the complaint is timely, the union's proposal on October 3 for a wage freeze for the first year of an agreement essentially dealt with the retroactivity issue. It dropped its proposal for conduct of a salary survey. On December 5, the employer retained its own proposal on wage issues. Both the union's proposal of later that day and the January 7 "mediator's proposal" would have returned the parties to the language of the OPEIU agreement regarding rates of pay, with the exception of any agreements on language on that subject (such as listing of hourly rates) which the parties had made in negotiations.

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51 Curiously, the union's proposal in that regard called for implementation to one day prior to the issuance of the certification which marked the onset of the union's bargaining rights.

Article 9 - Employee Discipline and Dismissal (Suspension) -
The progress of the "suspension" issue through negotiations is detailed in discussion of union allegation 3, above. As noted there, the employer did not offer a written proposal on suspension, and frequently suggested that the union drop its proposal to include provision for "suspensions" in the discipline article.

Article 22 - Termination and Renewal -
The progress of the "mid-term amendments" language is detailed in discussion of allegation 3, above. Language regarding release time for employee negotiators is discussed in connection with allegation 5.a., above.

Summary - Refusal to Provide Explanations -
As noted in discussion of several allegations in this case, parties to a collective bargaining relationship are obligated, as part of the obligation to bargain in good faith with respect to mandatory subjects of bargaining, to explain their own proposals and to explain the reasons for their responses to proposals advanced by the opposite party. Mar-Len Cabinets, supra; Federal Way School District, supra. As noted in City of Snohomish:

> Explanations for proposals and explanations of rejections of proposals are important in a collective bargaining atmosphere so that the other party may know how to re-fashion a counterproposal that would meet the needs of all involved.

The fine line to be recognized is that, while the parties are not required, as an element of good faith, to accept proposals made by the other party or to make counterproposals, giving merely "philosophical" reasons for rejection of proposals is not indicative of an attitude in keeping with the good faith obligation.

Were this complaint timely as to the entire course of bargaining, much of the employer's early conduct would tend to support finding of a violation. For example, the employer's rationale for rejection of the mid-term amendment language appears to have been primarily that the employer did not want such

language in the agreement. Similarly, the employer's May 23 explanation for its rejection of the union's classification proposal was limited to "management's rights". The only other discussion on classification found by the Examiner in the record is the employer's comment to the mediator on December 5 that it intended to conduct its own classification study and would discuss any objections the union had to the results in the negotiations for the next contract. In the absence of a collective bargaining relationship, everything is a management right. But given the presence of an exclusive bargaining representative for these employees, that explanation concerning a mandatory subject of bargaining is indicative of an elemental rejection of the bargaining process. Similarly, once the employer was given assurance that the union's proposal on break rooms was not intended to require any capital outlays by the employer, the employer's continued rejection of the proposal on seemingly philosophical explanations, such as that "it followed state law" or "certain matters were best dealt with outside the agreement" is the type of conduct which would invite finding a violation.

Several of these matters, including employee rights, employee participation, salary survey, suspensions, termination / renewal / mid-term amendments of the collective bargaining agreement, and most aspects of the hiring and promotion topic, were conditionally or totally withdrawn by the union in its October 3 proposal. Any absence of discussion during the time period germane to this allegation thus cannot be attributed solely to the employer.

Given the strictures of the statute of limitations, the Examiner also does not find violations of the statute with respect to any of the remaining issues raised under this allegation. The union held to the "retention of benefits" issue to the end, and the "mediator's proposal" drafted by the employer would have achieved the union's desired result by returning to the language of the OPEIU contract. The union also held to its proposed restrictions on the use of temporary employees after October 3. The employer countered on December 5 by proposing to resurrect transfer language, which the union itself had dropped, in exchange for the union dropping the temporary employee language. The temporary employees subject disappeared in

the move to the OPEIU contract language in December, as did the bulk of the union's classification proposal. Wages and the release time issue clearly were on the table during the period for which the complaint is timely on the "refusal to provide explanations" allegation, but it is also clear that the positions of the parties on those issues had been well framed in discussions prior to August 19, so that the prior discussion mitigates the lack of discussion during the period for which the allegation is timely.

Confusing Bargaining by Repeated Renumbering of Proposals

In paragraph 7.a. of the amended complaint, the union alleges that the employer made the negotiation process confusing and lengthy by repeatedly renumbering and moving bargaining subjects from one article to another. The record reflects that the union's initial proposal used a numbering system different from that contained in the OPEIU agreement.[52] The employer responded with a proposal which used a numbering system which differed from both the OPEIU contract and the WPEA's proposal. While the employer did not offer particular explanation for its numbering scheme, it essentially stayed with its numbering system throughout the negotiations. The evidence does not support the allegation of "repeated renumbering of proposals". The union ultimately changed its numbering format to conform with the employer's.

Totality of Conduct

The union asserts in paragraph 8 of its amended complaint that the actions reflected in its allegations against the library, considered in their totality, evidence a continuing refusal by the library to negotiate in good faith. Throughout the discussion of the union's allegations in this case, the Examiner has made reference to standards enunciated by the Commission, by the National Labor Relations Board, and by the courts in determining whether

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52 The record does not reflect that the basis for that arrangement was ever explained by the union at the bargaining table. The Examiner can only presume that the format proposed was one which conformed to that usually used by the WPEA.

good faith bargaining has occurred. The finding of a violation generally cannot be based solely on contract proposals put forth by a party. American National Insurance Company, supra. Seattle-First National Bank v. NLRB, 638 F.2d 956 (9th Cir., 1981). Since "it would be extraordinary for a party directly to admit a bad faith intention", the motives of a party must be ascertained from circumstantial evidence, which may properly include some evaluation of contract proposals. Continental Insurance Co. v. NLRB, 495 F.2d 44 (2nd Cir., 1974). Reed and Prince, supra. City of Snohomish, supra. A-1 King Size Sandwiches, supra. As the court noted in NLRB v. Cable Vision, supra:

> ... the failure to come close to agreement accompanied by a failure to make meaningful concessions on nearly every subject suggests that something is awry ... if management has adhered uniformly to proposals predictably unacceptable to the Union, has refused to make meaningful concessions in nearly every area, and has insisted (without clear justification in principle) on maintaining its original positions in these areas (and the Union has not), one has some evidence for concluding that the Company has engaged in surface bargaining instead of bargaining in good faith.

Good faith also demands that an employer meet with a willingness to hear and consider a union's view and a willingness to change its mind. M. A. Harrison Manufacturing Company, 253 NLRB 675 (1980), enf. 682 F.2d 580 (6th Cir., 1982). However, even where a respondent behaves in a number of ways evidencing good faith, such behavior cannot mitigate other behavior violative of its good faith obligation. A-1 King Size Sandwiches, supra; City of Snohomish, supra.

These parties entered negotiations from very different backgrounds in collective bargaining. The record reflects that Conable's only experience in collective bargaining has been with this employer, and with the OPEIU. Hurlburt has spent a lifetime in labor relations, but primarily in the private sector. While St. John and Cameron both have labor experience outside of the WPEA, the bulk of the WPEA's contracts involve employees of the state of Washington, who are not empowered to bargain concerning wages

and wage-related matters. These diverse experiences clearly colored the positions and perceptions of the parties regarding the course of bargaining at issue in these proceedings.

The employer asserts that the union's behavior had a direct influence on its own actions, and should be considered to mitigate those actions which the Examiner may perceive to indicate a lack of good faith on its part. The employer stresses that the union violated the "ground rules" agreements of the parties, that the union made press releases and sent letters to various elements of the community, and that the union made contacts with the library trustees, in support of the employer's perception that the union was engaged in an ongoing program of circumvention and disruption.[53] Ground rules are not a mandatory subject of bargaining, however, and any violations of contracts between the parties are not subject to remedy in unfair labor practice proceedings. City of Walla Walla, Decision 104 (PECB, 1976). The Examiner does not discount the irritation felt by the employer at some of the union's actions, nor relieve the union of its responsibility to approach negotiations with the same good faith attitude and effort to reach agreement required of the employer. Distasteful as the union's actions may have been to the employer in this case, the Examiner does not share the employer's view that conduct by the union could justify a violation of the law by the employer.

The employer has characterized the union's proposal as a "laundry list", as an "unedited wish list", as completely unrealistic, and as full of issues which were more appropriately dealt with as grievances. The union did make an extremely ambitious proposal, both in terms of its economic goals and its detailed approach concerning working conditions, but the employer must also recognize that its own proposal, which it believed to be reasoned and realistic, was equally ambitious in its attempts to restructure its entire wage and benefit system and change existing conditions in a number of other areas. The employer claims that it lawfully rejected a number of the union's

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[53] Certain actions of the union are under consideration in the employer's allegations in this matter.

positions as completely unlike the position of the prior union, as totally different from the language of the prior agreement, or as totally different from the employer's normal way of doing business. But that does not explain why the employer found it appropriate to change or delete a number of areas of the prior agreement, which also must be characterized as the employer's normal way of doing business up to that time. In making these observations, the Examiner does not hold that it is necessarily inappropriate or in bad faith for an employer to seek a number of changes. But this employer must be held accountable for its explanations, and must accept the inference toward which such explanations lead; namely, that the employer was determined, in most substantive areas, only to enter into a contract on its own terms.

The employer mis-characterizes the union as essentially not having moved on its economic package. The Examiner finds the employer's characterization of a return to the OPEIU contract as "not abandoning anything" is reflective of a "start from scratch" attitude on the part of this employer which was found to be indicative of bad faith in Shelton School District, supra.

The employer's rigidity in determining appropriate meeting times for negotiations; its failure to explain its rejection of union proposals; its actions surrounding the July 19 "final offer"; its failure to put forth counterproposals, while also failing to explain its rejection of the union's proposals; its refusal to meet with or talk to union representatives during the August through December time period; its comments, noted throughout this record, showing a clear rejection of certain of the fundamental precepts of good faith bargaining; and its rejection of the union's rights to represent its employees are all indicia of a lack of statutorily required good faith. When coupled with the employer's rigid adherence to the bulk of its own positions, it is clear that a violation must be found.

Unilateral Implementation in January, 1986

The WPEA alleges, in allegation 7.g., that the employer unlawfully implemented changes in working conditions on January 16, 1986, after having engaged in conduct intended to frustrate negotiations and avoid agreement.

On January 14, 1986, Watson directed a memo to bargaining unit employees which briefly reviewed the negotiations, reviewed the events of the January 7 mediation session, and observed that the WPEA had declared an impasse, before noting that the library could either continue with the status quo or implement its last offer. Watson went on to state that the library was choosing to implement changes, effective January 16, 1986, because of its belief that negotiations had continued long enough and that "employees represented by the union now deserve to receive the additional pay rates provided by the proposal we made last summer." The library did implement changed conditions as reflected in its July 19, 1985 offer. The union makes no allegation that the library implemented other than what was offered.

There is Commission precedent for the proposition that an employer may lawfully implement changes of wages, hours and working conditions where an impasse has been reached in bargaining in which the employer has satisfied its statutory bargaining obligation. Pierce County, Decision 1710 (PECB, 1983); Spokane County, Decision 2167-A (PECB, 1985). No legally cognizable impasse can exist, however, where the breakdown of negotiations is caused or contributed to by the unlawful conduct of the employer. Federal Way School District, supra. In this matter, the employer is being found guilty of several violations of its obligation to bargain in good faith, and so is not entitled to take benefit of the "impasse" which was created. The employer's unilateral implementation of changed conditions was unlawful.

Offer of Proof of Subsequent Success in Bargaining

The employer sought to adduce evidence that the parties reached tentative agreement in bargaining some time after the unilateral implementation of changed conditions. The tentative agreement to which the employer referred at hearing was not ratified by the union membership. The WPEA objected to admission of such evidence, arguing that it should be excluded as evidence of good faith by the library. A ruling on the employer's offer of proof was reserved, at the request of the employer, for determination after the close of the hearing and submission of briefs on the matter. The Examiner finds

that the evidence offered by the employer has no probative value to the matters before the Examiner.[54]

THE EMPLOYER'S CASE

Union Actions Directed Against the Employer's Bargainers

The employer alleges in paragraph 6.b. of its complaint that a letter of March 13, 1985 from the union to Conable threatened actions against the employer bargaining team unless bargaining positions were changed, and thus violated the union's duty to bargain in good faith.

Cameron and St. John reviewed the employer's initial proposal after receiving it in the mail on March 9, 1985. Cameron and St. John were both dismayed and upset with the employer proposal. St. John testified that he

> ... had not seen this kind of a proposal from an employer, ever. And to be honest, I was very angry.

St. John believed that perhaps the library did not understand how the union viewed the "entire situation down there". He had reviewed the current salaries of bargaining unit employees and thought they were "gross." St. John composed and Cameron signed a letter to Conable, indicating the union's feelings and describing actions which the union proposed to take against the library if the employer's proposal were not quickly improved, including:

> ... The Fort Vancouver Regional Library "Employer Proposal" is a series of steps backwards. It is composed of take-aways that relegate our Members to a status worse than that of welfare recipients. It takes away current compensation elements to more than off-set any

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54 As noted in the discussion of remedies, following, evidence of agreement reached and ratified by the parties may be germane to the determination of appropriate remedies, but cannot be considered to mitigate earlier violations by either party.

> purported "cost gains" to the unit. In doing so, it reflects poorly on the Library Board and the stewardship of library director Ruth Watson, as being grossly insensitive and irresponsible.
>
> WPEA is willing to discuss and negotiate the elements of this proposal, however, unless it is improved significantly and quickly, we intend to act against the Library Administration. We intend to poll our Members through a VOTE OF NO CONFIDENCE in Ruth Watson, as Library Director, based upon your "Employer Proposal." After our VOTE is completed, we intend to go public with the NO CONFIDENCE vote and begin a publicity campaign focusing the community on this administration under Director Watson and the Library Board. Should this administration refuse to offer responsible future proposals, WPEA intends to take more active steps to bring about a satisfactory contract settlement...If the Employer Team cannot manage so as to provide even a basic subsistence wage, then perhaps the library needs new management. (capitalizations in original)

The letter indicated that copies were sent to Watson, to WPEA members, and to the WPEA bargaining team. St. John testified that he viewed the vote of no confidence mentioned in the letter as a way of telling the employer that "if there's nobody there that can do anything to change this, then why should the employees have any confidence in that management." He viewed sending the letter to Watson as a means of "lobbying" her, signaling to her the union's perception of the proposal. Cameron testified that Watson was sent a copy of the letter to inform her, as library director, that management's proposal was not acceptable to the bargaining team.

Cameron delivered the letter to the library's bargaining team at the outset of the March 14 negotiation session. The union did not discuss the employer's proposal or its reaction to that proposal with Conable prior to giving him the letter. Conable and the other members of the library's bargaining team read and discussed the letter privately after it was presented to them. They then told the union team that they would like to proceed to discuss the library's proposal, as the letter indicated the WPEA was willing to do.

The employer alleges in paragraph 6.d. of its complaint that a letter written by St. John under date of June 20, 1985, to George Delvo, then chair of the library board of trustees, threatened employer bargaining team members and was a violation of the good faith bargaining requirement.

The letter at issue called for the resignation of Watson and her management team, including Conable and Venturini. The letter went on to note,

> The basis for the request is a NO CONFIDENCE vote among our bargaining unit employees which was completed on June 15th. Of approximately 80 ballots sent out, 60 were returned to WPEA -- with many of the remaining 20 fearing reprisal or threatened in their job status should they return the ballot ...
>
> The employee response was an overwhelming NO CONFIDENCE, that the administration has not treated employees fairly. This indictment against the library leadership goes well beyond the issues discussed at the bargaining table ...
>
> WPEA urges you to respond to our request, and to immediately replace the incumbent administration with leaders and managers who can do just that: lead and manage people effectively. The library resource is too important to be unproductively wasted, with service delivery employees suffering low morale, wages and working conditions. We believe the operations can be managed more effectively with a new team.
>
> We urge you to respond immediately and if our request cannot be honored, WPEA requests to be placed on your next Board of Trustees Meeting Agenda so we can present our case. You should also know that while our members are not pleased with the status of collective bargaining negotiations, our appearance at the Board of Trustees Meeting will not be used to negotiate with the Board itself. We believe the NO CONFIDENCE issues go well beyond the bargaining process, and it's those issues we wish the Trustees to address, and not proposals for negotiating at the table.

Copies of the letter were sent to the other trustees, Watson, Conable, Cameron, and WPEA members at the library. The existence of the no confidence vote and the general contents of the letter addressed to Delvo were subjects of an article in the local Vancouver press on June 24.

Section 8(b)(1)(B) of the federal Labor Management Relations Act makes it an unfair labor practice for a labor organization to restrain or coerce an employer in the selection of its representatives for collective bargaining or the adjustment of grievances. Violations of Section 8(b)(1)(B) are generally also violations of the union's duty to bargain under the LMRA. Chapter 41.56 RCW contains no specific provision similar to Section 8(b)(1)(B), but the employer challenges the March 13 and June 20 letters under the "refusal to bargain" section of the Washington statute, RCW 41.56.150(4).

The National Labor Relations Board has found a union guilty of an unfair labor practice when the union has attempted to force an employer into selecting or replacing a particular individual as its representative for collective bargaining or the adjustment of grievances. Laborers' International Union of North America, Local 478, 204 NLRB 357 (1973), enf. 503 F.2d 192 (D.C. Cir., 1974); Operating Engineers, Local Union No. 3, 219 NLRB 531 (1975); Asbestos Workers Local Union No. 27, 269 NLRB 719 (1984); Local 259, United Automobile, Aerospace, and Agricultural Implement Workers of America, 225 NLRB 421 (1976). Where the failure of a union to meet in collective bargaining has been based upon the identity of a particular employer representative, and that failure to meet has been coupled with a number of other questionable actions, the union's conduct has been found to evidence an overall lack of good faith. United Brotherhood of Carpenters and Joiners of America, 276 NLRB 682 (1985).[55]

The WPEA argues that its actions were not in violation here, in that it did not refuse to meet with the library's bargaining representatives, and the letters in question contained no threats against those individuals in the

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[55] The holding in International Organization of Masters, Mates, and Pilots, 233 NLRB 245 (1977) does not suggest otherwise. The union there picketed the employer to attempt to force it to hire an additional individual, without identifying specifically who should be hired. The NLRB held that the illegal activity is the attempt by a union to force an employer into selecting or replacing a particular individual, and since the union in that case was making no effort to circumscribe the employer's freedom to select the individual of its choice, there was no violation.

event they did not resign. Indeed, the union claims that the letters cannot constitute any improper threat because the WPEA has no relationship with bargaining team members or the library board which could give the letters any coercive effect.

The WPEA's argument is inapt. It is true that the WPEA never refused to meet with the library bargaining team, contrary to the practices exhibited by the unions in many of the NLRB cases in which a violation was found. Nor was the WPEA successful in removing Conable or Venturini from employment, as the union was in the firing of a supervisor in Local 259, supra. As the Executive Director noted in his preliminary ruling in this case, a union has a free speech right to attempt to sway public opinion about an employer, and also has the right to lobby public officials to let them know the potential political effects of their action or inaction. The union was within its rights to write letters expressing its displeasure with the employer's bargaining positions and to contact the media to voice those opinions. Similarly, in matters under the jurisdiction of the National Labor Relations Board, a union has a legal right, under certain circumstances, to engage in work slowdowns, picketing, or strikes. Where the unions in the cases cited above crossed the line was in striking, or engaging in work slowdowns, to attempt to remove a particular supervisor or employer bargaining team member. Similarly, where the WPEA crossed the line here was in its efforts, clearly delineated in both letters, to interfere with the employer's right to select Conable and Venturini as members of the employer's bargaining team. That the union could not simply say to those individuals, "You're fired", does not, as the WPEA would have it, remove the possibility of a violation. None of the unions in the cited cases had such power. There can be no question that the WPEA was attempting in its letters, either directly or inferentially, to have Conable and Venturini removed from the bargaining team, and also to have them removed from employment. The union's first attack on Conable and Venturini came before the employer's initial proposal was even discussed. Such actions are not in keeping with the good faith bargaining obligation, and the employer's unfair labor practice allegations concerning the letters have merit.

Allegations of Circumvention of the Library Bargaining Team

Paragraph 6.h. of the library's amended complaint alleges that the union committed a violation in connection with a September 9, 1985 letter from St. John to Conable. Although Conable was the addressee, the original letter was received by Conable approximately one week after the trustees, who had been indicated on the letter as recipients of copies, received their copies. The employer alleges that action was a circumvention and also is indicative of the union's overall bad faith.

Paragraph 6.j. alleges that the union committed a similar "circumvention" violation in regard to the delivery of the union's October 3, 1985 proposal. The trustees and the library director, who were not members of the employer's bargaining team, received mailed copies of the proposal before Conable.

St. John's September 9 letter contained the union's proposal that unresolved issues be submitted to an independent third party for a decision in the nature of final and binding interest arbitration. St. John noted in the letter that the union would cooperate with any reasonable process by which an arbitrator might be selected. He stated that the WPEA would not publicize the proposal until the library rejected it or until September 20, 1985. A copy of the letter was sent to the mediator. St. John testified that copies of the letter were sent to the members of the library's board of trustees, because the union felt it was being "stiff-armed" by the employer, and wanted to let the trustees know

> ... we were dissatisfied and upset and wanted Mr. Conable not to be so comfortable in what we perceived as unfair labor practices.

St. John expected that perhaps the trustees would communicate with the management team and "help us get an agreement".

Conable testified that he first learned of the letter on September 13, 1985, during a routine meeting with Delvo, as was the practice, a few days in

advance of a library board meeting. Conable described the conversation with Delvo on that occasion as "kind of ... confusing". Delvo inquired about arbitration. Not knowing of the existence of the letter, Conable thought Delvo was talking about mediation, and responded in that vein. Ultimately, Delvo referred to the letter, and Conable and the others went to Delvo's office, where they were shown Delvo's copy of the letter. Conable did not receive his copy of the letter until the September 19 mail delivery.

The letter to Conable and the copies sent to at least several of the trustees were sent by certified mail. A photocopy of the envelope in which Conable's letter was received was admitted into evidence. While the postmark and amount of postage are blurry, Conable testified that he believed that the envelope was postmarked on September 9, with postage of $1.62. That date and amount are the same as that shown on the envelope containing a letter sent to Carol Davies, one of the trustees. Certified mail receipts which are in evidence show that the envelopes addressed to three of the trustees were delivered on September 11. The certified mail receipt for the envelope addressed to Conable shows receipt on September 19.

The October 3, 1985 letter contained what the union characterized as a comprehensive counterproposal. The letter indicated that copies were being sent to the mediator, Watson, the trustees, and the WPEA bargaining team, noting, "This proposal will be sent ... to the Library Trustees purely for informational purposes and not to negotiate with them." The letter set a deadline of October 8 for a response from the library, with the proviso that the library should contact the mediator if it needed more time to consider the proposal. Again, the union sent the document to Conable by certified mail, obtaining a receipt showing that the document was postmarked October 3, 1985. Conable learned of the document from the mediator, who called Conable on October 4 to tell him that he was forwarding a copy of the union's proposal. Conable received the copy from the mediator on October 7. Members of the board of trustees had received the proposal from the union on October 5. The return receipt received by the union from the post office indicates that Conable received the document from the union on October 10, 1985.

Conable testified that he became concerned that a pattern was developing in which communications from the WPEA were reaching the addressee later than others who were to receive copies. Besides the incidents involving the two union proposals which Conable had received late, Conable cited late receipt by both him and Watson of the September 25 communication regarding the "unfair" listing. Conable also made reference to an incident in which Delvo had received a letter questioning his ownership of a building being leased by the library after the press had apparently already received such a letter and called him about it.[56]

These allegations can be disposed of on the facts. The record is clear that Conable received his copies of the documents in question after those documents had been received by others. However, the record is devoid of evidence, other than testimony of Conable's suspicion, that Conable's late receipt of his copies was a purposeful action by the union. The employer notes that the documents were not necessarily mailed on the date they were postmarked. While that is possible, there is no proof in the record to sustain that claim or the employer's suspicions. The employer does not meet its burden of proof on these allegations.

Phone Calls from St. John to Trustees

The employer alleges in paragraph 6.k. of its complaint that the union violated its good faith bargaining obligation when, in the course of telephone calls made to library trustees at various times during the bargaining process, St. John requested the intervention of the trustees to obtain a settlement, and also sought removal of library administrators.

Although he could not remember the exact number or time frame of the calls he received from St. John, Delvo testified that he had received "probably three or four" telephone calls, the first of which was sometime between late May and July, 1985. Delvo recalled St. John saying in that first call that he

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56 Although mentioned by Conable in his testimony, this matter was not developed by either party in this record.

did not believe the staff was giving the board correct information about the bargaining process, and that "if he and I could just talk, and he could explain what the real situation was he was sure that I would understand this." According to Delvo, St. John requested a private meeting with him, suggesting that if the two met, they could work things out. Delvo was uncomfortable with the conversation because he was not certain what he could say. He told St. John that it was his understanding that "there were ways that this had to be handled and that if it was handled outside of those channels it would be violating the negotiations." Delvo testified that:

> St. John then became agitated, ... this is where I -- my first time that I ran into this with him, and I ran into it afterwards, he got really -- he just changed and did a 180 and started to become real agitated and so, subsequently, we talked for about two or three minutes and I can't remember whether it was that time or the time after, he hung up.

In one phone conversation, St. John discussed appearing at the July board meeting. Delvo was unable to recall the content of other conversations, because after the first phone call "I was really cautious."

St. John recalled one phone conversation with Delvo, and testified that "I may have had another one with him, but I don't recall." He did not recall any phone conversations with Delvo prior to sending his June 20 letter. St. John kept notes of a conversation that occurred in the late afternoon of July 11, 1985. St. John recalled that Delvo told him at the outset that he was not going to respond on any of the bargaining issues because he felt quite limited in what he could say, and he wanted it understood that he would do no negotiating. Delvo then explained his perception of the role of a trustee, which he saw as primarily fiduciary. St. John testified that he responded that "... the Board has the responsibility of hiring and firing some of the top management; that's for sure." After some further conversation, St. John indicated that the union wanted to address the board. Delvo told him that he wouldn't put them on the agenda, but that they would have an opportunity to speak during a "citizen comments" portion of the meeting. Delvo also told

him the board might cut them off if they got out of control, but if they were contributing, they would be able to speak.

St. John recalled talking by phone with at least one other trustee, whom he recalled as a Mr. Gressit, at about the same time he recalled talking with Delvo. St. John was trying to reach someone on the board about scheduling a union appearance at a board meeting, and he recalled just going down the list of trustees, placing calls. He testified that he told Gressit "we were dissatisfied with the negotiations progress at this point and we wanted to appear before the board." St. John could not specifically recall talking with any other trustees, although he placed calls to several.

In United Food and Commercial Workers Union, Local 1439 (Food City West), 262 NLRB 309 (1982), the NLRB found that the union violated its good faith bargaining obligation when, in conjunction with other actions, it attempted to circumvent the employer's designated bargainer, including disparaging that bargainer and telling the employer that the parties need not call the meetings "negotiations".[57] No meetings actually took place in the absence of the employer's representative. Sultan School District, Decision 1930 (PECB, 1984) establishes that a union's contact with a public official, rather than with the public employer's designated bargainers, is not a per se violation of RCW 41.56.150. The focus of analysis must be on the content of the communication between the union official and the school board members. The proposed discussions in the Sultan case were understood by both sides to be "philosophical" in nature. In dismissing the allegation, the Examiner in that case noted that the union official did not refuse to meet with the employer's designated bargainer or make disparaging remarks about the employer's bargainer. Had the union official advanced specific proposals or threatened to break off negotiations if the school board refused to meet with him, a different result would have been reached. In affirming the Examiner,

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57 The union also was found to be unyielding in its position, to have made strike threats "without so much as a nod to the processes of negotiation", and to have engaged in only one token negotiation session in which its representative was without authority.

the Commission noted the holding in Madison School District v. Wisconsin Employment Relations Commission, 429 U.S. 167 (1976), in which the Supreme Court of the United States held that individual employees and their representatives had a constitutional right to present their views to elected school board members at public meetings, even though their speech was addressed to the subject of pending negotiations, but did not find that decision to be directly on point to the situation of a union soliciting private meetings with individual board members. Sultan School District, Decision 1930-A (PECB, 1984). The Commission held that union officials have the right to lobby public officials on public issues, but that if such "lobbying" became bargaining, it would violate the statute. The Commission noted that the union's actions in Sultan invited speculation, but that, in fact, nothing happened.

The employer argues that St. John crossed the line between lobbying and negotiating in the instant case. In contrast to the Sultan case, the employer cites here a "relentless stream of oral and written communication" to the trustees, attempts by St. John to discuss the full range of the bargaining topics with the trustees (rather than the single issue of agency shop, as was the case in Sultan), and St. John's repeated disparagement of the library's bargaining representatives as evidence distinguishing the instant matter from Sultan. The union responds that the conversations at issue were short, that no specific proposals were discussed, and that St. John's criticisms of Conable were not so offensive as to lose free speech protection.

The Examiner accepts Delvo's uncontroverted testimony as establishing that St. John made an effort to schedule a discussion of the negotiations process with Delvo. It is credible, given St. John's comments about the board's authority to hire and fire managers and the union's actions elsewhere on this record, that St. John disparaged the employer's bargainers in the course of those phone conversations. However, the evidence does not establish that St. John made specific bargaining proposals during the course of phone calls to trustees, that he ever threatened to break off negotiations, or that he ever

refused to meet with the employer's designated representatives. The union's actions certainly give rise to suspicion about its motivation, but the Examiner is unable to conclude that St. John's actions during those phone calls rise to the level of an independent violation of the statute.

Course of Conduct Allegation

The Executive Director ruled that the employer was entitled to show that the union engaged in a course of conduct of failing or refusing to bargain in good faith. Specifically, his ruling noted:

> To the extent that the complaint contains factual allegations of misconduct falling within the jurisdiction of the Commission, the complainant will be entitled to show a course of conduct involving those facts.

Although the employer's amended complaint contained a number of allegations of bad faith by the union, only the five allegations discussed above were ruled by the Executive Director to state a cause of action. The Examiner has therefore limited consideration to the facts on those areas in ruling on the course of conduct allegation.

As noted above, the union did breached its good faith obligation in connection with its attempts to interfere with the employer's selection of its own bargaining representatives, and in personalizing its problems with the employer. The union's actions in contacting members of the board of trustees give rise to suspicion that the union was indeed attempting to circumvent the employer's chosen bargaining representatives, and to bargain directly with the trustees. Similar actions, even though no meetings were held, were found to be part of an unlawful course of conduct in United Food and Commercial Workers, supra. Part of the UFCW's bad faith conduct in that case was found to be its strike threats before ever really bargaining. The WPEA also made certain threats immediately after receiving the employer's initial proposal. All of those actions point to less-than-exemplary bargaining conduct. The issue to be determined in evaluating overall good faith is, however, the

party's state of mind, its willingness to meet, discuss, and enter into a collective bargaining agreement. The WPEA never refused to meet with the employer's representatives, and in fact actively sought to meet more frequently. Its representatives were not without the authority to bargain. Although the WPEA certainly held to many of its positions at the bargaining table, it modified or dropped many others. Without excusing the union's unlawful or less-than-exemplary behavior, as discussed above, the Examiner does not find that the union's overall conduct indicates an unlawful overall course of conduct.

REMEDY

The WPEA requests a cease and desist order, restoration of those benefits and working conditions removed at implementation, payment of attorney's fees and costs, and an order that the parties return to the bargaining table for a sixty day period, after which time they be ordered to submit to interest arbitration if they have not been able to reach agreement.

The employer argues that if any violations are found, only traditional remedies are appropriate. It disputes any claim by the union for extraordinary remedies, given its claim that the union's conduct contributed significantly to the problems in bargaining.

The conventional remedies for "refusal to bargain" and "interference" unfair labor practice violations include that the offending party cease and desist from its unlawful conduct, that the offending party post notice informing the affected employees of its unlawful conduct (and of its commitment to cease and desist from such conduct) and, where appropriate, that the offending party bargain in good faith upon request made by the other party to the collective bargaining relationship. Where unlawful unilateral changes have been made, the remedy may also include restoration of the status quo ante. Extraordinary remedies have been ordered in selected cases, where defenses asserted have been frivolous or totally lacking in merit.

Each of these parties has, at considerable expense, obtained rulings that the other has engaged in unlawful conduct, and has received vindication of some of its own conduct. Each can be, and is, ordered to cease and desist from its unlawful conduct. The apparent resolution by the parties of their contract dispute subsequent to the close of the hearing in this matter[58] does raise certain issues with regard to other appropriate remedies, however. The statute declares voluntary agreements by the parties to be preferred. Effectuation of that statutory policy requires that the Examiner refrain from setting aside agreements by the parties covering issues which were in dispute during the time period germane to the unfair labor practice proceeding. The Examiner is not unmindful of the possibility that an agreement reached after the course of bargaining described in this decision may have been tainted by the illegal behavior of the parties, and has fashioned a remedy with that in mind. However, given the long and tortuous nature of these proceedings, and the length of time it took these parties to reach an agreement, the Examiner does not believe that a blanket bargaining order and/or blanket restoration of the status quo ante would serve the mandates of the statute. These parties need to put behind them the unlawful activities which led to these cases, and get on with a more fruitful and productive bargaining relationship.

The Public Employment Relations Commission has awarded attorney's fees in a very limited number of cases. The instant cases do not present the fact pattern of frivolous defenses or abuse of process under which the Commission has found attorney's fees remedies to be appropriate.

The Commission has awarded interest arbitration as an unfair labor practice remedy in one case, METRO, Decision 2845-A (PECB, 1988). That case involved an employer which consistently refused to perform its legal obligations, in spite of prior rulings by the Commission and the courts. The instant case does not compare to the fact pattern exhibited in METRO.

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58 See footnote 8, supra.

FINDINGS OF FACT

1. Fort Vancouver Regional Library is a public employer within the meaning of RCW 41.56.030(1). At all pertinent times, the employer's representatives for the purposes of collective bargaining were Gordon Conable and Corinne Venturini, associate directors of the library, and Frank Hurlburt, a consultant to the library on labor relations matters.

2. The Washington Public Employees Association (WPEA) is a bargaining representative within the meaning of RCW 41.56.030(3). The WPEA was certified by the Public Employment Relations Commission on December 27, 1984, as the exclusive bargaining representative of a bargaining unit of regular full-time and part-time office, clerical, and non-professional employees of the Fort Vancouver Regional Library. At all pertinent times, the union's representatives for the purposes of bargaining with the Fort Vancouver Regional Library were its Executive Director, Eugene St. John, and Senior Staff Representative James Cameron.

3. The WPEA and the library began negotiations for a collective bargaining agreement on January 9, 1985. At that meeting, the union requested that the library grant paid release time to the employee members of the union bargaining team. The employer had not paid for paid release time in the past, and refused the request unless it could bill the union for the employee's time, as it had done with the previous exclusive bargaining representative. The union declined to pay for that time. The employer offered flexibility in arranging employee schedules so that negotiations could occur on their time off, and agreed to allow employees to use vacation time or be released from work without pay to attend negotiation sessions. The union requested that negotiations occur after work hours or on weekends, but the employer refused. The parties discussed the issue of paid release time at several meetings. Both parties held to their positions on the subject, with the employer also stating that its representatives would not appear for any scheduled evening or weekend negotiation sessions.

4. The union mailed its initial proposal, consisting of about 50 pages, to the employer after the January 9 meeting. The union's initial written proposal included a request for paid release time and travel expenses for employee members of its bargaining team.

5. A bargaining session held on February 7, 1985, was encumbered by the absence of employee members of the union bargaining team who were prevented from attending because they were involved in an automobile accident while en route to the meeting. Explanations for certain parts of the union proposal were abbreviated due to their absence.

6. The parties met again on February 21, and spent that entire meeting discussing the union's proposal. The employer made no proposals.

7. There is no evidence of remarks made or actions taken by the employer during the organizing or election process to support the allegation that the employer held animus toward its employees or the WPEA, because of the exercise of the right to change bargaining representatives. The employer's initial proposal to the WPEA included a number of reductions from conditions theretofore in effect, but the employer had well thought out reasons and goals in advancing its economic proposals. Some of those goals dated back to the negotiation of previous contracts between the employer and the former exclusive bargaining representative of the employees. The employer's initial proposal to the WPEA on shop stewards was not a significant change from its current practice. Although the employer's initial proposal to the WPEA on union security was a change from prior practice, the evidence does not establish that said proposal was made in reprisal for the exercise by its employees of their right to change exclusive bargaining representatives.

8. The employer's numbering of its contract proposals using a different format from either the WPEA or the prior collective bargaining agreement was maintained in a consistent manner throughout the course of negotiations, and was not designed to frustrate agreement.

9. The employer's initial proposal put the union on notice that the employer was considering economic items as a package, and that the employer took the position that change to one part of that package would result in adjustment to other parts.

10. In March, 1985, shortly after it received the employer's initial proposal, the union wrote a letter to Conable indicating its intention to "act against the Library Administration," by taking a no confidence vote and beginning a publicity campaign. The union also claimed it would take unspecified additional steps if the library did not offer "responsible" proposals. The letter also noted that if the employer could not do better, perhaps it needed new management.

11. Early in the bargaining, the employer provided no rationale for its rejection of union proposals, or gave responses such as "it's a management right" or "we don't want it in the agreement" on the majority of the subjects on the bargaining table.

12. The employer did not initially propose any change of sick leave benefits, but called for a significant reduction in vacation benefits. The union and the employer reached a tentative agreement on sick leave on April 24, 1985, providing for benefits consistent with the past practice. On May 9, in conjunction with an improvement of its offer regarding vacation benefits and consistent with the "package" approach previously announced to the union, the employer proposed a reduction in sick leave benefits. Although sick leave was discussed thereafter, the employer did not formally modify its position. In January, 1986, the employer implemented the sick leave rates it had proposed on May 9.

13. On June 20, 1985, the union wrote to George Delvo, then chair of the library board of trustees, calling for the removal and replacement of library director Ruth Watson, Conable, and Venturini from employment. Copies of the letter were sent to Watson, Conable, and the other members of the board of trustees.

14. Early in a meeting held on July 19, 1985, a tentative agreement had been reached on most issues relating to hours of work and scheduling of employees (Article 7). After an additional exchange of proposals on the same date, the parties were unable to reach agreement on either shop stewards (Article 2) or employee discipline (Article 9). The union then proposed to accept the employer's management rights language if the employer would address some of the union's concerns on subcontracting, position classification, employee rights, and employee participation on committees. The employer's response, proposing that the union accept the employer's prior proposals on a number of issues including management rights, shop stewards, discipline, and the Article 7 language discussed earlier in the day, and drop the union proposals on subcontracting, classification, employee rights, and employee participation, was indicative of an absence of good faith. The union rejected that proposal, and the issues remained unresolved.

15. Later in the meeting held on July 19, 1985, the employer made an economic proposal which contained only minor changes from its April 24 and May 9 proposals. The employer did not characterize its economic proposal as containing changes of its prior position.

16. By the end of the July 19 meeting, the parties had agreed that the union would submit the contract proposals then on the bargaining table to a vote of its membership. Conable offered to assemble the various proposals into a composite document which he would forward to the union by approximately the end of the following week. Conable's failure to meet the projected time frame for delivery of a composite document was due to a number of personal and work-related reasons, but Conable then adversely affected the bargaining process by failing to inform the union of the delay, or any reasons for it. The employer mailed the proposal to the union on August 14, 1985.

17. During the summer of 1985, St. John placed telephone calls to members of the board of trustees wherein St. John discussed appearing at meetings

of the board of trustees, and the responsibilities of members of the board. In a conversation with Delvo, St. John disparaged the employer's bargaining team and suggested a private meeting to discuss the bargaining process. St. John made no specific bargaining proposals to Delvo, however, and did not threaten to break off negotiations or refuse to meet with the employer's designated bargainers. The union appeared at one or more public meetings of the board of trustees, but no private meetings occurred with the trustees, either individually or in a group.

18. During a mediation session held on August 29, 1985, the union questioned the employer's cost calculations for its pay proposal. The mediator conveyed information from the employer to the union regarding the calculations, after the employer had explained its position to the mediator. The union made no follow up requests for information at that time.

19. Between August 29, 1985, when the negotiations were recessed pending the development of a "proposal" by a mediator assigned to work with the parties, and December 5, 1985, the employer failed and refused to communicate directly with or to meet with the union in negotiations. Direct communications between the parties were limited to two brief telephone contacts initiated by the union, although the union telephoned and wrote to the employer on several occasions during that period.

20. In a letter from St. John to Conable dated September 9, the union proposed that the parties submit all unresolved issues from the negotiations to final and binding interest arbitration. Copies of the letter were sent to the members of the library board of trustees. The letters were sent by certified mail. The evidence fails to establish that the envelope addressed to Conable was posted in a manner different from the envelopes addressed to other employer officials. At least three of the trustees received their letters on September 11, while Conable did not receive his letter until September 19.

21. On or about October 3, 1985, St. John sent a comprehensive counter-proposal to Conable. Copies were sent to the board of trustees and the library director. The document was sent by certified mail. Conable's certificate was postmarked October 3, 1985. The union took a copy of the proposal to the mediator, who sent a copy to Conable on October 4, 1985. Members of the board received their copies on October 5, while Conable received the copy mailed to him by the union on October 10.

22. Between August, 1985, and January, 1986, the employer rejected a number of proposals made by the union, without making any counterproposals of its own or providing guidance to the union as to how to modify proposals to make them more acceptable to the employer.

23. Between August, 1985, and January, 1986, the employer's failure to respond to certain proposals made by the union was mitigated by its responses on those subjects in prior meetings or by the union's dropping of the proposals.

24. The December 5, 1985, meeting between the parties was set up by the mediator. At the close of a mediation session held on December 5, 1985, the mediator brought St. John and the employer bargaining team together for a face-to-face meeting. Although St. John testified of there having been an agreement during that meeting that the employer would provide its calculations of the cost of the union's latest proposal to the union prior to the next mediation session, neither Hurlburt nor Conable recalled such an agreement, or any request by the union. The employer did not provide any such calculations. The union made no follow-up requests.

25. During a mediation session held on January 7, 1986, the union made a written request for cost information. At the close of the mediation session, the union told the employer that the parties were at impasse. The employer thereafter assumed the request to be moot, and failed to respond to the request for information.

26. During the course of negotiations, the parties had several discussions regarding the cost of their respective proposals. The parties openly discussed the employer's methodology for arriving at its figures, and the union's exceptions to that methodology. During the August 29 mediation session, the employer's cost calculation for its proposal was conveyed to the union by the mediator. The employer made no economic proposals during the December 5 mediation session. The employer's explanation of its cost calculations was consistent throughout the course of bargaining.

27. During the January 7, 1986, mediation session, the employer authored a "mediator's proposal" which proposed a significant change in concept from prior proposals and from the wage system theretofore in effect at the library. There is no evidence that either the mediator or the employer represented the proposal otherwise, or that the union understood it otherwise.

28. The employer made a number of proposals in bargaining which were unacceptable to the union, and then either failed to offer explanations for its positions or offered only explanations which were pretextual or destructive of the bargaining process. In particular, it is not clear that the employer ever provided any clear explanation for its proposed retrenchment from prior practice on union security; the employer's positions on Sunday premium pay, scheduling, and hours of work appear to have been pretextual, and did not explain why the employer felt it necessary to change prior practice; the employer imposed suspensions upon employees after having resisted the addition of a "suspension" step to its discipline procedure, because it desired to retain unilateral control of working conditions; the employer's rationale on management rights and the grievance procedure reflect a rejection of the rights and obligations of the exclusive bargaining representative to represent employees; while stating that it recognized its legal obligation to bargain mid-term changes, the employer refused, without real explanation, to include such language in the collective bargaining agreement.

29. The employer rigidly adhered to the bulk of its own positions throughout the course of bargaining, and evidenced a determination, in most substantive areas, to enter into a contract only on its own terms.

30. On January 16, 1986, the employer unilaterally implemented the changes in wages, hours and working conditions as reflected in its bargaining proposals made on July 19, 1985.

CONCLUSIONS OF LAW

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

2. Based on the full evidentiary record available to the Examiner, the union's allegations concerning the employer's conduct on February 7, 1985 are untimely under RCW 41.56.160.

3. The employer's actions at the February negotiations sessions, described in paragraphs 5 and 6 of the findings of fact, do not constitute an unlawful lack of preparedness to negotiate or an unlawful delay of the bargaining process, and are not in violation of RCW 41.56.140(4).

4. By its actions described in paragraph 3 of the findings of fact, the employer did not refuse to meet at reasonable times and places, and did not violate RCW 41.56.140(4).

5. By withdrawing from a tentative agreement regarding sick leave and altering its proposal under the circumstances here present, the employer did not engage in bad faith, and did not violate RCW 41.56.140(4).

6. By conditioning a previously agreed matter on further concessions from the union concerning several other articles, as actions described in paragraph 14 of the findings of fact, the employer failed to bargain in good faith and violated RCW 41.56.140(4) and (1).

7. By submitting an economic proposal containing only minor changes from its prior position, as described in paragraph 15 of the findings of fact, the employer did not mislead the union and did not violate RCW 41.56.140(4).

8. By failing to communicate with the union concerning delays in the bargaining process, as described in paragraph 16 of the findings of fact, the employer failed to bargain in good faith and violated RCW 41.56.140(4) and (1).

9. By failing and refusing to offer counterproposals or guidance to the union, as described in paragraph 22 of the findings of fact, the employer failed to bargain in good faith and violated RCW 41.56.140(4) and (1).

10. By its failure and refusal to meet with or communicate directly with the union between August 29 and December 5, 1985, as described in paragraph 19 of the findings of fact, the employer refused to meet at reasonable times and places and refused to bargain in good faith, and so violated RCW 41.56.140(4) and (1).

11. Under the circumstances described in paragraphs 18 and 24 of the findings of fact, the employer did not refuse to provide information required by the duty to bargain, and did not violate RCW 41.56.140(4).

12. By failing and refusing to provide the union, upon request, with information reasonably necessary to its functioning as exclusive bargaining representative, as described in paragraph 25 of the findings of fact, the employer failed to bargain in good faith and violated RCW 41.56.140(4) and (1).

13. By its actions in explaining its proposals and positions, as described in paragraph 26 of the findings of fact, the employer did not put forth misleading and confusing figures in support of its proposals, and did not violate RCW 41.56.140(4).

14. By its actions in developing the "mediator's proposal" described in paragraph 27 of the findings of fact, the employer did not misrepresent the effect of its proposal, and did not violate RCW 41.56.140(4).

15. As described in paragraph 7 of the findings of fact, the employer did not advance its proposals in retaliation for the exercise by its employees of their right to change their exclusive bargaining representative, or in an attempt to break the union, and did not thereby violate RCW 41.56.140(1).

16. By its actions described in paragraph 23 of the findings of fact, the employer did not refuse to respond to or explain union proposals, and did not violate RCW 41.56.140(4).

17. The employer's behavior concerning a number of topics of bargaining, as described in paragraph 28 of the findings of fact, evidences a pattern of explanations and positions which were pretextual and/or destructive of employee bargaining rights, in violation of RCW 41.56.140(4) and (1).

18. By its use of a new numbering scheme for a collective bargaining agreement, and its consistent retention of that new system during the negotiations, as described in paragraph 8 of the findings of fact, the employer did not fail or refuse to bargain in good faith and did not violate RCW 41.56.140(4).

19. By rigidly adhering to its own proposals and by evidencing an intent to accept a collective bargaining agreement only upon its own terms, as described in paragraph 29 of the findings of fact, the employer refused to bargain in good faith and violated RCW 41.56.140(4) and (1).

20. By engaging in a course of conduct, as described in the portion of paragraph 3 of the findings of fact relating to rigidity in scheduling of negotiations sessions, and as described in paragraphs 11, 14, 16, 19, 22, 25, 28, 29 and 30 of the findings of fact, by its comments evidencing rejection of fundamental precepts of good faith bargaining; and by

its rejection of the union's right to represent bargaining unit employees, the employer has violated RCW 41.56.140(4) and (1).

21. By its action in implementing changes of wages, hours and working conditions absent the agreement of the union, as described in paragraph 30 of the findings of fact, while having committed unfair labor practice violations which contributed to the breakdown of negotiations, the employer refused to bargain in good faith and violated RCW 41.56.140(4) and (1).

22. By seeking the removal of the employer's designated bargainers from their bargaining responsibilities and/or their employment, as described in paragraphs 10 and 13 of the findings of fact, the union failed and refused to bargain in good faith and violated RCW 41.56.150(4).

23. By its actions in mailing communications to the employer's chief negotiator, as described in paragraphs 20 and 21 of the findings of fact, the union did not violate RCW 41.56.150(4).

24. By communicating with members of the employer's board of trustees, under the circumstances described in paragraph 17 of the findings of fact, the union did not refuse to bargain in good faith and did not violate RCW 41.56.150(4).

25. By its actions described herein, the union did not engage in an overall course of conduct in violation of RCW 41.56.150(4).

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:

1. (Case No. 5938-U-85-1103) Fort Vancouver Regional Library, its officers and agents, shall immediately:

A. Cease and desist from:

1. Failing and refusing to bargain collectively, in good faith, with the Washington Public Employees Association or any other organization selected by its employees as their exclusive bargaining representative by conduct including, but not limited to:

a. Conditioning agreement on previously agreed upon matters upon the making of further concessions;

b. Delaying the bargaining process or failing to communicate legitimate reasons for delays of the bargaining process;

c. Rejecting proposals made by the union without issuing any counterproposals or providing guidance to the union as to how to modify proposals to make them more acceptable;

d. Providing pretextual explanations for its rejection of union proposals;

e. Providing explanations for rejection of union proposals which reflect a fundamental rejection of the collective bargaining process, or of the rights and obligations of the exclusive bargaining representative to represent employees;

f. Failing and refusing to meet with the union at reasonable times and places for collective bargaining;

g. Failing to provide the union with requested cost information reasonably necessary to the union's function as exclusive bargaining representative;

h. Rigidly adhering to its own positions in bargaining, in order to enter into a contract only on its own terms;

i. Unilaterally implementing changes in wages, hours and/or working conditions of employees without having bargained in good faith to agreement or to a lawful impasse;

j. Engaging in a course of conduct not in keeping with the good faith bargaining obligation.

2. In any other manner interfering with, restraining or coercing its employees in their exercise of rights protected by Chapter 41.56 RCW.

B. Take the following affirmative actions to remedy the unfair labor practice violations found herein, and to effectuate the policies of Chapter 41.56 RCW:

1. Restore the wages, hours and working conditions of its employees involved in these proceedings to those in effect prior to January 16, 1986, except as specified in an existing collective bargaining agreement between the parties or as determined by good faith negotiations leading to such an agreement.

2. Upon request, bargain collectively in good faith with the Washington Public Employees Association as the exclusive bargaining representative of its employees, on all matters of wages, hours and working conditions of its employees in the bargaining unit described in these proceedings, except as specified in an existing collective bargaining agreement between the parties or as determined by good faith negotiations leading to such an agreement.

3. Post, in conspicuous places on the employer's premises where notices to employees are usually posted, copies of the notice attached hereto and marked "Appendix A." Such notice shall, after being duly signed by an authorized representative of the Fort Vancouver Regional Library, be and remain posted for

sixty (60) days. Reasonable steps shall be taken by the Fort Vancouver Regional Library to ensure that said notices are not removed, altered, defaced, or covered by other material.

4. Notify the Washington Public Employees Association, 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 union with a signed copy of the notice required herein.

5. Notify the Executive Director of the Public Employment Relations 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 herein.

2. (Case No. 6051-U-85-1134) The Washington Public Employees Association, its officers and agents, shall immediately:

A. Cease and desist from refusing to bargain collectively in good faith with the individuals designated by Fort Vancouver Regional Library as its representatives for the purpose of collective bargaining.

B. Take the following affirmative actions to remedy the unfair labor practices and effectuate the policies of the Act:

1. Post, in conspicuous places on the employer's premises where union notices to employees are usually posted, copies of the notice attached hereto and marked "Appendix B." Such notice shall, after being duly signed by an authorized representative of the Washington Public Employees Association, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Washington Public Employees Association to ensure that

said notices are not removed, altered, defaced, or covered by other material.

2. Notify the Fort Vancouver Regional Library, 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 employer with a signed copy of the notice required herein.

3. Notify the Executive Director of the Public Employment Relations 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 herein.

DATED at Olympia, Washington, this 2nd day of November, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Martha M Nicoloff

MARTHA M. NICOLOFF, Examiner

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

APPENDIX A

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL NOT fail and refuse to bargain collectively, in good faith, with the Washington Public Employees Association or any other organization selected by our employees as their exclusive bargaining representative.

WE WILL NOT condition agreement on previously agreed upon matters upon the making of further concessions by the union.

WE WILL NOT delay the bargaining process or fail to communicate legitimate reasons for delay of the bargaining process.

WE WILL NOT reject proposals made by the union without issuing counterproposals or providing guidance to the union as to how to modify proposals to make them more acceptable.

WE WILL NOT provide pretextual explanations for our rejection of union proposals.

WE WILL NOT provide explanations for rejection of union proposals which reflect a fundamental rejection of the collective bargaining process, or of the rights and obligations of the exclusive bargaining representative to represent employees.

WE WILL NOT fail and refuse to meet with the union at reasonable times and places for collective bargaining.

WE WILL NOT fail to provide the union with requested cost information reasonably necessary to the union's function as exclusive bargaining representative.

WE WILL NOT rigidly adhere to the bulk of our own positions in bargaining in order to enter into a contract only on our own terms.

WE WILL NOT unilaterally implement changes in wages, hours, and/or working conditions of employees without having bargained in good faith to agreement or lawful impasse.

WE WILL NOT engage in a course of conduct not in keeping with the good faith bargaining obligation.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in their exercise of rights protected by Chapter 41.56 RCW.

WE WILL restore the wages, hours and working conditions of employees involved in these proceedings to those in effect prior to January 16, 1986, except as specified in an existing collective bargaining agreement or as determined by good faith negotiations leading to such an agreement.

WE WILL, upon request, bargain collectively in good faith with the Washington Public Employees Association as the exclusive bargaining representative of employees, on all matters of wages, hours and working conditions of employees in the bargaining unit described in these proceedings, except as specified in an existing collective bargaining agreement or as determined by good faith negotiations leading to such an agreement.

FORT VANCOUVER REGIONAL LIBRARY

By: _____

AUTHORIZED REPRESENTATIVE

DATE: _____

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 other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.

APPENDIX B

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AND IN ORDER TO EFFECTUATE THE POLICIES OF THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT, CHAPTER 41.56 RCW, WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively in good faith with the individuals designated by Fort Vancouver Regional Library as its representatives for the purpose of collective bargaining.

WE WILL bargain collectively in good faith with individuals designated by Fort Vancouver Regional Library as its representatives for the purpose of collective bargaining.

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION

BY: _____

AUTHORIZED REPRESENTATIVE

DATE: _____

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