STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 77, Complainant,	)	CASE 15092-U-00-3809
vs.	)	DECISION 8727-A - PECB
SNOHOMISH COUNTY PUBLIC UTILITY DISTRICT 1, Respondent.	)	DECISION OF COMMISSION

Rinehart, Robblee & Hannah, by *Terry C. Jensen*, Attorney at Law, for the union.

Anderson Hunter Law Firm, by *J. Robert Leach*, Attorney at Law, for the employer.

This case comes before the Commission on a timely appeal filed by International Brotherhood of Electrical Workers, Local 77 (union), seeking to overturn findings of fact, conclusions of law, and an order of dismissal issued by Examiner Vincent M. Helm.[1] Snohomish County Public Utility District 1 (employer) opposes the appeal, and supports the Examiner's decision. We reverse.

BACKGROUND

The employer and union were parties to a 1985-1988 collective bargaining agreement which required the employer to pay the total premiums for employee health benefits for the first year of the contract. For the subsequent two years, the employer paid a fixed

[1] *Snohomish County PUD*, Decision 8727 (PECB, 2004).

contribution and the employees covered any difference between the employer's contribution and the actual cost.

In late 1986 and early 1987, the employer created a Flexible Benefits Plan to collect and disburse funds for employee and retired employee insurance premiums, medical claims, flexible spending accounts, and for the administration and costs for the program. The union and employer conferred on the matter, and agreed to place responsibility for administration and funding of the Flexible Benefit Plan with the employer. They also agreed that any change to the administrative procedures or change of carriers would not result in loss of benefits or increase in premium costs for the employees.

The parties agreed to a successor contract for 1988-1991, and it made several changes to employee medical benefits. Specifically, the employer and union agreed that bargaining was no longer required on changes to the administration of the Flexible Benefits Program, different contribution rates were established for probationary employees, and part-time employees were given a wage adjustment in lieu of employer-paid benefits.

In 1988, the employer established a Voluntary Employees Beneficiary Association (VEBA). The original articles of association for the VEBA called for three persons appointed by the employer and three persons appointed by employees to make recommendations for modifications or additions of coverage to employee health benefits.

From 1994 through the time critical to this proceeding, the collective bargaining agreements mandated that the employer's health benefit contributions would be a percentage of the "new year's cost" of the benefit.

The VEBA fund had surplus funds, particularly after the employer self-insured its employee benefits in 1995, and those amounts were accumulated in a reserve. The VEBA committee authorized reimbursements to employees beginning in 1990. The VEBA fund continued to accumulate a surplus throughout 1997 and into 1998, however.

Consultants hired by the employer to assist the VEBA committee advised the committee that maintaining the reserve was problematic for several reasons:

First, the consultants advised that income collected for the VEBA fund should be used to benefit current (as opposed to future) beneficiaries;

Second, the consultants advised that disbursing reserves in the form of cash rebates created an issue about who should receive the rebates; and

Third, the consultants advised the committee that maintaining a reserve could create tax status issues for the VEBA fund.

In June 1999, the VEBA committee adopted a course of action to utilize 20 percent of the current reserve to assist the funding of the benefit costs in 2000. To achieve its desired result, the committee estimated the total benefits cost for 2000 under the approach it had typically used, then deducted an amount equal to 20 percent of the VEBA fund reserve. Once that calculation was made, the employer was to use the resulting sum to determine what its 90 percent contribution was as required by the parties' collective bargaining agreement. The decision was not unanimous.[2]

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[2] The initial vote was deadlocked, with all three employer appointees voting in favor of the proposed plan to utilize the reserve, and all three union appointees voting against the plan. Under the VEBA Articles of Association, the vote of the junior union appointee was discounted, and the plan was adopted based on the votes of the employer appointees.

The union filed a grievance over the decision to utilize the VEBA fund reserve, but the employer refused to arbitrate that grievance. The union filed this compliant alleging the employer committed an unfair labor practice when it unilaterally changed the manner in which it calculated the cost of health benefits for 2000, but the parties asked that this proceeding be delayed while they litigated the refusal to arbitrate in court. Following conclusion of the court proceedings,[3] the union requested that the Commission process its unfair labor practice complaint.

Examiner Helm held a hearing on October 7, 2003, and April 14, 2004. The Examiner issued his decision on September 15, 2004, dismissing the union's complaint.

ISSUES PRESENTED

1. Are the VEBA committee members agents of the entity that appoints them?

2. Was the use of the VEBA fund reserve for 2000 consistent with past practice?

3. Did the union contractually waive its right to bargain changes to the VEBA fund?

4. Did the use of the VEBA fund reserve to lower the employer's benefits cost for 2000 constitute an unlawful unilateral change?

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[3] In an unpublished opinion, the Washington Court of Appeals determined that the union's grievance was not arbitrable under the parties' collective bargaining agreement. The Court declined to rule on the merits of the issues framed in the instant case.

ANALYSIS

Standard of Review

This Commission makes its own de novo conclusions and applications of law, as well as interpretations of statutes. We review an examiner's findings of fact to determine if they are supported by substantial evidence and, if so, whether they in turn support the examiner's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002); *World Wide Video Inc. v. Tukwila*, 117 Wn.2d 382 (1991). The Commission attaches considerable weight to the factual findings and inferences made by our examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001).[4]

Inquiry Limited to Events Through March 16, 2000

Complaints filed under Chapter 391-45 WAC provide respondents with notice of the claims against them, and thus assist in proper decision-making on the merits of cases. WAC 391-45-070 freely allows amendments of complaints at any time prior to the appointment of an examiner (subject to due process requirements) and allows germane amendments of complaints (again subject to due process requirements) up to the opening of a hearing. Once a hearing has been opened, WAC 391-45-070 only permits amendment of

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[4] Unchallenged findings of fact are considered "verities" on appeal. *Brinnon School District*, Decision 7210-A (PECB, 2001). On appeal in this case, the union erroneously characterizes unchallenged findings as "the law of case". The "law of the case" doctrine only applies to unchallenged conclusions of law, when the same case is again before an appellate body following remand. *See* Rule of Appellate Procedure 2.5; *Folsom v. County of Spokane*, 111 Wn.2d 256 (1988).

a complaint if the non-moving party has not objected to the evidence that is the subject of the amendment. A party that fails to either properly plead a specific allegation or to properly amend its complaint to add that allegation effectively waives its right to adjudicate that particular claim. *Grays Harbor County*, Decision 8043-A (PECB, 2004).

In this case, the complaint filed by the union on March 16, 2000, only concerned the use of the VEBA fund reserve for 2000. The union made no attempt to amend its complaint to add later events. The Examiner properly limited his decision to the scope of the union's complaint.

Applicable Legal Principles

Public utility districts are municipal corporations of the state of Washington and the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, generally applies to municipal corporations. RCW 41.56.020. Chapter 41.56 RCW is similar to the National Labor Relations Act (NLRA) and, while not controlling, decisions construing the NLRA are generally persuasive in interpreting state labor laws that are similar to or based upon the NLRA. *Nucleonics Alliance v. WPPSS*, 101 Wn.2d 24 (1981).

RCW 41.56.020 makes reference to RCW 54.04.170 and 54.04.180, which are provisions of the statutes regulating public utility districts:

> RCW 54.04.170 COLLECTIVE BARGAINING AUTHORIZED FOR EMPLOYEES. Employees of public utility districts are hereby authorized and entitled to enter into collective bargaining relations with their employers *with all the rights and privileges incident thereto as are accorded to similar employees in private industry.*
>
> RCW 54.04.180 COLLECTIVE BARGAINING AUTHORIZED FOR DISTRICTS. Any public utility district may enter into

> collective bargaining relations with its employees in *the same manner that a private employer might do* and may agree to be bound by the result of such collective bargaining.

(emphasis added). Thus, the provisions in Chapter 54.04 RCW may grant public utility districts and their employees rights different from those accorded other public employees in Chapter 41.56 RCW.

In *Public Utility District v. Public Employment Relations Commission*, 110 Wn.2d 114 (1988), the Supreme Court of the State of Washington held that the Commission has jurisdiction over labor disputes between public utility districts and their employees, except where Chapter 41.56 RCW conflicts with RCW 54.04.170 or .180. That ruling did not explicitly upset a state court of appeals ruling which stated that disputes between public utility districts and their employees should be determined by reference to the substantive principles of federal labor law. *Electrical Workers v. PUD*, 40 Wn. App. 61 (1985). In a follow-up to the *Public Utilities District* case decided by the state Supreme Court, an examiner stated, and the Commission agreed, that "closer adherence" to NLRB precedent is required in cases falling under RCW 54.04.170 and .180 than the general deference permitted by *Nucleonics*. *Public Utility District 1 of Clark County*, Decision 2045-A (PECB, 1989), aff'd, Decision 2045-B (PECB, 1989). We thus apply NLRA precedent (where available) in this situation, and we only apply Commission precedent to the extent that it is consistent with available NLRA precedent. If inconsistencies exist between the two sets of precedent, NLRA precedent is controlling.

Employee Benefits are a Mandatory Subject of Bargaining

Both NLRA precedents and Commission precedents consistently hold that employer payments toward the premiums for employee medical

benefits are an alternative form of wages. *Colite, Inc.*, 278 NLRB 293 (1986); *Gray Harbor County*, Decision 8043-A (PECB, 2004). Because health benefits are wages (and therefore a mandatory subject of bargaining), an employer that fails or refuses to bargain any change commits an unfair labor practice. *Langston Companies, Inc.*, 304 NLRB 1022 (1991); *City of Brier*, Decision 5089-A (PECB, 1995). A conclusion that health benefits are a mandatory subject of bargaining is only the beginning of the analysis in this case.

Common Law Principal/Agent Rules Apply

The Examiner found in this case that, "[T]here is no evidence that the [VEBA] committee was the alter ego of the employer so that its actions became, in effect, the actions of the employer[.]" If the VEBA committee actions were independent of the employer, then no violation of Chapter 41.56 RCW can be found.

In order for the actions of the VEBA committee to be attributable to the employer, we must first determine whether the employer appointees to that committee are agents of the employer for the purposes of imputing liability. In proceedings before the National Labor Relations Board (NLRB), "responsibility attaches [to a principal] if, 'applying the ordinary law of agency,' it is made to appear the . . . *agent* was acting in his capacity as such." *Teamsters Local 886 (Lee Way Motor Freight)*, 229 NLRB 832 (1977)(emphasis in original). Similarly, in proceedings before this Commission, we apply the common law rules of principal/agent when called upon to determine if the actions of a purported agent can be imputed to the principal upon whose behalf they are acting. *See, e.g., Community College District 13*, Decision 8117-B (PSRA, 2005)(holding that non-member union supporters' actions may be imputed upon the union).

Under Washington's common law rules of agency, an agent's authority to bind his principal may be either actual or apparent. *Deers, Inc. v. DeRuyter*, 9 Wn. App. 240, 242 (1973)(citing 3 Am.Jur.2d Agency sec. 71 (1962)). With actual authority, the principal's objective manifestations are made to the agent; with apparent authority, they are made to a third person or party. *Smith v. Hansen, Hansen, Johnson, Inc.*, 63 Wn. App. 355, 363 (1991) review denied, 118 Wn.2d 1023 (1992). Implied authority is actual authority, circumstantially proved, which the principal is deemed to have actually intended the agent to possess. *King v. Riveland*, 125 Wn.2d 500 (1994). Washington courts have held that the "authority to perform particular services for a principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services." *Walker v. Pacific Mobile Homes, Inc.*, 68 Wn.2d 347, 351 (1966).

The evidence in this case demonstrates that the VEBA committee was the alter-ego of the employer, so that actions of the VEBA committee can properly be attributed to the employer.

- The 1988 VEBA Articles of Association explicitly established, at Article 4, section 11, that the "VEBA Committee shall act as the agent of the District with regard to the trust ("Trust") established by the District[.]" Although the VEBA Articles of Association were amended subsequently,[5] that clearly establishes the original intention of the employer.
- The employer effectively controls the VEBA committee through its appointees. The record demonstrates that the vote of the junior union member is disregarded in the event of a tie vote,

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[5] The original section 11 language was omitted from amended VEBA Articles of Incorporation that were adopted in 1998 and took effect January 1, 1999.

so that the three employer appointees to the six-member body can always control the outcome of any question.

- The record demonstrates that the employer's Board of Commissioners (Board) continued to maintain ultimate authority over the actions of the VEBA committee after January 1, 1999. In notes from a meeting of the employer's board on August 24, 1999, Mark Schinman is quoted as telling the employer's board that it retained the ultimate authority over how VEBA Committee works, and if "the [Board] is not satisfied with what's going on, the [Board] can do something[.]"

- The employer provided all of the administrative support to the VEBA committee, and it hired consultants to advise the VEBA committee.

While these indicies of control may or may not individually demonstrate a principal/agent relationship, they persuade us, when taken together, that the VEBA committee is, in fact, an agent of the employer.

The Examiner's determination that the VEBA committee was not an agent of the employer was in error, and we amend the findings of fact and conclusions of law accordingly.

Past Practice and Waiver by Inaction

The employer argues that the Examiner properly found that the union's acceptance of previous uses of VEBA fund reserves constituted a waiver of the union's bargaining rights.

In order for a party to rely upon a "past practice" defense, the practice being used to justify the current action must be of the same nature as the complained-of action. Additionally, there must have been some prior acceptance of that practice on the part of the

complaining party, and the complaining party must have consciously yielded its right to bargain about the matter. *New York Mirror*, 151 NLRB 834 (1965); *City of Seattle*, Decision 2935 (PECB, 1988).

The parties' past practices support our finding that the use of VEBA fund reserve money in 1999 was not consistent with previous usage of those trust funds.

- In 1990, a $300 deposit of reserve funds was made to the accounts of all employees.
- In February 1993, a $200 deposit of reserve funds was made to the accounts of all employees.
- In November 1993, the VEBA committee authorized a $45 per employee use of reserve funds to offset an increase in premiums.

In each of those instances, the use of surplus funds benefitted only the employees. In each of those instances, the rebate was calculated and paid after the employer calculated its benefit contribution for the year, so that there was no reduction of the employer's contribution or other benefit to the employer.[6]

Although the VEBA committee authorized an 11.1 percent reduction in the premium levels for the 1997 calendar year, this reduction in premiums differs from the previous usages of the VEBA fund. The October 1996 use of VEBA fund reserves was conditioned on the premium costs being higher than anticipated, and was not a payment to employees in the form of an account credit or actual payment of funds.

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[6] See, for example, Exhibit 18 (the employer issued a rebate check to all employees to lower the surplus VEBA account funds).

The case at hand concerns a use of the VEBA fund reserve to reduce the employer's benefits costs for 2000, which is factually distinguished from the past usages described here. The Examiner's reliance on past practice was in error. We thus amend the findings of fact and conclusions of law accordingly.

Union Did Not Contractually Waive Its Right to Bargain Benefits

This Commission has consistently held that any waiver of a collective bargaining right must be "clear and unmistakable." *Whatcom County*, Decision 7244-B (PECB, 2004). Broadly worded management rights clauses are not sufficient to constitute a waiver of a union's right to bargain mandatory subjects. *City of Sumner*, Decision 1839-A (PECB, 1984). To meet the "clear and unmistakable" standard, the contract language must be specific, or it must be shown that the parties fully discussed the matter claimed to have been waived and that the party alleged to have waived its rights consciously yielded its interest in the matter. *Allison Corporation*, 330 NLRB 1363, 1365 (2000); *Lakewood School District*, Decision 755-A (PECB, 1980)(waiver of bargaining was made knowingly and intentionally).

Here, the pertinent part of section 5.11.1 of the parties collective bargaining agreement states:

> The current Flexible Benefits Program benefit coverages will be reviewed annually by the Employee Benefit Review Committee. This committee will have equal representation of bargaining unit and non-bargaining employees. The committee will make mutually agreed upon recommendations for modification or additions of coverages to the medical plan. Administration and funding of the plan, including carrier changes, are the responsibility of the District; provided, however, the District agrees to advise and discuss in advance with the Employee Benefit Review Committee significant administrative modifications or carrier changes. . . . It is further agreed that any changes in administrative procedure or carrier shall not

> result in a reduction of types of benefit coverages except when specifically expressed by labor/management agreement. The parties to this agreement understand and agree that the benefits of the existing Flexible Benefits Program shall not be reduced or modified during the term of this Labor Agreement without written approval by both parties.

The Examiner found through this language, that the union waived its right to bargain changes to the VEBA plan's funding for the duration of the agreement. We disagree. Nothing in the section presented demonstrates that the union intended to waive its right to bargain the parties' *contributions* to health benefits.

- The language explicitly grants the VEBA committee the authority to determine the level of *coverage* each employee will receive. However, the level of benefit coverage and each party's *contribution* towards the premiums to pay for that coverage is not the same.

- The language explicitly grants the committee authority over the administration of the benefit plan. However, the specific provision in the parties' collective bargaining agreement requiring the employer to contribute 90 percent of the level of coverage based on the new year's employee cost trumps a more generally worded waiver language, and is therefore inapplicable to this situation.

- No evidence was presented to demonstrate that during collective bargaining negotiations the parties agreed, discussed, or intended any language in section 5.11.1 of the collective bargaining agreement to grant the VEBA committee the authority to use surplus funds to artificially lower the new year's employee cost.

The Examiner erred in his application of the contractual waiver rules in this case. We amend his findings of fact and conclusions of law accordingly.

Change in New Year Employee Cost an Unfair Labor Practice

In ascertaining the meaning of a particular word or words within a statute, this Commission must consider both the statute's subject matter and the context in which the word is used. *Chamberlain v. Department of Transportation*, 79 Wn. App. 212, 217 (1995) (*cited in State - Transportation*, Decision 8317-B (PSRA, 2005) . Similarly, this Commission also construes words within a contract by affording them their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998); *Mining Specialists*, 314 NLRB 268, 269 (1994); *See also, Hearst Communications Co. v. Seattle Times Co.*, 154 Wn.2d 493 (2005).

Here, Section 5.11.1 of the parties' April 1, 1997, through March 31, 2000, collective bargaining agreement states in part:

> Effective January 1 of each year, the District's benefit contribution shall be calculated in the following manner:
>
> 1. The basic benefit coverage most selected by employees shall be determined from the previous year.
>
> 2. The District shall contribute 90% of that level of coverage based on the *new year's employee cost*.

(emphasis added). The real dispute for this particular issue is how exactly the parties intended to define the term "new year" as it is used within the contract. The employer maintains that no violation of the statute should be found since it still contributes 90 percent of the health benefit costs as required by the contract. It argues that since the contract term "new year's employee cost"

is not defined, and the contract is silent about prescribing a method for calculating the new year's employee cost, the VEBA committee was free to determine the new year's employee cost and then determine the employer's and employee's contribution rates.

Examining the ordinary use of the language in question, the term "new," when used in conjunction with the term "year," can be defined as a "beginning or appearing as a recurrence, resumption, or repetition of a previous act or thing." Webster's Third New International Dictionary, 1522. Webster's also defines the entire term "new year" as the "year following the current year in any calendar." Webster's Third New International Dictionary, 1524. Thus, it is clear from the plain language of the contract that the parties intended the benefit "cost" to be the beginning or initial cost of the benefit. We find that the term "new year's employee cost" as used within the contract is not ambiguous, and that the parties intended the term to mean the unadulterated cost to employees.

The evidence demonstrates that the actual change implemented by the employer through the VEBA committee to lower the cost of employee health benefits was in violation of the parties' collective bargaining agreement. The parties' contract contains no provisions that envision the use of artificial modifiers to determine the "new year's" cost. Rather, the parties explicitly intended the employer's 90 percent share, and the employee's 10 percent share, to be determined by the beginning cost of health benefits based upon the specific language used within the contract.

Other Agreed Upon Provisions Support Commission's Findings

Although the VEBA committee amended the VEBA Articles of Incorporation after the adoption of the 1997-2000 collective bargaining agreement, provisions contained within the amended articles of

incorporation provide further support for our findings. Section 2.2 of the VEBA Articles of Incorporation states:

> In no event shall any part of the principal or income of this VEBA or the VEBA Trust established herein be paid or revert to the District, inure to the private benefit of any individual in violation of applicable VEBA requirements, or be used for any purpose whatsoever other than for the purpose expressly defined herein.

This language is consistent with the parties' collective bargaining agreement, and makes it abundantly clear that the VEBA Trust was established for the benefit of the employees, and not the employer. If the parties were to allow the surplus VEBA Trust to be used to lower the new year's employee cost, then the VEBA Trust would be used to lower not only the employee's contribution, but the *employer's* contribution rate would be lowered as well. Allowing this sort of scenario would be in violation of the VEBA Articles of Incorporation since VEBA Trust funds would be reverting to the employer.

Based upon our finding, the employer unilaterally changed a mandatory subject without bargaining to impasse in violation of RCW 41.56.140(1). The Examiner's conclusion otherwise must be reversed, and we amend the findings of fact and conclusions of law accordingly.

NOW, THEREFORE, the Commission makes the following:

AMENDED FINDINGS OF FACT

1. International Brotherhood of Electrical Workers, Local 77 (union), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for

a unit of employees employed by Snohomish County Public Utility District.

2. Snohomish County Public Utility District is a public employer within the meaning of RCW 41.56.030(1).

3. The union and employer have a collective bargaining relationship which dates back to 1985.

4. In 1986, the employer, pursuant to agreement with the union, and by resolution, adopted an employee Flexible Benefits Plan, Expendable Trust Fund, and Specific Benefit Plan.

5. In 1988, the employer, by resolution, adopted articles of association for a Voluntary Employees' Beneficiary Association (VEBA) designed to provide payment for welfare benefit plans.

6. The VEBA articles of association originally provided for the authority for control and management of the plan to rest with a Benefits Administration Committee (committee) composed of plan members appointed by the employer.

7. At various points in time prior to the filing of the complaint herein, the composition of the Benefits Administration Committee was expanded and the union was granted the right to appoint bargaining unit employees to the committee. Ultimate control of the committee was vested with the employer through employer-appointed members by provisions within the VEBA articles of association eliminating the voting rights of the least senior bargaining unit representative in the event consensus was not reached.

8. The 1988-91 collective bargaining agreement contained several revisions with respect to the employees' insurance and medical plan. The agreement continued to provide for fixed, albeit escalating, employer contributions for each year of the agreement with employees' contributions being required to make up the difference between the employer contribution and the cost of medical benefits.

9. The 1991-94 collective bargaining agreement did not change the provisions on the employees' insurance and medical plan except to increase the employer contribution by a fixed amount each year.

10. The 1994-97 collective bargaining agreement introduced significant changes to the employees' insurance and medical plans. This contract modified the employer benefit contribution from a fixed amount to a certain percentage figure, determined January 1 of each year, representing 90 percent of the "new year's employee cost" of the level of medical plan coverage most selected by employees the preceding year. Eligible employees contributed the remaining 10 percent.

11. Between 1985 and 1995, medical benefits were provided by the purchase of medical insurance through various insurance carriers. Sometime in 1995, and continuing thereafter, medical benefits were provided on a self-insured basis.

12. Beginning in 1996, the new year's employee costs for medical benefits was determined by the VEBA committee. In making this determination, the committee utilized outside consultants paid for by the employer for assistance in making the determinations.

13. The committee, in determining the appropriate cost for each new year's benefits, considered several factors, including: an estimate of claims accrued but not yet submitted or paid, inflationary factors, employee turnover, and maintenance of an adequate reserve for the plan most selected by employees the prior year.

14. Between 1987 and 2000, the plan had accumulated varying amounts maintained as reserves. The committee, on several occasions, utilized various approaches to dispose of reserves deemed to be in excess of that required for proper funding.

15. On three occasions, the VEBA committee utilized part of the excess surplus by direct contributions either in the form of a cash payment to eligible bargaining unit employees, or through a credit to their individual flexible benefit accounts. On another occasion, in 1996, the committee elected to reduce contributions for the employer and employees by 11 percent.

16. In June 1999, the committee, by majority vote of the employer-appointed members, determined to apply 20 percent of the reserves deemed to be excess in the VEBA plan (approximately $170,000) to funding of the new year's employee cost of benefits, thereby reducing the amount that otherwise, based upon committee projections, would have been required to fund the benefits.

17. The action described in paragraph 16 above resulted in an artificially lowered new year's employee cost.

18. The parties' collective bargaining agreement provides that the employer's contribution is determined by 90 percent of the new year's employee cost for benefits.

AMENDED CONCLUSIONS OF LAW

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

2. Snohomish County Public Utility District (employer) failed to bargain, under Chapter 41.56 RCW, the June 1999 decision of the Voluntary Employees' Beneficiary Association to utilize 20 percent of reserves deemed to be surplus in the reserves maintained to fund employee benefits through the plan administered by the employer. The VEBA committee, through the employer-appointed members, is the alter-ego of the employer. The actions were not consistent with past practice and, therefore, constitute a unilateral change in existing terms and conditions of employment in violation of RCW 41.56.030(4).

3. By the terms of the collective bargaining agreement in effect between the parties when the complained-of actions occurred, International Brotherhood of Electrical Workers, Local 77, did not waive its right under RCW 41.56.030(4) to bargain with respect to matters set forth, and therefore, the employer has committed an unfair labor practice under RCW 41.56.140(4) and (1) by its action as described in paragraph 16 of the above findings of fact.

AMENDED ORDER

Snohomish County Public Utility District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing to bargain changes of wages, hours, and working conditions of employees in the bargaining units represented by the International Brotherhood of Electrical Workers, Local 77.

   b. In any other manner, interfering with, restraining, or coercing its employees in the exercise of their rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Meet with and bargain in good faith with the union concerning use of the Voluntary Employees Beneficiary Association (VEBA) committee surplus.

   b. Restore the *status quo ante* by reimbursing to the VEBA fund the amount of funds the VEBA committee directed to be used to offset the new year's employee benefit cost for the year 2000.

   c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix." Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

   d. Read the notice attached to this order into the record at a regular public meeting of the Snohomish County Public Utility District, and permanently append a copy of the

notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the International Brotherhood of Electrical Workers, Local 77, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

Issued at Olympia, Washington, the 13th day of February, 2006.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

Commission Douglas G. Mooney did not take part in the consideration or decision of this case.

Appendix

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY made a unilateral change to the mandatory subject of employee benefits by using surplus funds in the Voluntary Employees Benefit Account to lower the employer's contribution to employee benefits, without first bargaining to impasse with the International Brotherhood of Electrical Workers, Local 77.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL reimburse to the Voluntary Employees Benefit Account for the amount of surplus funds used to offset the new year's employee benefit cost for the year 2000.

WE WILL meet and bargain in good faith with the International Brotherhood of Electrical Workers, Local 77, concerning use of any Voluntary Employees Benefit Account surplus.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____ SNOHOMISH COUNTY PUBLIC UTILITIES DISTRICT

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.