Adams County, Decision 6907 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, COUNCIL 2, AND AFSCME LOCAL 1374, Complainant, vs. ADAMS COUNTY, Respondent.	CASE 13204-U-97-3213 DECISION 6907 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Audrey B. Eide, General Counsel, Washington State Council of County and City Employees, appeared for the complainant.

Menke, Jackson, Beyer & Elofson, by Rocky L. Jackson, Attorney at Law, appeared for the respondent.

On June 2, 1997, the Washington State Council of County and City Employees **and its affiliated Local 1374 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission** under Chapter 391-45 WAC, alleging that Adams County (employer) refused to bargain in good faith and interfered with employee rights in connection with negotiations concerning medical insurance for 1997.

The Executive Director issued a preliminary ruling in the matter under WAC 391-08-110, framing the cause of action as:

> Failure or refusal of the employer to meet at reasonable times, and/or to negotiate in good faith with respect to medical insurance carriers and premium rates for 1997.

The Executive Director also declined to rule on a motion for dismissal which had been filed by the employer on June 9, 1997.

The employer filed a motion for summary judgment and supporting materials on October 6, 1997. Paul T. Schwendiman was assigned as Examiner on December 4, 1997, replacing the staff member initially assigned to the case. The employer's motion for summary judgment was denied in a written order issued on December 5, 1997. A hearing was held at Ritzville, Washington, on December 11, 1997. The parties filed post-hearing briefs.

Based on the evidence and arguments, the Examiner rules that no unfair labor practice was proved regarding an employer-appointed insurance committee or regarding implementation of new insurance plans, but that the employer committed unfair labor practices with regard to negotiations on the maximum employer contribution for insurance coverage. A remedial order is issued.

BACKGROUND

The employer's Public Works Department provides services from several sites within Adams County. The union represents all of the non-supervisory employees of the Public Works Department.

Prior to the 1997 plan year,[1] the terms and conditions negotiated by the employer and union for medical and dental insurance were the same as those provided for most Adams County employees. The only exception concerned 10 employees in the Sheriff's Office, who are

[1]The medical plan year ran from February 1 of each year through January 31 of the next year.

"grandfathered" under a separate historical arrangement regarding their insurance benefits.[2]

The Insurance Committee

In response to employer-wide dissatisfaction with the medical plans then in effect, the employer created an insurance committee in 1993 or 1994, to investigate alternatives. The employer appointed all members of the committee, which consisted of one elected official, one union-represented employee from the Public Works Department, one unrepresented employee from the Public Works Department, one employee from each of the other large departments, one employee from the courts, and one employee from the Sheriff's Office. The employer appointed Cliff Plumb as the union-represented employee from the Public Works Department.[3] The union did not file an unfair labor practice complaint concerning the creation or composition of the insurance committee.

The committee investigated alternatives to the three medical plans then provided by Medical Services Corporation (MSC), and contacted both union-represented and unrepresented employees about their preferences. The committee concluded that the nine plans offered

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[2]In 1977, employees in the Sheriff's Office elected to forgo a wage increase in exchange for a substantially higher employer contribution toward dependent medical coverage. Ten employees were grandfathered under that arrangement in 1992, when new employees in that department were made subject to the same cap on employer-paid insurance as all other county employees.

[3]Plum had been a union officer for about 10 years, but there is no evidence he was nominated by, or appointed to the insurance committee at the behest of, the union. New union leadership was elected within a year after the insurance committee was formed. While it is clear that the new union leadership knew of Plum's membership on the insurance committee, Plum did not represent the union from the time the new leadership was elected.

by the State of Washington Public Employees Benefit Board (PEBB) were a better choice than the MSC plans. The PEBB plans provided broader coverage, but they also had higher costs. The committee eventually recommended the PEBB plans to the County Commissioners, but it failed to convince a majority of the County Commissioners to replace the MSC plans with the PEBB plans.

The Collective Bargaining Agreement and Reopener

The union and employer were parties to a collective bargaining agreement for the period of January 1, 1995 through December 31, 1997. That agreement included:

> The County shall provide the employee the choice of three medical plans under Medical Service Corporation, Option I, Option II, and Option III. The County's contribution toward employee medical coverage shall not exceed $134.64 per month during the period of this Agreement. Employees who choose a plan where the employee cost is less than $134.64 per month may apply the difference between $134.64 and the employee only cost toward dependent medical coverage only.

The collective bargaining agreement also provided a $44.26 per month amount for dental coverage, and provided for employee life insurance. It allowed for possible negotiation of medical and dental changes in 1996 and 1997, as follows:

> If the cost of medical or dental insurance increase for the years 1996 and 1997, the parties mutually agree to open this contract and commence negotiation on any change in the insurance provisions contained in this section.

In negotiations under that reopener for 1996, the parties agreed to combine the $134.64 and $44.26 amounts and to add $21.10, bringing the total employer contribution to $200.00 per month.

The insurance committee proposal to change to the PEBB plans was circulated to all Adams County employees in 1996. A large majority of all county employees signed a petition to the County Commissioners, requesting approval of the committee proposal. Those signing that petition included the president of the local union, at least one union executive board member, and 34 of the 37 employees represented by the union. The County Commissioners agreed to change the insurance plans, effective February 1, 1997, but retained the $200.00 maximum employer monthly contribution for all but the 10 grandfathered employees in the Sheriff's Office. Under the new PEBB plans, the out-of-pocket expense for those who selected employee-only coverage ranged from $0.00 to $34.08 per month,[4] and the out-of-pocket expense for full family coverage ranged up to $334.78 per month.

In approving the plan change described in the preceding paragraph, the County Commissioners acted prior to any negotiation, agreement or impasse with the union regarding the medical and dental insurance reopener for 1997. On or about January 10, 1997, the union requested reopening of the medical insurance provision of the collective bargaining agreement.

The employer responded on January 17, 1997, with a draft addendum to the parties' collective bargaining agreement. That draft incorrectly indicated a reversion to the employer contribution

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[4]Out of the nine PEBB plans, only the PacifiCare plan provided employee-only coverage without out-of-pocket employee expense. Prior to February 1, 1997, two of the three MSC plans provided employee-only coverage without out-of-pocket expense.

rates and medical plans which had been in effect in 1995, and the union refused to approve or sign the document.

On January 29, 1997, the employer provided a corrected draft addendum which reflected the substitution of the PEBB plans, and retained the 1996 $200.00 maximum employer contribution. A letter covering transmittal of that draft asserted:

> [This] draft represents agreement between the two parties. ... it is not an opening proposal by the County. ... If this draft does not represent agreement, please advise so that negotiations may commence.

The union was dissatisfied with the $200.00 maximum employer contribution. In a telephone conversation with an employer representative, the union requested a face-to-face meeting. After implementation of the PEBB plans on February 1, 1997, the union proposed a $34.08 increase in the maximum employer contribution.

The employer responded by letter from its attorney, Rocky L. Jackson, under date of February 24, 1997. While Jackson backpedaled on his previous statement that the addendum reflected an agreement reached by the parties, he invited the union to propose language and coverage changes, and stated that the employer welcomed union proposals on any subject,[5] he twice stated that no deviation from the $200.00 maximum contribution amount was to be expected.

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[5]Article XIX of the collective bargaining agreement provides that the parties may amend any part of the agreement by mutual consent. Neither party had an obligation to negotiate on any subject covered by the labor agreement, except the medical insurance provision by virtue of the medical reopener clause.

The parties eventually agreed to hold a face-to-face meeting on March 27, 1997. After agreeing to a meeting, however, Jackson sent a letter to the union on March 20, 1997, stating that there was no need for a face-to-face meeting because the County Commissioners had reviewed the union position and saw no need to change the $200.00 maximum contribution. Jackson stated that he was holding the date open, but he conditioned meeting on "if in fact the union can identify issues necessitating face-to-face negotiations".

The March 27,1997 Meeting and Subsequent Events

The union did not identify new issues, but it convinced Jackson that the March 27 meeting should go forward. At the meeting, the union presented statistical data from similar employers, to bolster its demand for an increase in the maximum insurance contribution paid by the employer. The data provided by the union showed that eight small counties in eastern Washington paid from 2% to 137% more for insurance benefits than Adams County. The union asked the employer to provide information about the new medical plans, and the employer provided that information. The union again proposed a $234.08 employer contribution, as the minimum increase that allowed employee-only coverage under any of the nine PEBB plans without any out-of-pocket expense to the employee. Responding to Jackson's assertion that the $200.00 maximum was applicable to "all County employees", the parties discussed the benefits provided to the Sheriff's Office employees hired prior to 1992.[6] By the

[6]The employer provided the dollar amounts after the union indicated its belief that some employees received more than $200.00 for insurance and requested the employer to confirm or deny that information. The Sheriff's Office employees enjoyed an additional $90.96 that could be used for coverage of a spouse, and an additional $69.00 that could be applied to children's coverage.

conclusion of the meeting, the union reduced its demand by $4.08, to request a $230.00 maximum employer contribution.

Following the March 27, 1997 meeting, and up to the time the union filed its complaint to initiate this proceeding, the employer maintained the position set forth in Jackson's letter of February 24, 1997. Jackson acknowledged that the employer could increase the maximum employer contribution, but stated that he lacked the authority to exceed the $200.00 amount originally proposed. He also advised the union that the County Commissioners had considered the increase proposed by the union, and had rejected that proposal. The employer again asked whether the union was interested in opening other parts of the contract including wages, holidays, annual leave and other economic items. The union declined to open negotiations beyond the medical and dental insurance reopener.

The union later reduced its original demand by half, to request a $217.04 maximum employer contribution. The employer steadfastly maintained its original position of a $200.00 maximum.

By letter dated May 7, 1997, the employer re-proposed the $200.00 maximum contribution as its "final, last and best offer". By letter dated May 7, 1997, the union stated that the parties would be at impasse, should the employer's offer be rejected at a June 12, 1997 membership meeting.

In a letter dated May 13, 1997, the employer asserted that the parties were at impasse, and it reserved a right to implement its "final, last and best" offer.

After the union membership rejected the employer's offer on May 22, 1997, the union requested mediation. The parties participated in

two mediation sessions into October of 1977, but no agreement was reached.

POSITIONS OF THE PARTIES

The union contends the employer dealt directly with employees regarding the new health plans, and that it failed to bargain in good faith and interfered with employee rights, by unilaterally implementing new health plans with increased costs born by employees.

The employer contends that the record does not support a finding that it dealt directly with employees, that the parties reached an impasse after good faith bargaining, and that the union may not prevail on its unfair labor practice complaint because the union requested mediation to settle the dispute.

DISCUSSION

The Motion for Summary Judgement

At the outset of the hearing, the employer renewed its motion for summary judgment. The Examiner deferred ruling on the motion, based on an incorrect understanding of actions by the Examiner initially assigned to the case. Before considering the merits of the case, the Examiner now denies the employer's motion for summary judgement and ratifies the order issued on December 5, 1997.

The Examiner is bound by the Executive Director's preliminary ruling that the complaint was sufficient to warrant a hearing. In making preliminary rulings under WAC 391-45-110, the Executive

Director assumes that all of the facts alleged in a complaint are true and provable. There is no analysis of the quality or quantity of evidence available to a complainant, or of the defenses which might be available to a respondent. The Commission's rules do not provide for or condone an extensive motion practice. The normal procedure is for an Examiner to hold a hearing at which the complainant will present its own case, and the respondent will present its own defense. WAC 391-45-270.

Motions for summary judgments are allowed under WAC 391-08-230, but will be granted only:

> ... if the pleadings on file, together with affidavits, if any, on file show that there is no genuine issue as to material fact and that one of the parties is entitled to a judgment as a matter of law.

A party moving for a summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. A summary judgment may be appropriate where a respondent simply admits all of the facts alleged by a complainant, without embellishment or affirmative defense, or where a respondent admits all of the alleged facts by failing to answer. See, WAC 391-45-210. Where the facts are contested, however, a hearing is required.

In this case, the employer avoided the risks of failing to answer the complaint.[7] While its answer admitted many of the facts alleged by the union, it did so only as embellished by qualifications and affidavit, and by asserting affirmative defenses. Those

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[7]Inasmuch as the Executive Director dismisses cases under WAC 391-45-110, where they do not state a cause of action as a matter of law, a complainant will likely prevail on the merits if the respondent fails to contest the facts or assert affirmative defenses.

embellishments, qualifications and defenses created genuine issues as to material facts, so that denial of its motion for summary judgment was appropriate.

The Alleged Circumvention of the Union

The employer cannot be found guilty of a "circumvention" violation in this proceeding.

After an exclusive bargaining representative is voluntarily recognized or certified by the Commission for an appropriate bargaining unit, the employer must refrain from dealing directly with bargaining unit employees about their wages, hours and working conditions. Those obligations are enforced by the unfair labor practice provisions of the statute, at RCW 41.56.140(4).

The employer arguably circumvented the union when it created an insurance committee with authority to act on the benefits provided to bargaining unit employees, and particularly when it appointed a bargaining unit employee to serve as a member of that committee. The union might even have sought to have the committee disbanded as an employer-dominated employee organization. See, Pasco Housing Authority, Decision 5927-A (PECB, 1997), citing Electromation, Inc., 309 NLRB 990 (1992), enforced, 35 F.3d 1148 (7th Cir. 1994). The union did not do so, however. The complaint filed in this case on June 2, 1997 is clearly untimely, under RCW 41.56.160(1), as to the actions taken by the employer in 1993 or 1994.

The union has not even established the date when the employer acted upon the petition circulated by the insurance committee in 1996. For this complaint to be timely as to that event, it would have to be shown that it occurred on or after December 2, 1996.

Unilateral Change of Health Plans

The employer did not commit an unfair labor practice when it implemented the PEBB health plans.

The duty to bargain under the Public Employees' Collective Bargaining Act is set forth in RCW 41.56.030(4), as follows:

> (4) "Collective bargaining" means the performance of the mutual obligation of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedure and collective negotiations on personnel matters, including wages, hours and working conditions which may be peculiar to an appropriate bargaining unit of such public employees, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. ...

The general rule is that the status quo must be maintained as to mandatory subjects of bargaining once an exclusive bargaining representative is in place, unless the duty to bargain is satisfied. Federal Way School District, Decision 232-A (PECB, 1977). Employers and unions generally negotiate collective bargaining agreements which regulate most aspects of their relationship (and waive the duty to bargain) for the duration of the contract. Where a collective bargaining agreement is silent, or where the parties expressly provide for a contract reopener, the duty to bargain is fully applicable. The party proposing a change must then give notice to the other, must provide opportunity for collective bargaining before implementation of the change, and must bargain in good faith to either an agreement or an impasse where bargaining is

requested. The duty to request bargaining will not arise where a change is presented as a fait accompli. City of Centralia, Decision 1534-A (PECB 1983). But a waiver by inaction will be found if a party given notice of a proposed change fails to request bargaining in a timely manner.

Violation of Contract -

In this case, the MSC plans were imbedded in the parties' collective bargaining agreement. Thus, the change to the PEBB plans would have constituted a contract violation, rather than the unilateral implementation of a fait accompli without bargaining, and the union would have needed to challenge the change to the PEBB plans by pursuing a grievance alleging a violation of the contract. The Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

Waiver by Inaction -

In this case, the union and its officers certainly knew of the creation and operation of the employer-wide insurance committee from its inception in 1993 or 1994. Even after the change of leadership, the new union officers simply allowed the insurance committee process to go forward. In 1996, union officers signed the petition asking the employer to accept the insurance committee recommendation. Nevertheless, the union did not make a timely request for bargaining about the change of plans. The union waived its bargaining rights about, and certainly has no basis to complain about, the implementation of the PEBB plans in February of 1997.

Tacit Agreement -

An alternative view of the sequence of events in this case is that the parties contemplated a change to the PEBB plans (or some other

plans) when they signed their 1995-1997 collective bargaining agreement. The employer-created insurance committee had been in operation since 1993 or 1994, and Section 18.3 provides for reopening a broad range of health and welfare issues:

> If the cost of medical or dental insurance increases for the year 1996 or 1997, the parties mutually agree to open this contract and commence negotiation on **any change in the insurance provisions in this section.**

[Exhibit 32, emphasis by **bold** supplied.]

The re-opener was invoked for 1996.[8] The possibility of a change of insurance plans remained open for 1997. The union tacitly accepted the new PEBB plans, as recommended by the committee and petitioned for by union officers and most union-represented employees.

No Proof of Change -

The selection of an insurance carrier is not always a mandatory subject of bargaining. City of Dayton, Decisions 1990 and 1990-A (PECB, 1984); City of Toppenish, Decision 1271 (PECB, 1981). To establish an actionable unilateral change, there must be a substantial change affecting the bargaining unit employees.

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[8]Although not subject to a ruling or remedy here, the Examiner deems it appropriate to review the employer's tactics at that time: The employer adopted a resolution increasing its maximum contribution to $200.00, but then rescinded that resolution and required that the union accept the $200.00 offer by 8:00 a.m. on January 26, 1996, to prevent deductions from the employees' February 5, 1996 pay checks. The union accepted the employer's offer on January 24, 1996. In City of Seattle, Decision 651 (PECB, 1979), an employer that gratuitously granted an increase in medical contributions but then withdrew that benefit without bargaining to impasse, was found guilty of an unfair labor practice.

In this case, the union did not prove that the benefits provided under the PEBB plans were substantially changed from those provided under the MSC plans. While the PEBB plans provide vision coverage that was not included in the MSC plans, there is no evidence that the union objected to that enhancement or sought bargaining.[9]

Misinformation and Refusal to Meet

The employer committed unfair labor practices by several of its actions during and after January of 1997, when the union invoked the contract reopener for 1997. The employer's actions do not evidence either a willingness to meet at reasonable times, or a good faith effort to reach an agreement.

Jackson's letter and accompanying proposal of January 17, 1997, were infected by obvious errors. While the use of the 1995 contribution rates might be disregarded as an innocent clerical error, the claim that the addendum represented an agreement of the parties cannot. The employer's chief spokesman in collective bargaining negotiations conducted under the statutory obligations of Chapter 41.56 RCW can be expected to have known that there had been no negotiations between the parties, and hence no agreement between them, on the insurance provisions for 1997.

Jackson's letter and proposal of January 29, 1997, eliminated the erroneous contribution rates, but compounded the mis-characteriza-

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[9]While an improvement in benefits could, in theory, be a basis for finding an unfair labor practice, a union may prefer to waive its bargaining rights where it sees a benefit to its members. See, City of Seattle, supra, where an increased medical insurance contribution was accepted by a union, and City of Dayton, Decision 2111-A (PECB, 1984), where a unilateral wage increase was implicitly accepted by a union.

tion of the status of negotiations between the parties. Without citing any basis for his statement then or since, Jackson wrote:

> It is my understanding this draft represents agreement between the two parties. This is not an opening proposal by the County. If this draft does not represent agreement, please advise so that negotiations may commence.

Again, the employer's chief spokesman can be expected to have known there had been no negotiations between the parties, and hence no agreement between them, on the insurance contribution for 1997.

Jackson's letter of February 24, 1997, evidences that the employer was not entering into negotiations with an open mind. He wrote:

> I have reviewed your letter of February 14, 1997, with the County and I am now in a position to make a proposal regarding the insurance section of the agreement.
>
> First, let me clarify your letter. The documents I have sent to you have not been an offer or proposal by the County, the documents previously sent where [sic] with the understanding that there has been some agreement between the parties as set forth in the documents. The enclosed addendum agreement is the County's first proposal regarding this issue.
>
> I do wish to advise you that **the $200.00 amount is the same amount the County contributes toward plan selection by all other employees** of the County.
>
> Please advise if you anticipate a face-to-face negotiation is necessary. I must advise that **I do not expect the County will change its position regarding the maximum contribution of $200.00 per month as that is the same contribution as all other employees of the County** receive. If there are language issues or coverage issues that you have questions

> about, please do not hesitate to contact me. Please advise if a meeting is necessary.
>
> Yours truly,
>
> *Dictated, but not read*
>
> Rocky L. Jackson

Exhibit 5, [emphasis by *italics* in original; emphasis by **bold** supplied].

Apart from any risks inherent in the letter having been sent without review by its author, two problems arise from it:

1. The employer was attempting to re-characterize the previous correspondence, while attaching the very same addendum as accompanied Jackson's letter of January 29, 1997; and

2. The twice-repeated statement that the $200.00 contribution is the same as provided for "all other employees" actually is incorrect.

Again, the employer's chief spokesman in collective bargaining negotiations can be expected to have known what had transpired previously, and can be expected to have discovered the true facts about the benefits provided to other employees before making and repeating a definitive statement on that subject.

Refusal to Meet and/or Conditions on Meeting -

To its credit, the employer agreed to a face-to-face meeting when pressed by the union. Within days of that agreement, however, it sought to avoid meeting with the union. In his March 20, 1997, letter to the union, Jackson wrote:

> The Commissioners see no change in [the $200.00 maximum] contribution and see no need

> for a face-to-face negotiation if the parties are in disagreement over the dollar amount.

The employer thus imposed preconditions upon the negotiations and took a position comparable to that found unlawful in Whitman County, Decision 250 (PECB, 1977).[10]

Waivers Not Inclusive or Ongoing -

Even if the union waived its bargaining rights on the change of medical plans discussed elsewhere in this decision, the employer has not provided any basis to conclude that the union waived its statutory bargaining rights concerning the level of employer contributions to be paid in 1997. A waiver of bargaining rights at one point in time does not constitute an ongoing waiver by that party of its bargaining rights on either that issue or on other mandatory subjects of collective bargaining. See, City of Seattle, supra, and City of Wenatchee, Decision 2194 (PECB, 1985). In this case, the union requested an increase sufficient to cover the employee-only premium rate for all of the new plans. The statute obligated the employer to meet with the union at reasonable times and to bargain in good faith on that matter. The employer failed to meet those statutory obligations.

The Negotiations

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[10]See, also, General Electric Company, 150 NLRB 192 (1964), enforced, 418 F2d 736 (CA 2, 1969), cert. denied, 397 U.S. 965 (1970), where the employer denied a union:

> [A]n opportunity to consider, comment on, or propose compromise or other alternatives ... prior to the time the employer's position was bound to become hardened by virtue of its "fair, firm offer" and uniformity of policies.

The National Labor Relations Board found that employer bargained in bad faith.

Participation in the March 27, 1997 meeting, and the subsequent mediation sessions did not absolve the employer of its unlawful conduct. The statutory collective bargaining obligation does not compel either an employer or union to agree to a proposal or to make a concession, but it does require good faith. RCW 41.56.030(4). The Commission has cautioned that:

> [A] party is not entitled to reduce collective bargaining to an exercise in futility. In other words, the parties must negotiate with the view of reaching an agreement, if possible. ... [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, Decision 1661-A (PECB, 1984).

In this case, the employer maintained its "no change from $200.00" position before any negotiations, and then as its first, only, last, best, and final offer throughout the negotiations.

The employer may have been seeking to effect an employer-wide standard or objective. While equal treatment of all employees might avoid ill will between members of various groups, the statute does not impose a duty on the employer to bargain in good faith with unrepresented employees. The union raised concerns about the employees who were receiving a higher employer contribution for medical benefits. An explanation for that difference was rooted in the history for those employees,[11] but the employer was unwilling

[11]It was never established that the tradeoff of a wage increase for higher medical benefits for the employees in the Sheriff's Office was a product of the collective bargaining process under Chapter 41.56 RCW.

to discuss that exception with this union until the union pried its existence out of the employer.

Although it eventually met with the union, and listened to the union's concerns regarding the limit on employer contributions, the employer's conduct during those negotiations and the subsequent mediation sessions appears to have been infected with the same misdirection tactics and closed-minded attitudes evidenced in the correspondence exchanged by the parties between January 17 and March 20, 1997. A hard bargaining stance is not always synonymous with illegal or bad faith bargaining, but certainly provides evidence of inflexibility. Here, the evidence compels a conclusion that the employer did not participate in the negotiations with an intent to reach an agreement on any terms other than its own, and that the employer did not conduct itself in a fair and forthright manner in those negotiations. There certainly was neither free and full discussion of the issues, nor explanation of reasons for and against various proposals. This case is comparable to Fort Vancouver Regional Library, Decision 2350-C (PECB, 1988), affirmed, Decision 2350-D (PECB, 1989). The employer clearly did not enter into these discussions with an open mind, as required by City of Mercer Island, Decision 1457 (PECB, 1982).

> [T]he duty to bargain in good faith is an obligation ... to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement ... Differentiating between good faith "hard bargaining" and bad faith "surface bargaining" is no simple task. Where there have been bargaining sessions, one cannot look at any one action or nonaction by the parties in making a determination. The totality of conduct must be considered.

Federal Way School District, Decision 232-A (EDUC, 1977).

The employer committed an unfair labor practice by steadfastly holding to the position it adopted prior to negotiating with the union.

Meetings Held Do Not Absolve Employer

Despite of the employer's resistance to face-to-face negotiations, the union tenaciously demanded negotiations on the contribution level. When the employer sought to back out of the first negotiation session scheduled by the parties, union representative Kae Roan reiterated the union's demand for bargaining in a March 21, 1997 letter which, concluded with:

> If the County has no desire to negotiate, please let me know and I will proceed forward in the appropriate manner.

Even after that thinly-veiled threat of unfair labor practice proceedings, Jackson's March 24, 1997 response, sought to impose pre-conditions on the bargaining:

> [T]he County is willing to negotiate **if there is something to negotiate about ...** if the only disagreement was the dollar amount of insurance contribution by the County, face-to-face negotiations would accomplish nothing other than to reaffirm that the parties disagree.
>
> The County agrees that the opener for this contract is limited to insurance. The County again points out that on a County-wide basis insurance is funded at the same levels that are being proposed to the Public Works union.
>
> The exchange of proposals is negotiation, and to date has not resulted in any agreement.
> ...
>
> ... The County believes that **the only thing face-to-face negotiations would accomplish is**

> **to expend County funds to meet** to determine that we disagree on the dollar contribution. That fact is already established. ...
>
> [Emphasis by **bold** supplied.]

Roan responded on March 26, 1997, stating confusion regarding the employer's position and adding:

> [T]he Public Employment Relations Commission has defined in their case rulings, that negotiations shall be at reasonable times and places. ... I do not believe the intent of the law was for the parties to mail documents back and forth without any face-to-face meetings to attempt to resolve their difference. Dialogue is necessary to be considered negotiations.

As Roan correctly summarized, the law is clear. RCW 41.56.030(4) imposes obligations (and costs) upon employers that are not satisfied or avoided because the employer does not want to agree to a union's proposals. The statutory obligation is not satisfied by mailing documents back and forth without face-to-face meetings and good faith effort to resolve differences. See, Developing Labor Law (3rd edition, 1983, Vol. 1 at 603).

Even if the employer is given the benefit of the doubt as to any intent to deceive the union in the early correspondence, it is clear that the employer was negligent in its preparation for the negotiations. This was not merely an isolated error, but a series of incidents that go to the heart of negotiations on a limited reopener. The failure of the employer to pay attention to its statutory obligations provides basis for finding that it committed an unfair labor practice.

The union invoked the mediation process under Chapter 391-55 WAC, but its participation in that alternative dispute resolution process neither eliminates its rights under Chapter 391-45 WAC nor absolves the employer of having committed an unfair labor practice. Indeed, the employer's ongoing resistance to alternatives and open discussion during the mediation process merely confirms that it had its mind made up concerning the contractual reopener before the union ever invoked that contractual right.

REMEDY

The conventional remedy for a "refusal to bargain" is to require the parties to return to the bargaining table where they left off (or in this case never started), and to bargain in good faith. Although the 1997 period at issue in this case has long since ended, the subject of the negotiations was money payments which could be implemented retroactively if an agreement is reached.

No extraordinary remedies have been requested, and none are warranted, in this case.

FINDINGS OF FACT

1. Adams County is a political subdivision of the State of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. The Washington State Council of County and City Employees, Council 2, and AFSCME Local 1374, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive

bargaining representative of a bargaining unit of public works employees of Adams County.

3. During or about 1993 or 1994, Adams County created a committee to investigate alternatives to the medical insurance plans then offered to its employees. The employer appointed all members to its insurance committee, including a public works employee represented by the union. Although Cliff Plum had been a union officer for about 10 years previous to his appointment as a member of the insurance committee, he was not nominated or appointed to that committee by the union. The union had knowledge of the creation of that committee and of the appointment of Plum as a member of that committee, but did not file a timely complaint concerning either the formation or composition of the committee.

4. The employer and union were parties to a collective bargaining agreement effective for the period from January 1, 1995 through December 31, 1997. That agreement specified the three medical plans to be offered to bargaining unit employees through Medical Service Corporation, and provided for reopening of negotiations to establish employer contribution rates for 1996 and 1997. The parties implemented the reopener provision for 1996, and negotiated an increase of employer contributions from the rates in effect during 1995.

5. At times not specified in this record, the insurance committee created by the employer, as described in paragraph 3 of these Findings of Fact, contacted both union-represented and unrepresented employees, to determine their preferences concerning medical insurance plans. The committee eventually recommended that nine medical insurance plans offered through the Washington State Public Employees Benefit Board be offered

to Adams County employees, in place of the plans offered through Medical Service Corporation. That recommendation was not accepted by the County Commissioners when first presented.

6. On unspecified dates in 1996, various employees of Adams County signed a petition asking the employer to accept the insurance committee recommendation favoring adoption of the PEBB plans. Union officers and a large majority of the employees represented by the union signed that petition.

7. In 1996, after being presented with the petition described in paragraph 6 of these Findings of Fact, the County Commissioners adopted the PEBB plans for all county employees, including employees in the bargaining unit represented by the union, effective February 1, 1997. Notwithstanding the terms of the collective bargaining agreement then in effect, the employer appears to have acted without notice to the union or collective bargaining on the matter.

8. In furtherance of the action described in paragraph 7 of these Findings of Fact, the employer circulated written materials to individual employees, including employees in the bargaining unit represented by the union, requiring them to choose among the medical insurance plans offered through the PEBB.

9. On January 10, 1997, the union requested negotiations concerning both the change of medical insurance plans and concerning the employer contribution rate for 1997.

10. On January 17, 1997, the employer's attorney and chief spokesman in collective bargaining matters mailed a proposed contract addendum to the union, purporting to represent the agreements of the parties to both: (a) Adopt the PEBB medical

insurance plans in place of the plans listed in the parties' collective bargaining agreement; and (b) establish the employer contribution rate for 1997 at the amount paid in 1995. The employer and its representative knew or should have known that there had been no collective bargaining negotiations, and no agreement between the parties, concerning the matters set forth in the tendered contract addendum.

11. The union refused to sign the contract addendum tendered by the employer's representative on January 17, 1997, and pointed out the error in regard to reverting to the contribution rates and medical plans in effect in 1995.

12. On January 29, 1997, the employer's attorney and chief spokesman mailed another proposed contract addendum to the union, providing for a maximum employer contribution rate of $200.00 per month, which was the rate negotiated by the parties for 1996. The letter covering transmittal of that draft re-asserted that the tendered addendum represented an "agreement between the two parties". The employer and its representative knew or should have known that there had been no collective bargaining negotiations, and no agreement between the parties, concerning the matters set forth in the tendered contract addendum.

13. The union was not satisfied with the $200.00 maximum contribution offered by the employer, and it proposed a $34.08 increase in the maximum employer contribution. The amount requested was the amount necessary to provide employee-only coverage under any and all of the PEBB plans.

14. By letter dated February 24, 1997, the employer's attorney and chief spokesman sought to re-characterize the addendum

documents previously provided as employer proposals, and he invited the union to propose language and coverage changes. He twice stated, however, that no deviation from the $200.00 maximum employer contribution was to be expected. The same letter misrepresented that the $200.00 maximum was applicable to "all other employees of the County" when, in fact, certain Adams County employees were receiving greater employer contributions under a historical arrangement. The employer and its representative knew or should have discovered the true facts before making the statement concerning the maximum applicable to "all other employees of the County".

15. The union requested a face-to-face meeting for collective bargaining under the contractual reopener concerning the employer contribution rate for 1997. The employer eventually agreed to schedule such a meeting for March 27, 1997.

16. On March 20, 1997, after the face-to-face meeting was scheduled as described in paragraph 15 of these Findings of Fact, the employer's attorney and chief spokesman sent a letter to the union stating that there was no need for a face-to-face meeting concerning the employer contribution for 1997, because the County Commissioners had reviewed the union's proposal and saw no need to change the $200.00 maximum contribution. The employer's attorney and chief spokesman further conditioned meeting upon the union identifying "issues necessitating face-to-face negotiations".

17. By letter dated March 24, 1999, the employer again asserted that face-to-face negotiations concerning the maximum employer contribution for medical insurance would accomplish nothing, other than to reaffirm that the parties disagree and to expend

county funds to meet, citing that the parties' disagreement was established prior to any face-to-face negotiation.

18. Notwithstanding the employer's earlier attempts to cancel or pre-condition the negotiations, as described in paragraphs 16 and 17 of these Findings of Fact, the parties met for the purposes of collective bargaining on March 27, 1997. The union responded to the employer's previous assertion that the $200.00 maximum was applicable to "all County employees" by calling attention to the historical arrangement by which 10 employees in the Adams County Sheriff's Office were receiving higher employer contributions for medical insurance, and the employer eventually disclosed information concerning that arrangement. Throughout the meeting, the employer maintained the position set forth in on January 29, 1997. The employer's attorney and chief spokesman acknowledged that the employer could increase the maximum employer contribution, but stated that he lacked authority to exceed the $200.00 amount originally proposed.

19. By letter dated May 7, 1997, the employer re-proposed the $200.00 maximum contribution as its "final, last and best offer".

20. The union did not accept the employer's offer, and requested mediation. Throughout the intervening period and in two mediation sessions, the employer steadfastly maintained the $200.00 per month maximum employer contribution rate which it had proposed, rejected all alternatives offered by the union, and failed to demonstrate any genuine effort to reach agreement.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. The complaint charging unfair labor practices filed in this matter on June 2, 1997 is untimely, under RCW 41.56.160, as to the employer's formation and composition of the insurance committee during or about 1993 or 1994, and by any circumvention of the union in the actions of that committee.

3. The union waived its bargaining rights concerning the change of insurance plans from those offered through Medical Service Corporation to those offered through the Public Employees Benefits Board, by its inaction when the proposition was presented to the County Commissioners in 1996, so that no unfair labor practice is established under RCW 41.56.140(4) as to the change of insurance plans.

4. By its false and misleading statements as described in paragraphs 10, 12 and 14 of the foregoing Findings of Fact, by its failure to vest its negotiators with authority to consider and make proposals as described in paragraph 18 of the foregoing Findings of Fact, by its failure to meet at reasonable times and places and/or its pre-conditioning of meeting for the purposes of collective bargaining as described in paragraphs 16 and 17 of the foregoing Findings of Fact, and by its failure and refusal to bargain in good faith as described in paragraphs 10, 12, 14, 16, 17, 18, 19 and 20 of the foregoing Findings of Fact, Adams County has committed, and is committing, unfair labor practices in violation of RCW 41.56.140(4) and (1).

NOW, THEREFORE, it is

ORDERED

Upon the basis of the foregoing 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 Adams County, its officers and agents, shall immediately:

1. CEASE AND DESIST from:

   a. Failing or refusing to meet with the union at reasonable times, to confer and negotiate in good faith, and to execute a written agreement, with respect to grievance procedure and collective negotiations on personnel matters, including wages, hours and working conditions of employees in the bargaining unit represented by the union, including employer contributions for medical insurance benefits.

   b. In any other manner, interfering with, restraining, or coercing its employees in the exercise of their rights under 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 the employer contributions for insurance benefits for 1997.

   b. 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 above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice attached hereto and marked "Appendix" aloud at the next public meeting of the Board of Commissioners of Adams County, and append a copy thereof to the official minutes of said meeting.

d. Notify the Washington State Council of County, City and Municipal Employees, 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 that union with a signed copy of the notice required by the preceding paragraph.

e. 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 required by the preceding paragraph.

Issued at Olympia, Washington, on the 10th day of December, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Paul T. Schwendiman

PAUL T. SCHWENDIMAN, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT make false and misleading statements in collective bargaining with a union representing our employees.
WE WILL vest our negotiators with authority to consider and make proposals in collective bargaining with a union representing our employees.

WE WILL meet with a union representing our employees at reasonable times and places, for the purposes of collective bargaining.
WE WILL bargain in good faith with the union representing our employees on all matters of wages, hours and working conditions of the employees represented by the union.

WE WILL bargain in good faith with the Washington State Council of County and City Employees and AFSCME, Local 1374 regarding the employer contribution for medical insurance for the year 1997.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

WE WILL read this notice into the record of the next public meeting of the County Commissioners, and append a copy thereof to the official minutes of such meeting.

ADAMS COUNTY

DATED: _____ By: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.